

7A(C)(3)

May 14, 2001

VIA TELECOPIER

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Mike:

I am writing to confirm the advice that you gave me last Friday, May 11, 2001. We concluded that no HSR filing is required in connection with the transaction described below.

The investors are a "constellation" of partnerships engaged in the business of acquiring troubled companies and other turnaround situations. The partnerships share office space and are all managed by the same management company. The general partners of the partnerships are in some cases the same, and in all cases related to one another. In spite of these interrelationships, each partnership is its own "ultimate parent" for purposes of HSR analysis because no partnership "controls" any other partnership under the HSR rules.

Management has agreed that three of the partnerships will make a very substantial investment in another company. The investment is described in a single acquisition document but will occur in three tranches. In the first tranche, the partnerships will acquire a newly issued class of voting convertible preferred stock of the company valued at \$49 million in the aggregate. No partnership will acquire more than \$45 million of voting securities in the first tranche. The new convertible preferred stock will give its holders the right to vote on an as-converted basis, and as a result, the largest of the investor partnerships will have the right to cast more than 50% of the votes in any meeting of the company's shareholders. (The final conversion rate will determine the precise percentage and is still being negotiated, but it is expected to be around 70% for the largest holder.)

The second tranche is expected to occur several weeks later at the close of a rights offering. In the rights offering, current shareholders of the company will have the right, but not the obligation, to purchase up to \$15 million of the new class of convertible preferred stock. The partnerships will have the obligation to purchase any shares not purchased by the current shareholders. The amount to be purchased by the partnerships in the second tranche could be as little as zero, if all of the shares offered are purchased by the current shareholders, or could be as great as \$15 million, if no shareholders participate in the rights offering.

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Mr. Michael Verne
May 14, 2001
Page 2

In the third tranche, the partnerships may, but are not obligated to, exercise an option to purchase an additional \$25 million of the company's convertible preferred stock.

Neither the composition of the investors nor the timing of the investments was structured with the intention of avoiding compliance with the HSR Act, and in fact the largest investor had begun preparation of the HSR notification form before our calls last Friday. The side-by-side investment by multiple parties is consistent with the partnerships' structure of their other investments, and the rights offering was perceived as helpful in garnering the support of current shareholders for the deal. These facts support the conclusion that the deal is not structured as a "transaction for avoidance" under Rule 801.90.

The purchase in the first tranche is exempt from the HSR filing requirements because it does not meet minimum transaction size of \$50 million. At the time of the closing of the first tranche, the partnerships cannot know whether any acquisition will be made in the second tranche, nor can they know the amount of any such investment.

After the first tranche, the largest partnership will "control" the company because it will have the right to cast more than 50% of the votes in any meeting of shareholders. Any acquisition by the largest investor in the second and third tranches (so long as that investor controls the company) is exempt from the filing requirements of the HSR Act under Section 7A(c)(3) as an acquisition "within the person."

Thank you for taking the time to discuss this matter with me.

Very truly yours,

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AGREE.

N. OVUKA, K. BERG &
M. BRUNO CONCUR.

B. Michael Verne
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