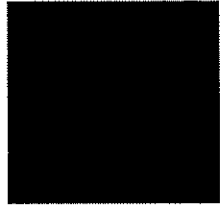


801.10
801.11(e)



March 18, 2005

VIA EMAIL

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

Re: HSR Analysis

Dear Mike:

This letter confirms our telephone conversation on March 17, 2005 with my colleague [REDACTED] regarding a proposed transaction which may be reportable under HSR.

As we discussed, a newly formed Ontario trust ("Trust") will form a wholly-owned Canadian subsidiary ("Acquire Co.") with proceeds from an initial public offering of the Trust's units. Acquire Co. will acquire, by way of direct investment (the "Investment"), newly issued voting securities and notes of a U. S. corporation ("Target"). Target will use the proceeds received from Acquire Co. and proceeds of a third party bank financing to (i) redeem its own voting securities from Target's existing shareholders (other than Acquire Co.) and (ii) pay off existing third party debt financing. The existing shareholders of Target prior to the Investment (the "Existing Shareholders") will retain a minority interest in Target immediately after the redemption.

If the acquisition price (or fair market ^{VALUE} price, if applicable) of Target's voting securities acquired by Acquire Co. is \$50 million and the notes are issued for \$150 million, we understand, and you confirmed that there would be no HSR filing because (i) the notes are not voting securities under HSR, (ii) Acquire Co.'s acquisition of \$50 million in voting securities would not meet the size-of-transaction threshold, (iii) amounts used to pay off third party lenders (liabilities) are not included in the size-of-transaction analysis (Interpretation 93 in the PNO Manual) and (iv) the redemption of the Existing Shareholders' voting securities is exempt under 16 C.F.R. § 802.30 (Example 4).

We also asked and you confirmed that the above conclusion would not change (i) if the value of the voting securities held by the Existing Shareholders and redeemed by Target is



in excess of \$53.1 million or (ii) whether or not Acquire Co.'s initial investment in Target for \$50 million is for more or less than 50% of the outstanding voting securities of Target or the redemption is for more or less than 50% of the outstanding voting securities of Target (*i.e.*, if the redemption is for more than 50% of the outstanding voting securities, there would be a change of control of Target as a result of the redemption). We understand that according to Interpretation 190 in the PNO manual redemptions can be considered transactions or devices for avoidance under circumstances where there are no legitimate business reasons for the structure. As we discussed, under the proposed transaction described in this letter, there are legitimate business reasons for the contemplated structure (including tax reasons) and, accordingly, you confirmed that this fact pattern does not raise any issues of avoidance under 16 C.F.R. § 801.90.

You also confirmed that the PNO's policy in respect of 16 C.F.R. § 801.11(e)(1)(ii) is that "all funds exhausted as a result of a transaction" can be deducted from the assets of an entity without a regularly prepared balance sheet and that this would specifically include debt repaid to third party lenders (*i.e.*, that the §801.11 (e)(1)(ii) deduction is not strictly limited to "cash...used...as consideration" and transaction expenses).

Finally, with respect to a question regarding the PNO's position on acquisitions which are conditioned upon each other and structured to be consummated simultaneously, you confirmed that Interpretation 230 in the PNO Manual accurately describes the PNO's current position. Interpretation 230 states that the PNO will not view multi-step transactions as simultaneous, but will analyze all possible transaction sequences and allow parties to choose a sequence that minimizes the number of filings required as long as at least one filing is made.

Please confirm that this letter accurately reflects our discussions. As always, thank you very much for your help.

Yours truly,

cc:

AGNES-
Bucher
2/23/05