

BY FACSIMILE

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Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: HSR Analysis of Prepackaged Bankruptcy Transaction

Dear Mike:

I am writing to confirm the advice you gave in the course of our telephone conversation back on Thursday, April 5, in which you agreed with our analysis of a prearranged bankruptcy transaction, and concluded that the proposed merger of two heavily-indebted companies would not be reportable as structured.

The proposed transaction is conditioned upon confirmation of plans of reorganization by bankruptcy courts with jurisdiction over each of the companies. The first element of the transaction is a merger between the two companies in bankruptcy, pursuant to Section 303 of the Delaware General Corporation Law, which we analyze as an acquisition by the surviving corporation A of all of the outstanding voting securities of its merger partner B. The second element is an equitization of debt, in which the voting securities of the merged company AB would be distributed among various debtholders of AB in exchange for releases of debt, and potentially among the shareholders of AB, in proportions to be determined by the bankruptcy court plans of reorganization. We analyze this distribution as a series of acquisitions of AB stock by various individual investors.

The merger between A and B which constitutes the first element of this transaction does not meet the statutory size-of-transaction test. The voting securities of B had a market capitalization of less than \$5 million when the company suspended trading a few days before our phone conversation took place. The "pink sheet" trading value of the company in bankruptcy

Michael Verne Federal Trade Commission

April 18, 2001 Page 2

value of the existing voting securities of B as determined in good faith by A according to Rule § 801.10(c)(3). This value would certainly be much less than \$50 million.

The distribution of AB voting securities which constitutes the second element of the merger may be reportable, if as a result of that distribution any one person will hold AB securities worth more than \$50 million. A and B are not able to determine the value of AB securities that any one person will acquire, until the bankruptcy plans are finalized and the identities of future AB shareholders are known. However, they acknowledge that it is possible that there could be one or more reportable acquisitions with respect to this part of the transaction. This apparently anomalous result comes about because in this part of the transaction, the debtholders acquiring AB voting securities will release the merged company from a substantial volume of the debt which is adversely affecting the market values of A and B at present. Disencumbered by much of its debt, the stock of the merged company AB may have a market value of several hundreds of millions of dollars.

In effect, the two elements of the transaction will occur simultaneously. However, the merger agreement describes the merger as the first step of the transaction. Furthermore, the merger logically must come first: in the second element of the transaction, the voting securities of the merged company AB will be issued to the debtholders of A and B as consideration for their release of debts.

Accordingly, you agreed with our conclusion that the merger must be analyzed as the first step in the transaction, and as such, would not be reportable unless the fair market value of B's voting securities should exceed \$50 million when the merger takes place.

Please contact me as soon as possible if I have mischaracterized our conversation or your views in any way. Although this transaction cannot take effect until the bankruptcy courts have confirmed the plans, the parties would want to prepare their HSR filings immediately if any were to be required in connection with the merger.

As always, thank you very much for your time and attention.

