

802.50
801.1(e)

August 25, 2000

RECEIVED
FEDERAL TRADE COMMISSION
AUG 25 2000

BY FACSIMILE AND REGULAR MAIL

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

Re: **Foreign Issuer Exemption to HSR Reportability**

Dear Mr. Verne:

I am writing to confirm the matters we discussed in our telephone conversations on Monday, July 31, 2000 regarding the applicability of 16 C.F.R. § 802.50's "foreign issuer" exemption from reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act").

On the telephone, I described to you a proposed transaction in which an American corporation is acquiring 100% of the voting securities of two companies that are both incorporated in and organized under the laws of the [REDACTED]. For purposes of our discussion, we assumed that the HSR Act's size-of-person and size-of-transaction tests would be met in the transaction.

As is required in order to qualify for the foreign issuer exemption, I indicated to you that neither of the [REDACTED] companies holds any assets in the United States (let alone \$15 million or more in assets), and neither makes any sales in or into the United States (let alone \$25 million or more in such sales). See 16 C.F.R. § 802.50(b). I also told you that neither of the [REDACTED] companies is incorporated in the United States, and neither is organized under the laws of the United States. See 16 C.F.R. § 801.1(e)(2)(ii). Thus, the transaction should qualify for the

Michael Verne
August 25, 2000
Page 2

foreign issuer exemption if the principal offices of the [REDACTED] companies also are not within the United States.

In that regard, I told you that the official, legal mailing address of both [REDACTED] companies is in the [REDACTED], although neither company has a physical or operational office in the [REDACTED]. Rather, all of the assets, operations, and employees of both companies are in South America, and all revenue for both companies derives from sales in South America. Both of the [REDACTED] companies currently are wholly owned by an American corporation (the "Parent") which does have its principal offices in the United States. Neither of the [REDACTED] companies has any corporate officers, and each company has only one corporate director whose office is in the United States at the same location as the offices of the Parent.

After conveying this information to you, I asked whether, for purposes of the foreign issuer exemption, the [REDACTED] companies would be considered to have their "principal offices within the United States" under 16 C.F.R. § 801.1(e)(2)(i) (the definition of "foreign issuer"). After considering the matter and conferring with others in the Premerger Notification Office ("PNO"), you called me back. You advised me that considering all of the above factors together, the PNO would not view the United States as the location of the [REDACTED] companies' principal offices and that if the other aspects of § 801.1(e)(2)(ii), in fact, were satisfied, then the [REDACTED] companies would be considered "foreign issuers." The transaction therefore would qualify for the foreign issuer exemption to HSR reportability, assuming all the other facts are as I described to you.

Given this understanding, the parties now plan to consummate the above-described transaction in the near future without filing an HSR premerger notification form. Therefore, I would appreciate it if you would call me as soon as possible, but in no event later than Tuesday, August 29, 2000, if my understanding is not correct or if I have misstated the summary of our conversations in any material way.

Thank you very much for your helpful guidance and assistance on this matter.

Sincerely,



AGREE THESE ARE
FOREIGN ISSUERS. THE LOCATION OF THE OFFICE OF A
DIRECTOR DOES NOT CHANGE THIS ANALYSIS. N. OVURA
AGREES.

Michael Verne
8/29/00