

802.51
801.40

[REDACTED]

November 21, 2003

By Electronic Mail

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Premerger Notification Analysis

Dear Mr. Verne:

This letter seeks to confirm our telephone conversation of November 17, 2003 with [REDACTED] and [REDACTED] concerning the non-reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act"), and applicable regulations of a multi-faceted transaction that is intended to create a joint venture.

Party A and Party B (collectively, the "Parties") have signed a letter of intent ("LOI") pursuant to which a joint venture, consisting of three newly-created legal entities, will be formed. These entities, a Delaware General Partnership (the "GP"), a Netherlands BV (the "BV"), and a Limited Liability Company to be formed in the United States (the "LLC"), are discussed separately below.

The Parties will contribute various entities doing business in the United States, Canada, Australia and Japan to the GP. Under the Premerger Notification Office's ("PNO") long-standing interpretation of the HSR Act, the creation of the GP is not a reportable event.

The Parties will contribute to the BV various entities doing business in countries other than those identified in the previous paragraph. You have previously advised us that the formation of a BV is potentially reportable under 16 C.F.R. § 801.40, unless one of the exemptions contained in 16 C.F.R. § 802.51 is applicable. We have determined that the exemption in 16 C.F.R. § 802.51(b) applies because sales made in or into the United States in each of the Parties' most recent fiscal years by the entities to be contributed to the BV are, in the aggregate, well under US\$50 million. Furthermore, we have determined that it is unlikely that the entities to be contributed to the BV will have aggregate sales in or into the United States in excess of US\$50 million in each of the Parties' current fiscal years. In this regard, monies collected from foreign entities by an entity acting as a collection agent in the United States, which then transfers the monies to the same or other foreign entities, are not considered to be sales "in or into" the United States. In addition, in neither the current nor the most recent fiscal year do the entities being contributed to the BV have aggregate total assets in the United States

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in excess of US\$50 million. Accordingly, as the ultimate parent entities of each of the Parties are both foreign persons, the formation of the BV is exempted from the requirements of the HSR Act by 16 C.F.R. § 802.51(b).

The Parties are forming the LLC to provide certain centralized management functions to the GP, the BV, and any other entities that are created in connection with the formation of the joint venture pursuant to the LOI. The Parties will contribute to the LLC the employment contracts of certain of their officers who will manage the joint venture entities. These will include the contracts of senior executives and other personnel who perform administrative functions that are most economically provided to the joint venture on a centralized basis. We understand from our conversation that the formation of the LLC would not be reportable for two reasons.

First, such contributions would not be viewed by the PNO as the contribution of "two or more pre-existing, separately controlled businesses" under the PNO's Formal Interpretation 15. Since the LLC would provide management and administrative support services that were previously performed in-house and were not (and will not be) made available to third parties, the contributed contracts would not constitute business units under 16 C.F.R. § 802.1(a). Second, since the LLC is simply assuming the liabilities and benefits of existing employment agreements and is not paying to acquire them, the contracts would be valued at zero for purposes of the HSR Act and would not approach the Act's \$50 million size of transaction test.

I would be grateful if you would contact me at the above phone number or e-mail address if this analysis is erroneous in any respect.

Very truly yours,

[REDACTED]

cc: [REDACTED]

AGREE. NOVUM CONCLUS.

B. Michael Verne
11/21/03

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