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July 12, 2002

VIA MESSENGER

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

2002 JUL 12 A 10:30

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Sale of Partnership with Intermediate Step

Dear Mr. Verne:

A few weeks ago we discussed a proposed transaction involving our client, Company A, which currently owns a 75% interest in a partnership that holds assets valued in excess of \$200 million. Company B owns the remaining 25% interest in the partnership. Company A wishes to buy out Company B's interest and then sell all of the partnership interests to a third party, Company C. Company A's obligation to acquire the partnership interest held by Company B would be contingent on the sale of all of the partnership interests to Company C.

We recognize that Company A and Company C would be required to file a premerger notification under the HSR Act for Company C's acquisition of 100% of the partnership interests from Company A since a sale resulting in one person holding 100% of the partnership interests is, for HSR purposes, analyzed as the acquisition of all of the assets of the partnership. The value of the assets in question exceeds \$200 million, thus satisfying the HSR Act's size-of-transaction threshold and making the size-of-parties test inapplicable.

The question we discussed on the phone is whether the intermediate step involved in the sale of the partnership from A to C – when Company A acquires Company B's 25% interest in the partnership (resulting in Company A holding 100% of the partnership interests for an instant) – would trigger a separate filing. You indicated that under the "continuum" theory, the HSR filing obligations for Company A's acquisition of Company B's 25% interest would be subsumed under Company A's reportable sale of the partnership interests to Company C. This seems in accord with prior informal opinions issued by the Premerger Notification Office to the effect that where an intermediary's ownership will be only transitory and where the subsequent transfer of ownership to the end buyer is a virtual certainty, only a single filing for the final



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ownership transfer is required. *See, e.g.,* Interpretation #70, ABA SECTION OF ANTITRUST LAW, PREMERGER NOTIFICATION PRACTICE MANUAL (2d ed. 1991).

Please let me know if our conclusions about our client's HSR filing obligations are correct. Thank you for your help.

Sincerely yours,

A large black rectangular redaction covers the signature area, obscuring the name and any handwritten notes that might have been present.

AGREE.
B. Michael Verne
7/15/02

A small handwritten checkmark is located in the bottom right corner of the page.