ABA Mergers & Acquisitions Committee

National M&A Invitational

Inaugural Negotiation Contest

Fact Pattern – Available to both Buyer and Seller teams

Schiv Roye, the matriarch of the Roye family, has decided that she wants to sell the family business if appropriate terms are available. For over 60 years the Roye family has operated a heavy-duty truck service and repair business in Texas, Oklahoma, New Mexico, and the eastern part of Arizona. It conducts business under the name “Britestar Truck Services.”

The family business is owned and operated through two companies: Weighstar Operations, Inc., a Delaware corporation (“OpCo”), which owns all of the operating assets of the business, and Royeco Properties, Inc., a Delaware corporation (“Landlord”), which owns all of the real estate. Neither OpCo nor Landlord has any subsidiaries. Schiv owns a 70% membership interest in each company. Schiv’s brother Connar owns 15% of each company, and Schiv’s two children each own 7.5% of each company. Schiv’s children have been involved in the business over the years but are currently not employed by OpCo or its affiliates. The business has been financed primarily from earnings and has very little debt; OpCo has only a small line of credit. Although Britestar has little debt, the truck repair industry in the US is particularly sensitive to interest rates, because many of the trucking companies are highly leveraged. An increase in interest rates eats into profits and the trucking companies respond by deferring maintenance on their fleets, which affects FTG and Britestar revenue. Most of Britestar’s customers are highly leveraged, more so than the average in the industry nationwide.

Furness Trucking Group, Inc. (“FTG”) is interested in acquiring Britestar. FTG is a US public Delaware corporation traded on the NYSE. FTG’s market capitalization is $1.5 billion. FTG owns and operates 250 heavy duty truck service and repair locations primarily in the southeast with a meaningful presence in eastern Oklahoma and Texas. The FTG team are seasoned buyers. FTG has been rolling up mom and pop shops like Britestar for years. FTG is interested in expanding its business in the areas where Britestar does business. FTG’s CEO, Sandi Furness, is a respected CEO both within and outside of FTG’s industry. She is particularly known for her strategic deal making. FTG has sufficient available cash to acquire Britestar and will not need to borrow any of the purchase price.

The parties have signed an NDA, and FTG has been conducting due diligence. However, because FTG is a competitor, OpCo has provided only limited information. Several current FTG executives and other officers have at times worked for Britestar over the years. OpCo has not told its employees generally about the potential sale.

Two months ago, OpCo and Buyer shook hands over a non-binding term-sheet, a selected summary of which is attached below. The term sheet states that the transaction will be structured as two simultaneous transactions: an acquisition of substantially all the assets of OpCo (“Asset Sale”) and a separate acquisition of the land from Landlord (“Land Sale”). Since that time, OpCo and FTG have been exchanging drafts of an Asset Purchase Agreement (“APA”) for the Asset Sale and a Purchase and Sale of Real Estate Agreement (“Land Sale Agreement”) for the Land Sale.

The Asset Sale will be conditioned upon and closed simultaneously with the Land Sale. The Land Sale Agreement, which is separate from the APA, has been fully negotiated, and will be signed simultaneously with the APA. The only remaining agreement that needs to be negotiated is the APA. The only significant closing conditions in the Land Sale Agreement are completing the survey and title work for all parcels and the closing of the Asset Sale. The parties believe it may take up to six months after signing definitive agreements to complete the necessary survey and title work to complete the Land Sale.

Several sections of the APA have been agreed to, but some significant issues remain to be negotiated. Most notably, the parties have agreed on the language of the representations and warranties in the APA and on the related disclosure schedules copies of which are not being provided. An earn-out was discussed but was tabled for various reasons. Both parties have instructed their M&A counsel to steer clear of any post-closing contingent payments based upon the performance of the business post-closing. Similarly, payment of the purchase price by FTG with shares of its stock was discussed but has been dismissed by both sides for various reasons and is no longer under consideration. The parties have agreed to a cash-free, debt-free deal with no purchase price adjustment. Separate tax and regulatory advisors for each party have signed off on the structure and relevant portions of the APA. All Hart Scott Rodino or antitrust concerns will be addressed by the parties' respective antitrust counsel and no other regulatory approvals are required for closing. No employees of Britestar are unionized and there are no other collective bargaining or similar labor issues present. Representation and warranty insurance ("RWI") has been considered but for the time being Sandi and Schiv have specifically instructed their teams to assume that RWI will not be available. Sandi and Schiv are generally comfortable with the interim operating covenants and have asked the lawyers not to further negotiate those provisions. As a result, FTG and OpCo have instructed their M&A counsel not to modify or negotiate any of the provisions of Articles IV or V. Any reference to these articles or any sections within these articles in other parts of the agreement are fair game, however.

OpCo has a significant supply contract with PACCAR. OpCo also has supply agreements with Heavy Motors ("HM"), Freightliner, Volvo Trucks and Navistar International. All of these contracts, other than the supply agreement with HM ("HM Supply Agreement"), require the supplier's consent in the event of a sale of substantially all of the assets of OpCo. No other significant third-party consents are required in connection with the contemplated transaction.

Recently, after the term sheet was completed, HM sued OpCo, accusing OpCo of offering deep discounts on parts in violation of the HM Supply Agreement, and OpCo filed a counterclaim against HM arguing that HM has been violating the "most favored nations" clause of the HM Supply Agreement (the "HM Supply Agreement Dispute"). FTG is aware of the HM Supply Agreement Dispute.

Each of FTG and OpCo has prepared, for internal use only, a short statement outlining its positions on various open items. FTG and OpCo have sent their statements to their own M&A counsel, but the client statements have not been sent to the counterparty.

TERM SHEET FOR THE ASSET SALE

Purchase Price	$75 – 85M. Paid in cash.
Structure	Two simultaneous transactions: (1) an acquisition of substantially all the assets of OpCo ("Asset Sale") (2) a purchase of all of the properties of Landlord ("Land Sale"). The closing of the Asset Sale will be conditioned upon the simultaneous closing of the Land Sale. The terms of the Land Sale are otherwise covered by a separate term sheet and purchase agreement. The closing of the Land Sale will take at least 6 months following execution of definitive agreements.
Debt	The deal will be cash-free debt-free. No debt will be assumed.
Timing	Sign definitive purchase agreement by January 25, 2024 Close by July 31, 2024
Regulatory approvals	None required.
Buyer Financing	Buyer to finance from cash on hand.