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801.10
802.30

[redacted]

December 29, 2006

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This letter serves to confirm our conversation on Thursday, December 28, 2006, concerning the treatment of a redemption and subsequent merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and rules and regulations thereunder. On our call, I provided you with the following fact pattern:

Company A ("A"), which is its own ultimate parent entity, is planning to acquire all of the outstanding voting securities of Company B ("B"), which is also its own ultimate parent entity, consisting of common stock, through a merger for approximately $65 million. Assume that the parties satisfy the size-of-person test. The parties assumed that the transaction would be subject to reportability under the HSR Act, and even contemplated as much in drafting the definitive agreement in the transaction.

In the sale process, some issues were uncovered regarding the performance of B. Because of concerns regarding the ongoing business performance of B, the parties decided that a portion of the shares held by B's largest shareholder ("S"), who is also a member of management, would be redeemed by B for consideration other than cash rather than being acquired through the merger.

As initially structured, B was to redeem S's shares in exchange for shares of preferred stock of B immediately prior to the effective time of the merger. This structure provided tax benefits for S. Later, the parties decided to change the form of consideration to be received by S through the redemption to a promissory note of the same value. Although this change resulted in a loss of tax benefits to S, the parties had by then settled on a structure that entailed a redemption preceding the merger, and decided to continue with the plan.

The parties decided to execute a separate contribution agreement simultaneously with the merger agreement relating to the redemption of S's stock in exchange for a promissory note. Two separate agreements were drafted to reduce the likelihood of shareholder action regarding the merger, which might have occurred had S received a different form of consideration under the merger agreement from the other shareholders.

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The final structure of the transaction contemplates a redemption of a portion of the B shares held by S in exchange for a promissory note, followed immediately by the acquisition by A of the remaining outstanding voting securities of B through the merger and the assumption by A of the promissory note.

When viewed as a two step transaction, neither step of the transaction is reportable under the HSR Act. In the first step, the redemption of a portion of S's shares by B in exchange for the issued promissory note is exempt under § 802.30 of the regulations under the HSR Act. In valuing Step 2, the merger of B into A, there would be no reason to value the shares of S acquired by A. Assuming that the acquisition of shares of B through the merger does not meet the size-of-transaction test, the second step would also not be reportable under the HSR Act.

You stated on the call that if A is indeed assuming a note which is the obligation of B, and provided that there is a legitimate business reason for the structure of the transaction, the Premerger Notification Office would view the transaction on a step-by-step basis and treat it as two separate transactions, neither of which was reportable based on the facts presented.

If you believe that I have in any way misinterpreted our conversation, please let me know immediately.

Thank you again for your assistance.

Agree
12/29/06

Sincerely,

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