

801.10



September 22, 2005

Michael B. Verne, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

Re: HSR Interpretation

Dear Mike:

This is to confirm the telephone conversation you had with [redacted] of [redacted] and myself on September 21, 2005, in which you agreed that the reporting requirements of the Hart Scott Rodino Antitrust Improvements Act and implementing regulations (the "HSR Act") would be applied to a transaction with the following aspects in the manner described below:

FACTS:

Aspect 1: Acquirer intends to acquire 100% of the voting securities in two separate corporations, Target A and Target B. Target A's Ultimate Parent Entity ("UPE") is an individual, Jane Doe. Target B is its own UPE, but Jane Doe owns 16.7% of the voting securities in Target B.

Aspect 2: Acquirer is paying a purchase price of \$60 million for Target A. Prior to closing, Target A holds debt in the amount of \$5 million to an institutional financing source and debt in the amount of \$5 million to an independent corporation ("Non-Target") also controlled by Jane Doe. Non-Target is not being acquired by Acquirer and is not a party to the transaction. During closing, Target A will repay in full the balances on both debts, and Acquirer will take possession of the voting securities of Target A only after such debts have been extinguished.

ANALYSIS AND CONCLUSION:



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Aspect 1: Because Target B is its own UPE, the acquisition of Target A and the acquisition of Target B are evaluated separately for whether they meet the size-of-transaction test. Further, there is no aggregation of the Target B voting securities being sold by Jane Doe with the Target A voting securities she is selling for the purpose of determining whether either acquisition meets the size-of-transaction test for reporting requirements.

Aspect 2: The amount of the repayment obligation on both the institutional debt and the debt to Non-Target offsets the purchase price, so that the purchase price is reduced from \$60 million to \$50 million for the purpose of determining of whether the transaction meets the size-of-transaction test for reporting requirements.

* * *

Please confirm that this is the correct interpretation of reporting requirements. Thank you for your time and consideration of this matter.

Sincerely,



cc: 

AGREE -
B. Michael Verne
9/22/05