

7A(C)(10)

February 29, 2000

FACSIMILE AND FEDERAL EXPRESS

Michael Verne, Esq.
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Ave., NW
Washington, DC 20580



Dear Mike:

Thank you for taking the time earlier today to discuss the analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") of the set of facts that I provided. This letter is to confirm that you concur that this set of facts, summarized herein, does not give rise to a reporting requirement under the HSR Act.

By way of background, Company A ("A") had previously acquired certain voting securities (not resulting in control) of Company B ("B") in a transaction that was not reportable under the HSR Act because the basic, jurisdictional threshold requirements were not satisfied. Subsequently, in late 1999, A and other investing parties acquired additional voting securities of B (the "Equity Financing"). A's acquisition of additional voting securities of B in the Equity Financing would have been reportable under the HSR Act but for the fact that it was exempt pursuant to Section 7A(c)(10) because it did not increase, directly or indirectly, A's percentage share of the outstanding voting securities of B -- rather, it was the exercise of preemptive rights by A to maintain its pro rata percentage.

After the Equity Financing, B commenced the process of registering for an initial public offering ("IPO") of its voting securities. Recently, in connection with its review of B's potential IPO, the National Association of Securities Dealers ("NASD"), which reviews the amount of underwriter compensation received in IPO's, has required that one or more of the underwriters -- a party or parties unrelated to A (and referred to herein as "C"), which had also acquired voting securities of B in the Equity Financing -- sell back a certain portion of those voting securities to B in order to avoid receiving "excessive compensation."

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Assuming that C does in fact sell back to B some of its shares of B stock in order to comply with NASD requirements, this action would be completely independent of the Equity Financing and, as you and I discussed, would be through no action or control of A. Therefore, while such a resale of B stock by C would result in a *de minimis* increase in A's voting percentage with respect to B, such a resale by C would neither negate the valid Section 7A(c)(10) exemption relied upon by A in the Equity Financing, nor be deemed to be a new acquisition of voting securities by A which might be separately reportable under the HSR Act.

In conclusion, no HSR reporting requirement arises from the facts presented. Thank you once again for your time and consideration of this matter, and please do not hesitate to contact me as promptly as possible should you have any questions regarding any aspect of this analysis.

Regards,

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[Redacted text]

[Redacted text]

THE INCREASE IN A'S PER CENTUM HELD IS NOT A RESULT OF ANY ACTION TAKEN BY A, AND A IS NOT IN ANY WAY INSTRUMENTAL IN CAUSING THE REDEMPTION WHICH WILL RESULT IN THE INCREASE. A HAS NOT MADE AN ACQUISITION FOR HSR PURPOSES AND THEREFORE HAS NO FILING OBLIGATION.

Michael Verne
3/1/00

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