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November 4, 1988

BY HAND

Donald S. Clark, Esq.  
Secretary  
Federal Trade Commission  
Room 136  
6th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Charles F. Rule  
Assistant Attorney General  
Antitrust Division  
Department of Justice  
Room 3214  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Re: Premerger Notification Program --  
Proposed Rulemaking

Gentlemen:

On September 22, 1988, the Federal Trade Commission published in the Federal Register (53 Fed. Reg. 36831) a notice of proposed rulemaking concerning its premerger notification rules. The rule proposed would exempt acquisitions of 10% or less of an issuer's voting stock from the premerger notification requirements. Two alternative proposals would alter the existing notification procedures for acquisitions below the 10% threshold. One would eliminate the notification requirement if the acquired securities were placed in escrow, while the other would eliminate in some transactions the requirement that the acquiror notify the acquiring firm (and the acquiring firm's obligation to make a premerger filing).

Covington & Burling has been asked by several clients who have recently learned of the proposed rulemaking to assist them in preparing comments. These clients are

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concerned that under some circumstances a holder of just under 10% of an issuer's voting securities may be able to exert substantial influence over the issuer that could have serious anticompetitive effects if the acquiror is a competitor of or in a customer/supplier relationship with the issuer. In addition, the likelihood that a holder of 10% of an issuer's voting securities may have a representative on the issuer's board, or otherwise have access to confidential business information, may in some cases raise potentially serious concerns about information exchanges if the acquiror and issuer compete.

Our clients have commenced a detailed study of the implications of this proposed rule in which we are assisting. They plan to submit comments based on this study that will address in some detail the concerns described above and others that may become apparent as they review the rule's implications. They believe that that their comments would be useful to the Commission in its deliberations over the proposed rules. However, because of the complexity of the issues involved, which will require considerable legal, statistical and economic analyses, and because they had no forewarning of the proposed rulemaking and have only recently learned of it, it will be impossible for them to complete any meaningful analysis or prepare useful comments by the November 19, 1988 deadline for submission of comments.

Accordingly, we respectfully request that the deadline for public comments on the rule be extended an additional 60 days to January 18, 1989. If adopted, the proposed rule would eliminate only a small number of premerger notifications that would otherwise be required, and we are unaware of any urgent need for its implementation. This extension of time would therefore cause no harm, but rather would facilitate informed public comment on an important and complex issue on which the Commission has indicated it is particularly desirous of informed input.

Sincerely,

  
Richard G. Slattery