

[Redacted]

[Redacted]

March 9, 2001

Michael Verne, Esq.,  
Premerger Notification Office,  
Bureau of Competition,  
Federal Trade Commission,  
Washington, D.C. 20580,  
USA.

Re: Project Cricket: Dual Listed Company Structure

Dear Mike:

We were grateful for the opportunity to talk with you today about the Dual Listed Company structure ("DLC") and for your view that the transaction is not subject to notification pursuant to the Hart-Scott-Rodino Improvements Act of 1976 ("HSR"). The following confirms the major features of the DLC structure under discussion between our client and the company represented by [Redacted]

An [Redacted] company and a [Redacted] company may merge through a dual-listed companies structure whereby their economic interests will be wholly aligned but each company will remain separately incorporated and traded on stock exchanges in [Redacted] and elsewhere. This is a structure similar to that employed by such corporate groups as [Redacted] Unilever and [Redacted]

The dual listed company structure does not fall within the general notification regime for mergers contained in Rule § 801.2(d). Neither company will acquire any common shares or assets in the other as part of the transaction. Instead, each corporation will issue a "special share" that will be held indirectly by a trust corporation. The special share in each company will allow voting rights to be exercised in accordance with votes cast by shareholders of the other company in order to provide for, in essence, unified voting by the shareholders of both companies. In addition, a dividend equalisation share will be issued by each corporation to the other to ensure that, where one of the corporations has insufficient distributable profits, a payment will be made to it by the other corporation in order to enable equal dividends to be paid by both of them. These shares will assure equalised distributions on liquidation.

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COMMUNICATIONS SECTION  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

The dual listed company structure assures that there will be a unity of interest, identical boards, unified management, single accounts, a joint voting structure, cross-guarantees and equal dividend payments, although there will not be a single surviving corporation after the transaction. Nor, save as mentioned above, will either hold any securities or assets after the transaction that they did not hold before. Therefore, we agree that this transaction does not trigger the HSR notification requirements.

That conclusion is consistent with the view of John M. Sipple of your office in relation to the creation of the DLC structure under which [redacted] plc now operates, when I raised the issue with him in 1995 on behalf of [redacted]

[redacted] has authorized me to say that he concurs in the view expressed in this letter. Please do not hesitate to call either [redacted] or me if you should have any further questions.

We are grateful for your assistance.

Kind regards.

Yours sincerely,

[redacted signature]

(Enclosure)

cc:

[redacted]

VIA FACSIMILE AND EXPRESS MAIL

I AGREE, AS DO M. BRUND, R. SMITH,  
T. HANCOCK & N. OVUKA. THIS IS NOT  
AN ACQUISITION & THEREFORE NOT COVERED BY  
THE ACT.

B. Michaelson  
3/9/01

[redacted]

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