

801.30

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, June 19, 2008 10:04 AM
To: Verne, B. Michael
Subject: TENDER OFFER IN THE UNITED KINGDOM

MIKE, I WOULD LIKE FOR YOU TO CONFIRM THE PNO'S UNDERSTANDING OF TWO ISSUES RELATING TO AN ACQUISITION OF VOTING STOCK UNDER THE LONDON CITY CODE ON TAKEOVERS AND MERGERS AND THE CLASSIFICATION OF THE PROPOSED TRANSACTION PURSUANT TO 801.30 OF THE HSR RULES OF PRACTICE:

FACTS:

COMPANY A PLANS TO ACQUIRE, THROUGH A WHOLLY OWNED SUBSIDIARY, ALL OF THE ISSUED AND OUTSTANDING ORDINARY (VOTING) SHARES OF COMPANY B THROUGH A COMBINATION OF OPEN MARKET PURCHASES, FORWARD PURCHASES OF B'S SHARES IN WHICH COMPANY A WILL TAKE POSSESSION OF THE SHARES UPON EXPIRATION OR TERMINATION OF THE HSR WAITING PERIOD, AND A PUBLIC TENDER OFFER FOR ALL OF THE REMAINING SHARES UNDER THE LONDON CITY CODE ON TAKEOVERS AND MERGERS. COMPANY A WILL PROVIDE COMPANY B WITH THE PROPER NOTIFICATION REQUIRED BY SECTION 803.5(a) OF THE HSR RULES OF PRACTICE.

AS PART OF THE TRANSACTION, COMPANY A AND COMPANY B WOULD ENTER INTO AN "IMPLEMENTATION AGREEMENT". UNDER THIS AGREEMENT, THE PARTIES AGREE TO, AMONG OTHER THINGS, TAKE ALL STEPS NECESSARY FOR IMPLEMENTATION OF THE ACQUISITION ON A TIMELY BASIS, A BREAK UP FEE IS IMPOSED AND OTHER TERMS TO EFFECTUATE THE MERGER ARE INCLUDED.

1. NON-CASH TENDER STATUS OF THE PUBLIC OFFER:

IT IS OUR UNDERSTANDING THAT THE PNO'S POSITION IS THAT THE PROPOSED TENDER OFFER CANNOT BE TREATED AS A CASH TENDER OFFER UNDER THE HSR RULES OF PRACTICE. PLEASE CONFIRM THIS VIEWPOINT.

2. THE "IMPLEMENTATION AGREEMENT" DOES NOT AFFECT THE 801.30 STATUS OF THE PROPOSED TRANSACTION:

IT IS OUR UNDERSTANDING THAT AS LONG AS COMPANY A'S HSR FILING COMPLIES WITH THE APPLICABLE AFFIDAVIT AND NOTICE TO COMPANY B REQUIREMENTS, THE TRANSACTION DESCRIBED ABOVE QUALIFIES AS A SECTION 801.30 TRANSACTION (TENDER OFFER AND OPEN MARKET PURCHASES) AND ALSO, ENTERING INTO THE "IMPLEMENTATION AGREEMENT" DOES NOT AFFECT THE 801.30 STATUS OF THE TRANSACTION. THUS, THE HSR WAITING PERIOD WOULD BEGIN UPON THE ACQUIRING PERSON'S (COMPANY A) SUBMISSION OF A COMPLIANT HSR FILING TO THE FTC AND DOJ AND THE ACQUIRED PERSON (COMPANY B) WOULD BE REQUIRED TO FILE ITS NOTIFICATION WITHIN FIFTEEN DAYS AFTER COMPANY A'S FILING.

THE PNO HAS LONG TAKEN THE POSITION THAT A MERGER AGREEMENT MAY BE EFFECTUATED BY OPEN MARKET PURCHASES AND A TENDER OFFER-THUS QUALIFYING FOR 801.30 STATUS-AS LONG AS THE TENDER OFFER HAS BEEN PUBLICLY ANNOUNCED AND THE ACQUIRING PERSON COMPLIES WITH THE APPLICABLE AFFIDAVIT AND NOTICE REQUIREMENTS. SEE PREMERGER NOTIFICATION AND PRACTICE MANUAL, OPINION 167

(3RD ED 2003).

WE WOULD APPRECIATE YOUR CONFIRMATION OF THE ABOVE AS SOON AS POSSIBLE AS TIME IS OF ESSENCE. THANK YOU FOR YOUR TIME AND ATTENTION TO THIS MATTER.

[REDACTED]

1.) AGREE
2.) AGREE
BM
6/19/08

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