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August 17, 1999

VIA COURIER

Mr. Richard Smith
Office of Premerger Notification
Bureau of Competition
Federal Trade Commission
6th St. and Pennsylvania Ave., N.W.
Room 303
Washington, D.C. 20850

CONFIDENTIAL TREATMENT
REQUESTED

Re: HSR Hypothetical and Analysis

Dear Mr. Smith:

Per your suggestion, I am writing to confirm our multi-party telephone conversation of August 12 and the preliminary conclusion that a proposed acquisition of non-voting preferred stock and a possible subsequent, mandatory transformation of the non-voting preferred stock into voting common stock will not be reportable under the HSR Act based upon the facts we provided in such conversation. For ease of review, I will set forth the pertinent information as bullet points below.

- * Company A would acquire between 15 and 20 percent of the aggregate outstanding shares of Company B.
- * The acquired shares would be non-voting, preferred stock.
- * The Certificate of Incorporation of Company B would be amended to provide for the mandatory transformation of the shares into voting common stock in the event that Company B should complete an initial public offering ("the IPO") of such shares of common stock.
- * It is the view of legal counsel that:
 1. The transformation of non-voting securities into voting securities is not a potentially reportable "conversion" or "acquisition" where the transformation is the result of a previously agreed upon triggering event which is not certain or virtually certain to occur and which may be prevented by circumstances outside of the holder's control.

[REDACTED]

and

2. The key facts for determining whether the potential transformation of this non-voting preferred stock into voting common stock is reportable under the HSR Act are (i) Company A's ability to cause the IPO to occur, (ii) the relative "certainty" that the IPO will, in fact, occur and (iii) whether the non-voting preferred stock is being issued to Company A because the IPO of shares of Company B's common stock is anticipated by the parties.

* In particular, counsel is influenced by the example set forth in the Statement of Basis and Purpose to 16 C.F.R. § 801.1(f)(3), 43 Fed. Reg. 33450, 33463 (1978), wherein a holder's shares are converted from non-voting stock to voting stock due to the failure to pay a dividend for a specified period of time. In other words, where such a transformation is triggered by an event which is not certain to occur at the time of the acquisition, and the occurrence of which is likewise out of the holder's control (contractually or otherwise), the transformation is not treated as a potentially reportable "conversion" or "acquisition."

* In this case:

1. The proposed transaction, as described during our phone conversation, has been under discussion and negotiation in excess of seven months.
2. The determination by Company B to take steps initiating the IPO approval process was made within the last three months. Company B did not have an organizational meeting for the IPO with its investment bankers until June 15, 1999.
3. Company A played no role in Company B's determination to pursue the IPO.
4. Company B has recently filed its registration statement with the SEC, but has yet to receive any comments on this statement. Company B is not scheduled to conduct a "road show" with potential investors until after it receives comments from the SEC. The registration statement does not indicate how many shares of common stock Company B intends to offer or the pricing range of these shares. The ability of Company B to complete the IPO is subject to financial market conditions which are presently volatile and unfavorable for similarly situated companies.

[REDACTED]

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5. The decision to issue non-voting preferred stock to Company A was based on a strong desire on Company B's part that Company A not have any ability to influence the corporate affairs of Company B. Company A will not have any right to appoint persons to the Board of Directors of Company B.
6. It is customary corporate finance practice to provide for the mandatory transformation of non-voting preferred stock into shares of voting common stock contemporaneously with the closing of the IPO of shares of common stock.

We would appreciate your further attention to this matter, including review by any Premerger personnel you deem appropriate, within the next four to five (4-5) business days. Please feel free to call me at the direct dial number listed above should you have any questions. In the event that you confirm your initial conclusion, I would ask that you either sign off on this letter in the space below, issue a confirmatory letter of your own, or call me with verbal confirmation.

On behalf of all parties, please allow me to thank you for your prompt consideration of this issue; it is sincerely appreciated.

Very truly yours,


8/19/99 Called writer and advised that no filing was required. The IPO action by Company B, in the context of Items 1 through 6 above -- and particularly the points made on Items 1 and 5 --, render this transaction a non-conversion. (NV read letter and agrees.)
R. B. Smith

 