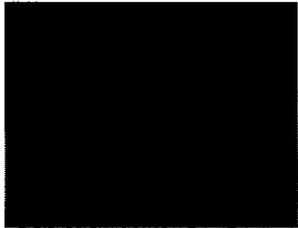


801.1(b)  
802.A



CONFIDENTIAL

VIA ELECTRONIC MAIL

January 11, 2007

Mr. B. Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
7th & Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mike:

I am writing to confirm my understanding of a telephone conversation we had on December 28, 2006 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of a proposed transaction discussed below.

Proposed Transaction

The proposed transaction relates to the acquisition of additional interests in a limited liability company, LLC, by Company A. LLC holds 100% of the voting securities of one issuer of voting securities and 48% of the voting securities of another issuer. LLC has two classes of limited liability company interests: A units and B units. Company A currently holds only A units of LLC representing 40% of the overall number of units of LLC.

Until a certain amount of profits are achieved by LLC, all of the profits of LLC go to the holders of the B units. After a certain level of profitability has been achieved by LLC, profits will be divided based on the percent of total LLC units held by each holder of the LLC units. With regard to the distribution of assets of LLC upon dissolution, Company A is entitled to receive approximately 70% of the assets, after the payment of debts, if the dissolution of LLC occurred in the near future. Over time, if Company A did not acquire additional units in LLC, its rights to assets upon dissolution of LLC may fall to as low as 40%.

Company A previously loaned LLC \$25 million in exchange for a convertible note that can be converted into additional A units of LLC. Company A intends to exercise that note at a point in time when it would be entitled to receive approximately 70% of the assets, after the payment of debts, if the dissolution of LLC occurred at the time of the conversion.





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Company A also is negotiating to buy out the remaining holders of limited liability company interests in LLC, the Remaining Interests. These negotiations will not be completed at the point Company A exercises the convertible note to acquire additional A units.

Conclusions

You agreed that Company A already controls LLC for HSR purposes under 16 C.F.R. § 801.1(b)(1)(ii) at the time of the exercise of the convertible note. Specifically, you agreed that the rights to profits of LLC and the rights to assets of LLC upon dissolution are variable, and thus control of LLC at the time of the acquisition of additional interests in LLC is solely determined by the right to assets upon dissolution of LLC, assuming dissolution were to occur at the time of the additional acquisition. You confirmed that as Company A would control LLC already at the point of the note conversion that the acquisition of additional LLC units regardless of value, through the conversion or otherwise, would be non-reportable under the HSR Act pursuant to 16 C.F.R. § 802.30 as an intraperson transaction.

You also confirmed that in valuing the interests that Company A holds in LLC for HSR purposes that the value of the 48% interest LLC holds in an issuer of voting securities should be excluded under 16 C.F.R. § 802.4, assuming LLC does not have the power to designate 50% or more of the board of directors of the issuer through the holding of voting securities, contractual rights, or a combination of the holding of voting securities and contractual rights. You agreed that the fact that LLC has an option to acquire the remaining 52% of the issuer is not relevant to whether LLC controls the issuer for HSR purposes, assuming the option has not be exercised and the option carries with it no current rights for the election or designation of directors.

Finally, you confirmed that assuming *arguendo* that Company A did not acquire control of LLC until the exercise of the convertible note, it is not necessary to aggregate in the value of the Remaining Interests to determine if the conversion of the note is HSR reportable, assuming there is no letter of intent or definitive agreement for the acquisition of the Remaining Interests at the time of the conversion of the note.

\* \* \*



[Redacted]

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January 11, 2007  
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Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[Redacted]

AG:ess  
w  
1/11/07

[Redacted]