

ABA # 296

[REDACTED]  
COUNSELORS AT LAW

[REDACTED]  
[REDACTED]  
[REDACTED]  
June 1, 2000

**VIA HAND DELIVERY**

**Confidential**

Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Restructuring of Transaction

Dear Mr. Verne:

This letter memorializes our conversation of Tuesday, May 24th. [REDACTED] of the law firm of [REDACTED] was also on the phone call. [REDACTED] represents the shareholders of [REDACTED]

On March 31 of this year, [REDACTED] made an HSR filing for the acquisition of 100% of the voting securities of [REDACTED] (Transaction [REDACTED]). Early termination of the waiting period was granted on April 11.

In a related transaction, [REDACTED] also intended to acquire 100% of the voting securities of [REDACTED] an entity that was its own ultimate parent entity. The acquisition of [REDACTED] was exempt from the reporting obligations of the HSR Act, as neither the size-of-person nor the size-of-transaction test was met. The HSR filing for the acquisition of [REDACTED] made reference to the acquisition of [REDACTED] because the two companies had the same shareholders each with the same percentage ownership of the two companies.

[REDACTED]  
[REDACTED]

[REDACTED]

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To limit their tax liability, the shareholders of [REDACTED] and [REDACTED] have asked, and [REDACTED] has agreed, to restructure the transaction as follows: (i) the shareholders will contribute their holdings of [REDACTED] to a new holding company ("Holdco") (Holdco will be its own ultimate parent and will control [REDACTED] will acquire 100% of the shares of [REDACTED] and (ii) [REDACTED] will acquire 100% of the shares of Holdco.

Steps one and two will not require HSR filings, as one or both of the jurisdictional thresholds will not be met.

We discussed whether step three would require [REDACTED] to make an additional HSR filing and you concluded it would not. You reasoned that because [REDACTED] had already filed for the acquisition of [REDACTED] and because Holdco was simply a shell company which would hold directly only that entity for which an HSR filing had previously been made [REDACTED] was effectively acquiring only that entity [REDACTED] for which it had earlier filed. That the composition of that entity [REDACTED] will have changed between the time of [REDACTED] HSR filing and closing of the transaction was not sufficient to cause you to conclude that a new HSR filing was required. This conclusion is supported by the fact that had [REDACTED] acquired [REDACTED] prior to consummation of [REDACTED] acquisition of [REDACTED] but after [REDACTED] had achieved HSR clearance for its consummation of [REDACTED] new HSR filing would not be needed.

Thus, on this basis, you advised the [REDACTED] did not need to make a new filing for its acquisition of Holdco.

Please contact me immediately if I have misstated your conclusion and advice. I can be reached [REDACTED]

[REDACTED]

AGREE -

*B. Michael Verne*

6/1/00

[REDACTED]