

October 6, 2000

BY FACSIMILE AND FIRST CLASS MAIL

Mr. Michael Varne
Prmerger Notification Office
Bureau of Competition, Room 309
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: HSR Advice

Dear Mike:

I am writing to you to confirm my understanding of a telephone conversation we had on October 4, 2000. Following is a description of the transaction I described to you in part during that conversation, including additional facts we did not discuss on October 4.

A, B, and C are each their own ultimate parent entities ("UPE's") under the HSR Act and its implementing regulations. A, B, and C will form a limited liability company ("LLC") to acquire assets that comprise an operating unit of Y. A, B, and C will contribute to the LLC at the time of its formation only the cash needed to acquire assets from Y. ^{1/} The LLC will not have regularly prepared financial statements at the time of its formation.

A is guaranteed an annual payment of 10% of A's initial investment amount, ^{2/} and the right to appoint one of LLC's five directors. If there is a default in guaranteed payments, A will get the right to appoint an additional director. Upon the liquidation or sale of LLC (or its assets), A will receive 49.9% of the proceeds of the first \$12 million, and 40% of any proceeds in excess of \$12 million.

^{1/} It is contemplated that LLC will also borrow money from a third party to help pay for the assets of Y.

^{2/} It is presently contemplated that the guaranteed payments will come from LLC's profits. If profits aren't sufficient, then the payments may come from A's and B's capital accounts.



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B is guaranteed an annual payment of 6% of B's initial investment amount, and the right to appoint one of LLC's five directors. If there is a default in guaranteed payments, B will get the right to appoint an additional director. Upon the liquidation or sale of LLC (or its assets), B will receive 49.9% of the proceeds of the first \$12 million, and 20% of any proceeds in excess of \$12 million.

C will be the managing member of LLC. C will not receive, in exchange for its investment in LLC, any guaranteed payments. However, C will have the power to appoint three of LLC's five directors. Upon the liquidation or sale of LLC (or its assets), C will receive 2% of the proceeds of the first \$12 million and 40% of any proceeds in excess of \$12 million. C or an entity under common control with C will manage the assets of LLC. In exchange for its management services, C will be paid a minimum fixed monthly management fee plus a contingent fee based on the financial performance of the assets. The contingent fee will be 100% of the profits of LLC after distribution to A and B of the guaranteed payments described above.

Under the facts described above, and based upon our telephone conversation, I understand that LLC would be deemed its own UPE at the time of its formation. Because it will not have regularly prepared financials at the time of its formation, and because it does not have to include in its *pro forma* financials the money contributed to it by A, B, and C to acquire the assets of Y or the money it will borrow from a third party to acquire the assets of Y, LLC will not be a \$10 million person at the time it acquires assets from Y. Thus, LLC's acquisition of assets from Y would not be reportable under the HSR Act.

Please call me to confirm that my HSR analysis of the transaction described above is correct. As always, thanks for your help.

Best regards,

AGREL - NO ONE HAS THE RIGHT TO 50% OF
THE PROFITS OR ASSETS UPON DISSOLUTION AT
THE TIME OF THE FORMATION.

B. Michael Verne
10/10/00