

802.9
802.64

CONFIDENTIAL

VIA ELECTRONIC MAIL

January 29, 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 telephone conversations we had on January 22, 2007 and January 26, 2007 concerning obligations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

There is a proposed merger between two publicly trade companies, Company A and Company B, whereby Company A will be the surviving corporation. The underlying merger is reportable under the HSR Act for Company A's acquisition of all of the voting securities of Company B. Please assume that both Company A and Company B have complied with or will comply with the HSR Act for that acquisition by Company A.

Pursuant to the merger between Company A and Company B, the shareholders of Company B will receive voting securities of Company A as consideration for the merger. Please assume that some of the Company B shareholders will as a result of the merger end up holding an amount of Company A voting securities valued above the HSR size of the transaction test. Some or all of these shareholders may intend to rely on some exemption from filing such as the investment only exemption under 16 C.F.R. §802.9 or the institutional investor exemption under 16 C.F.R. §802.64. It is also possible that some of these shareholders (such as institutional investors) that appear for SEC or other purposes to beneficially own enough shares of Company B that they would acquire from the merger Company A stock above the size threshold do not actually hold such amount of shares for HSR purposes. The list of shareholders that may hold Company A stock valued above the size of the transaction test as a result of the merger could change between now and closing. For example, the value of Company's A publicly traded voting securities may increase or decrease, a shareholder could acquire or sell voting securities of Company B, and common shareholders of Company A and B could increase or decrease holdings of voting securities in either or both companies prior to the closing of the merger.



B. Michael Verne
January 29, 2007
Page 2

You agreed that Company A does not have an obligation under the HSR Act to notify any Company B shareholder that the shareholder may be acquiring a HSR reportable amount of Company A voting securities as a result of the merger or to seek confirmation from any Company B shareholder that the shareholder is taking a position that it does not have a reporting obligation. Accordingly, if a Company B shareholder fails to file, but should have filed under the HSR Act for acquiring Company A voting securities as a result of the merger --based on an incorrect reliance on an investment only exemption or other reason -- this would not result in any HSR violation by Company A, such as for not filing as an acquired person. In this context, my understanding is that Company's A HSR obligation to file as an acquired person will arise only when shareholders file for a reportable acquisition of Company A voting securities.

* * *

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,



Agree -
Beuel
1/29/07

