

802.52
801.12

December 1, 1999

BY TELECOPY

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Control of an Acquired Person by a Foreign
State for the Purposes of Rule 802.52

Dear Michael:

As I explained on the phone earlier today, I wanted to discuss with you a question about whether, in a specific set of circumstances, a foreign state will be deemed to control an acquired person for purposes of Rule 802.52 -- the exemption involving acquisitions from foreign states. I thought it would be most efficient to begin by describing the situation in writing before we discussed it.

The Capital Structure of the Acquired Person

My client will be acquiring 100% of the voting securities of an entity -- Corporation A -- organized under the laws of a foreign state. Corporation A has two classes of voting securities outstanding. The two classes vote together to elect the members of the board of directors. The first class, Class A, is entitled to cast ten votes per share. The second class, Class B, is entitled to cast one vote per share.

There are 3,000,000 shares of Class A shares outstanding and 25,066,038 shares of Class B. This means that 55,066,038 votes may be cast for the election of the board of directors.

The foreign state holds shares that entitle it to cast 34,000,000 votes, or approximately 61% of the votes that may be cast. It holds these shares in two ways. The Ministry of Industry holds 2,700,000 Class A shares entitling it to 27,000,000 votes (approximately 49% of the total vote). A corporation whose shares are 100% owned by the foreign state holds 300,000 Class A shares and 4,000,000 Class B shares, entitling the foreign state to 7,000,000 votes (approximately 12% of the total vote).

The Power and Policy of the Foreign State

Pursuant to the capital structure I have described, Corporation A would be, under the Hart-Scott rules, its own ultimate parent and the foreign state would be deemed to control it. My client's acquisition of Corporation A would be exempt under Rule 802.52.

The question I would like to discuss concerns the effect, under the Hart-Scott rules, of a policy of the foreign state with respect to its voting of the Class A shares (the shares entitled to ten votes apiece). The government of the foreign state, pursuant to a quorum of its ministers, has adopted a resolution providing that, as long as there is no threat that Corporation A would come under foreign control, the foreign state will not cause its Class A shares to cast the ten votes to which they are entitled but will instead cast only as many votes as a similar number of Class B shares could vote. When it casts its votes in this manner, the foreign state will be casting less than 50% of the votes cast in an election of directors.

Our client's counsel in the foreign state have explained that the resolution described above is not a law and does not change the power of the Class A shares to cast ten votes (and thus does not change the foreign state's ability to cast more than 50% of the total vote). The foreign state's corporate law and Corporation A's charter continue to allow the shares to cast ten votes. The foreign state could exercise its full voting rights at any time and could not be prevented from doing so. It has simply announced, as a policy matter, that in some situations it will not

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Furthermore, the government could adopt a different policy and issue a new resolution at any time.

In these circumstances we believe that the foreign state controls Corporation A both within the definition of "control" in Rule 801.1(b) and for the purpose of the exemption contained in Rule 802.52. The foreign state's announcement of its voting policy does not change the fact that the state continues to hold more than 50% of the outstanding voting securities of Corporation A.

I would be grateful if you would call me after you have had an opportunity to think about this. My direct number is [REDACTED] Thank you.

Very truly yours,

[REDACTED]

AGREE THAT CORPORATION A IS STILL
CONTROLLED BY THE FOREIGN STATE, AND
THE ACQUISITION IS EXEMPT UNDER 802.52.

Michael Verne
12/2/99

N. GYURKA CONCURS.