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WRITER'S DIRECT NUMBER:

[REDACTED]

February 21, 2002

Via Courier

Michael Verne
Federal Trade Commission
Premerger Notification Office
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Question re: Closing Date Adjustment of Purchase Price

Dear Michael:

This letter confirms a telephone conversation we had last week regarding whether a closing-day adjustment to a purchase price in a transaction subject to the HSR Act could rise to the level of improper "gun jumping" prior to the expiration of the waiting period.

Specifically, during our brief conversation we discussed the following hypothetical: Company A is to buy Company B for Announced Price X. On the closing date in the 2nd Quarter of 2002, Price X will be adjusted to include Interest Y, calculated back from the closing date to February 1, 2002. Price X is also to be offset on the closing date by a portion of profits made by B on sales made since Feb. 1, 2002, or Sales Profits Z. Therefore:

$$\text{Purchase Price}_{\text{adjusted}} = X_{\text{announced price}} + Y_{\text{interest}} - Z_{\text{sales profits}}$$

This hypothetical assumes that the adjustments of Y and Z to X affect neither the reportability of the transaction nor the amount of the filing fee required - *i.e.*, in no event will the Purchase Price fall outside the \$100 million to \$500 million range. Further, prior to closing, Company B will maintain complete management authority over the business being sold and will not coordinate its management activities with Company A.

My question was as follows: If Company B's pre-closing sales made after February 1, 2002, are made with the understanding that some of the profits derived therefrom will be applied against the announced purchase price, pursuant to an agreement that explicitly

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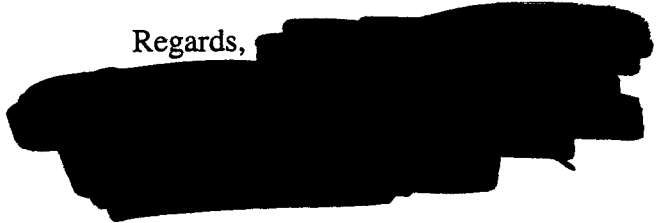
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makes any benefit received by A from such profits contingent on the closing of the transaction and that leaves all of the management of the business to Company B, are Company A and Company B engaged in improper "gun jumping" activity?

I understand from my discussion with you that adjustments Y and Z in the hypothetical activity described above could not by themselves support a charge of improper pre-merger activity, or gun-jumping, under Section 7A and that this activity is an acceptable closing date adjustment of the purchase price. Unless combined with improper pre-closing actions such as the coordination of sales efforts, therefore, adjusting the final purchase price according to a formula that includes a portion of the profits earned by Company B on sales made during the pre-closing period is not problematic under the HSR Act.

If this letter does not accurately summarize our conversation, please let me know at your earliest convenience.

Regards,



AGREE - THIS DOES NOT CONSTITUTE "GUN JUMPING"

B. Michael Verne

2/22/02

