

802.9

April 11, 2000

Mr. Michael Verne
Merger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Interpretation of 16 C.F.R. 802.9

Dear Michael:

I am writing to confirm the advice that you gave to me and [redacted] in our phone conversation on Friday, April 7, 2000. Specifically, this letter confirms your advice that the "passive investor exemption" would excuse the transaction described below from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act").

Company A is making an investment of \$25 million in Company B, for which Company A will receive nonvoting common stock of Company B, convertible into Company B's voting common stock. On a fully diluted basis Company A's investment will, when converted, constitute less than 10 percent of Company B's voting securities.

Concurrently with the investment, Company A and Company B have entered into an agreement describing a "strategic alliance". Company A is a manufacturer and distributor of technology equipment and services. Company B is an "incubator" for businesses (clients of Company B) that use such equipment and services. The terms of the strategic alliance agreement specify that:

• Company A will have the right to send an observer to the meetings of the Board of Directors of Company B, and/or to receive the materials prepared for the Board. Company A will not have a Board seat nor will it have the right to vote on any Board matters.

} OBSERVE
OR
PASSIVE

• Company B will designate Company A as the "preferred provider" for itself and the recommended preferred provider for Company B's incubator clients. Company A will be the primary preferred provider over all other suppliers for certain technology needs and one of two preferred providers for certain other technology needs, so long as Company A's pricing and other specifications for such technology are competitive with other vendors of such technology.

} VENDOR-
PREFERRED
OR

[REDACTED]

* NOT A PROBLEM AS LONG AS A
DOES NOT INVOLVE ITSELF IN
PRICING OF B's PRODUCTS.

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• In connection with the recommendations to its incubator clients, Company B will actively promote Company A products to its clients, make available to them Company B staff trained and certified on Company A products, and in general facilitate introductions and dialogues between Company A and Company B's clients. Company A may lease office or laboratory space from a Company B affiliate in order to provide on-site support and demonstration services to Company B clients.

• Company A and Company B will engage in joint marketing efforts to publicize and promote their preferred provider relationship and to promote and enhance each other's products and services. Representatives of each Company will meet regularly to discuss market trends, emerging needs of the Company B clients, and improvements to Company A products and services.

• Company A will consider financing the acquisition of Company A product through leasing or debt financing, subject to Company A's standard credit review process.

*

OK

The initial investment is not a filing event under the HSR Act because the securities acquired do not have the present right to vote. Upon conversion of the initial investment Company A will hold voting securities of Company B valued at \$25 million (or more), but will hold less than ten percent of Company B's voting securities. Company A is making the investment solely for investment purposes and does not intend to become engaged with or to influence the management of Company B. The activities described above - a simple "observer" status with the Company B Board, a preferred provider vendor/vendee relationship, and the promise of promotions and financing related to the vendor/vendee relationship - are all consistent with a passive investment intent.

Based on the facts set forth above, you have agreed that the acquisition of voting securities through the contemplated conversion would be exempt from the filing requirements of the HSR Act pursuant to 16 C.F.R. 802.9. Thank you for your assistance on this matter.

AGREE WITH THE CONCLUSIONS OF
THE WRITER.

Michael Verne
4/10/00

Sincerely,

[REDACTED SIGNATURE]

cc: [REDACTED]