801.1(c)

[redacted]

[redacted] Attorneys at Law

[redacted]

April 29, 2004

VIA MESSENGER

Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
2004 APR 29 P 4:38

Re: Hart-Scott-Rodino Informal Interpretation

Dear Mike:

As you may recall, we spoke on Tuesday regarding certain Hart-Scott issues surrounding a proposed transaction. I relayed to you the following facts:

> Company A has two wholly-owned subsidiaries: Sub 1 and Sub 2. Company A holds 100% of the outstanding voting securities of both Sub 1 and Sub 2.
>
> Sub 1 leases an electric power plant from Bank B. The lease has a five-year term and will end later this year. Sub 1 is being acquired by a third party in a transaction for which the parties have already filed Hart-Scott. At the end of the lease, Sub 1 must either purchase the power plant or sell it on behalf of the bank to a third party. The acquisition price would be approximately $80 million, which was agreed upon at the time the lease was entered into in 1999. The present fair market value of the plant is less than that, approximately $70 million. The lease document recites that for financial accounting purposes the lease is to be treated as an operating lease, but for all other purposes it constitutes a financing arrangement that preserves beneficial ownership of the plant in Sub 1, with Bank B retaining only a security interest. For example, Sub 1 receives all tax benefits ordinarily available to owners of power plants. Moreover, Sub 1 bears the risk of loss and is required to pay $80 million to the bank at the end of the lease term, even if, for example, the plant was seriously damaged or destroyed, or Sub 1 was unable to locate a third-party purchaser willing to pay $80 million for the plant. Sub 1's lease payments will be treated by the parties as interest payments – not principal payments – on a loan.

[redacted]

[redacted] L P

Sub 1 subleases the plant to Sub 2 under the same terms as the lease with Bank B, but Sub 1 remains primarily liable to the bank on the lease.

In light of the impending expiration of the lease agreement for the plant, Sub 1 will terminate the lease agreement and surrender all of its rights under the lease agreement to Bank B. Immediately after the termination, Bank B will sell the plant to Sub 2 for the $80 million amount.

Based on the above facts, you advised that Company A already had beneficial ownership of the plant, and therefore the acquisition of the plant by Company A (through Sub 2) from Bank B would not necessitate a Hart-Scott filing. You indicated that your view was based on the totality of the facts, including the mandatory nature of Company A's acquisition or third-party sale requirement, the fact that Company A bears the risk of loss for the plant, and the fact that Company A can sell the plant to a third party at the end of the lease.

Please call if you have any questions or if you disagree with the conclusion, based on the facts I relayed in our discussion, that a Hart-Scott filing is not required in connection with the described transaction. As always, I greatly appreciate your time and assistance.

Sincerely,

[redacted]

AGREE -
B Mich
5/3/04