



Michael Verne  
Federal Trade Commission

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value of the existing voting securities of B as determined in good faith by A according to Rule § 801.10(c)(3). This value would certainly be much less than \$50 million.

The distribution of AB voting securities which constitutes the second element of the merger may be reportable, if as a result of that distribution any one person will hold AB securities worth more than \$50 million. A and B are not able to determine the value of AB securities that any one person will acquire, until the bankruptcy plans are finalized and the identities of future AB shareholders are known. However, they acknowledge that it is possible that there could be one or more reportable acquisitions with respect to this part of the transaction. This apparently anomalous result comes about because in this part of the transaction, the debtholders acquiring AB voting securities will release the merged company from a substantial volume of the debt which is adversely affecting the market values of A and B at present. Disencumbered by much of its debt, the stock of the merged company AB may have a market value of several hundreds of millions of dollars.

In effect, the two elements of the transaction will occur simultaneously. However, the merger agreement describes the merger as the first step of the transaction. Furthermore, the merger logically must come first: in the second element of the transaction, the voting securities of the merged company AB will be issued to the debtholders of A and B as consideration for their release of debts.

Accordingly, you agreed with our conclusion that the merger must be analyzed as the first step in the transaction, and as such, would not be reportable unless the fair market value of B's voting securities should exceed \$50 million when the merger takes place.

Please contact me as soon as possible if I have mischaracterized our conversation or your views in any way. Although this transaction cannot take effect until the bankruptcy courts have confirmed the plans, the parties would want to prepare their HSR filings immediately if any were to be required in connection with the merger.

As always, thank you very much for your time and attention.

Best regards,

[Redacted signature and name]

cc:

AGREE -

*B. Michael Verne*

4/20/01