

ABA INT. # 10

TELEPHONE FACSIMILE

April 7, 2000

CONFIDENTIAL

VIA FACSIMILE

Mr. Michael Verne  
Premier Notification Office  
Federal Trade Commission  
Room H-314  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mike:

This letter will confirm yesterday's conversation among you, [REDACTED] and me concerning the application of the Hart-Scott-Rodino ("HSR") Act to the following transaction.

B intends to sublease a facility from A for 20 years. The amount of the lease payment has been arrived at through arm's-length negotiations. The lease does not provide any purchase option at termination. Although the useful life of the facility is greater than 20 years, a preexisting third-party ground lease beneath the facility expires before 20 years. Upon expiration, the holder of the ground lease could (1) sign a new lease with A or an option to extend A's existing lease; (2) lease the facility to someone other than A who runs the same type of business as B; or (3) remove the existing facility and replace it with another type of facility. We asked you to assume for these purposes that the HSR Act's size-of-person test is met.

You confirmed that entering into the lease would not be reportable under the HSR Act. Entering into a lease is not treated as an asset acquisition, unless the lease exhausts the useful life of the leased property or amounts to the present transfer or installment purchase of the underlying asset. A lease for less than the useful life of the leased asset will be treated as a bona fide lease, rather than an acquisition, so long as it provides rental payments normal for that kind of property and any subsequent purchase option is at fair market value.

Accordingly, B's lease of the facility is a bona fide lease rather than a purchase. The terms of the lease provide for rental payments normal for this type of facility and do not exhaust the useful life of the facility.

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You also confirmed that the existence of the ground lease does not alter this conclusion. The useful life of the facility will not be exhausted when the lease with B ends; rather, the ground leaseholder could cause the facility to be removed when the ground lease ends. In that event, the leaseholder (not the lease) will have ended the useful life of the facility.

Please call me promptly [REDACTED] you believe that we have misunderstood any part of our conversation. Thank you again for your help.

Sincerely,

[REDACTED]  
[REDACTED]

cc: [REDACTED]

AGREE -

*Michael Verne*

4/10/00