

Rule 80.1.1(b)(1)

[REDACTED]

[REDACTED]

September 4, 2001

By E-Mail (kberg@ftc.gov)

Ms. Karen Berg
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Loan to Seller or affiliated party prior to expiration
or termination of the waiting period.

Dear Ms. Berg:

As a follow-up to our call of this morning with [REDACTED] and the undersigned, we are writing to confirm your advice that it would be permissible to make the loan described below prior to the expiration or termination of the waiting period specified in 15 U.S.C. 18a(b)(1).

Our client or a special purpose subsidiary (collectively referred to as "Buyer") proposes to extend a loan to target or its parent or one or more of parent's subsidiaries (collectively, the "Seller") which are currently operating as a debtor in possession under Chapter 11 of the U.S. Bankruptcy Code. The Buyer currently is participating in the second stage of a Court-ordered bidding contest with the goal of acquiring assets of the Seller. The bidding is expected to take place and conclude today, upon which time the Bankruptcy Court likely will be asked to confirm the sale. If it prevails in the bidding, Buyer anticipates filing Premerger Notification and Report Forms with the FTC and DOJ early this week.

In order to facilitate Seller's ability to operate prior to closing, and thereby to induce Seller to accept Buyer's bid and without investing in Buyer any control over Seller prior to the conclusion of the HSR waiting period and the closing of an acquisition, it has been proposed that Buyer loan Seller an amount equal to the aggregate of the following amounts:

[REDACTED]

10/10/01

- 1) Amounts due on September 28, 2001 pursuant to terms of an existing Debtor-In-Possession Financing Facility which are estimated to be approximately \$100 million (hereafter referred to as the "Amount Due");
- 2) the difference between the Amount Due and the second highest bid for the assets of Seller;
- 3) any associated expenses and fees incurred by Seller in connection with this loan; and
- 4) any associated expenses and fees charged by Seller's senior lenders or DIP lenders who would be required to subordinate their current loans to Buyer's loan.

The loan to the Seller (or possibly to a group of creditors as will be directed by the circumstances of this bankruptcy proceeding) will be of limited recourse to the borrower. In no event will the amount of the loan be higher than Buyer's anticipated acquisition price. The loan will not bear interest and the Buyer will not have the ability to call the loan except in limited circumstances involving the sale or partial sale of assets to a third party in which case Buyer only will be entitled to the proceeds of such sale that would be necessary to repay amounts outstanding under the loan.

Buyer has also requested that, if Seller breaches any covenant under the contemplated Asset Purchase Agreement between Buyer and Seller, that Buyer have the right (i) to extend the last date upon which the transaction contemplated in the Asset Purchase Agreement may close; and/or (ii) to request replacement of the member or members of the senior management team responsible for the breach. Buyer, however, would not be involved or have any say in Seller's selection of replacements for its management team during this period prior to closing. In addition Buyer (through its consultants) would have customary lender's rights pertaining to inspection of the books and records of companies for whose assets Buyer is currently bidding.

We would ask that you confirm your advice that the extending of the loan by Buyer as described above would not constitute a transfer of beneficial ownership of the assets of Seller to Buyer and, therefore, that such loan can be made prior to the expiration or early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.



[REDACTED]
Karen Berg

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September 4, 2001

If I or [REDACTED] can address any questions you may have, please do not hesitate to contact me at [REDACTED]

Very truly yours,

[REDACTED]
cc: Michael B. Verne (mverne@ftc.gov)
[REDACTED]

Confirmed that this loan
would be permissible during the pendency
of the waiting period.

Karen Berg
Remedy Notification Office

[REDACTED]