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801.1(b)

[redacted]

WASHINGTON, D.C.

TELEPHONE [redacted]
FACSIMILE
E-MAIL
INTERNET

WRITER'S
TELEPHONE
E-MAIL JZ
FACSIMILE

2003 AUG 26 A 10:29

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

August 25, 2003

VIA FEDERAL EXPRESS

Ms. Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Nancy:

Further to our telephone conversation on June 11th, I am writing to seek confirmation of my understanding of the implications of that conversation with respect to the facts described below.

Company C is organized under the laws of the [redacted] It was incorporated on March [redacted] Its "Memorandum of Association" (which is functionally equivalent to a U.S. certificate of incorporation) provides, *inter alia*, that, "The share capital of the Company shall consist of 50,000 shares of US$1 each divided into two classes of Shares each as follows: (i) 25,000 Class A Shares of US$1.00 par value and (ii) 25,000

[redacted]

Class B Shares of US$1.00 par value." The Memorandum of Association further provides "that each class of Shares shall confer on its holders the exclusive right to elect and remove one director of the Company."

Company C's "Articles of Association" (*i.e.*, by-laws) provide that "the number of the directors shall be two, one Class A Director and one Class B Director." They also state that these Directors shall be elected in accordance with the Memorandum of Association, i.e., the holders of Class A Shares elect the Class A Director, and the holders of Class B Shares elect the Class B Director.

Company O, a [redacted] company, holds all the Class A Shares of Company C; and Company P, a [redacted] limited liability company, holds all the Class B Shares of Company C.

Our client, Mr. B, is a natural person and a U.S. citizen. Mr. B, through a series of controlled entities, controls Company P (which holds all of the Class B Shares of Company C). Mr. A, also a natural person, controls Company O (which holds all of the Class A Shares of Company C). We understand from Mr. A that he is neither a citizen nor a resident of the United States.

As of March [redacted] the day on which Company C was incorporated, Company C, Company O and Company P entered into a "Members' Agreement" to govern the relationship between Company O and Company P in connection with Company C. Among other things, this Agreement provides that, "The number of directors of the Company shall be two (2) and each class of Shares shall be entitled to elect one (1) director nominated by such class." This is the same result as is dictated by Company C's Memorandum of Association and Articles of Association.

Our client, Mr. B, plans to cause Company P to establish a Charitable Remainder UniTrust (the "Trust"). Company P then will transfer 65 Class B Shares of Company C to the Trust. The Trust will be irrevocable, and neither Mr. B nor Company P will have any reversionary interest in it. In accordance with Internal Revenue Code requirements, for 5 years Company P will be entitled to receive a 5% annuity from the Trust.

Some time after Mr. B establishes the Trust and causes 65 Class B Shares of Company C to be transferred to the Trust, two wholly-owned subsidiaries of Company C ("S1" and "S2") will each acquire voting securities of Company Z valued at well over

$50,000. Company Z is not a U.S. issuer, although it has substantial assets and revenues in the United States. Company C will not control Company Z after its subsidiaries acquire these voting securities.

Based upon my conversation with you on June 11th, and further consideration of the HSR Rules, I understand that:

1. today, each of Mr. A and Mr. B controls Company C, and each is an ultimate parent entity of Company C;

2. once Company P transfers 65 Class B Shares of Company C to the Trust, Mr. B will no longer control Company C, and will no longer be an ultimate parent entity of Company C, notwithstanding that Mr. B will continue to be able to elect one of the two directors of Company C because he will own most of its Class B Shares;

3. it will not be necessary for Company C, S1 or S2 to file a Hart-Scott-Rodino Form when S1 and S2 acquire the voting securities of Company Z, because this will be an acquisition of voting securities of a foreign person (Company Z) by a foreign person (Mr. A), and will not confer control of Company Z; and

4. it will not be necessary for Mr. B or Company P to file a Hart Scott-Rodino Form when S1 and S2 acquire the voting securities of Company Z, both because this will be an acquisition of voting securities of a foreign person (Company Z) by a foreign person (Mr. A), and will not confer control of Company Z, and because neither Mr. B nor Company P will control Company C when S1 and S2 acquire the voting securities of Company Z.

Thank you in advance for your attention to this inquiry. In accordance with your standard practice, unless I hear from you otherwise within three business days after you receive this letter, our client will proceed with the understanding that I have correctly stated your Office's position.

Sincerely yours,

[redacted]

8/26/03
Advised writer that I agree w/ conclusion. (Typo on page 4 - $50,000 should read $50,000,000.) NMO
M. Verne concurs