

802.63

From: [REDACTED]
To: FTC.SERIUS("mverne@ftc.gov")
Date: 4/22/02 9:06AM
Subject: HSR filing issue

Good Morning Mike - We talked about this transaction before, but the structure has changed slightly. I wanted to double check that 802.63 is still inapplicable and confirm that a filing will be required. The facts are substantially as follows:

A (a "vulture fund") has entered into an agreement with B to provide \$50 million of DIP financing in connection with the commencement by B of a case under Chapter 11 of the US Bankruptcy Code and the filing of a proposed plan of reorganization. Following confirmation of the proposed plan and corporate reorganization, the DIP facility will convert into equity of the reorganized B. Such equity will constitute 55% of the total equity of reorganized B. A's debt securities which currently total 80% of B's total debt securities, will also convert to equity upon confirmation of the proposed plan and reorganization of B. After the proposed plan is confirmed and B is reorganized, A will hold approximately 88% of the total equity of reorganized B. Please assume that both the size of parties and size of transaction tests will be met.

Assuming that a filing is required, is the executed DIP Financing Agreement sufficient to make the HSR filing or would we also need Bankruptcy Court approval?

Thanks so much.

[REDACTED]

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[REDACTED]

ADVISED THAT 802.63 IS INAPPLICABLE TO THIS TRANSACTION. THERE IS NO EXPECTATION OF REPAYMENT OF THE DEBT & THE DEBT IS BEING ACQUIRED IN CONNECTION WITH A PLAN OF REORGANIZATION IN BANKRUPTCY.

Bruchel
4/22/02