801.10

Dear Mike,

I am sending this email to follow up on a discussion we had a few months back, with the addition of a few facts that I do not believe affect the previous conclusion that an HSR filing would not be required.

[redacted]. The facts of the transaction are as follows:

Newco, a newly formed corporation, will acquire all of the voting securities of Debtor in a bankruptcy restructuring transaction. The shareholders of Newco will be certain current holders of the Debtor's defaulted debt. Prior to the acquisition, no shareholder will hold 50% or more of the outstanding voting securities of Newco. However, Company A will be deemed to control Newco for Hart-Scott purposes by virtue of its right by contract prior to the closing to appoint Newco's sole director. After closing, Company A will hold 51% of Newco's voting securities and will have the right to appoint a majority of Newco's seven board seats.

In Debtor's bankruptcy restructuring transaction, existing debt will be converted into the right to receive a cash distribution, which in turn will be used as payment for the acquisition of voting securities of Debtor. Certain current debt holders will contribute their cash distribution rights to Newco in exchange for Newco voting securities. The aggregate cash distribution value of the rights contributed to Newco will be approximately $50 million. Approximately 40% of this debt (or approximately $20 million) is currently held by affiliates of Company A, which are their own ultimate parents for Hart-Scott purposes. Company A will also contribute approximately $7 million in cash to Newco, bringing the total acquisition price for Debtor's stock to approximately $57 million. In addition, as a condition to closing of the transaction, Newco will arrange for the payment in full of a Debtor-In-Possession Loan of Debtor's, portions of which are held by Company A and its affiliates, that may be as large as $35 million, through a $35 million dollar exit financing loan. A portion of this new debt will be held by Company A and its affiliates.

Based on these facts, we do not believe that the creation of Newco or the purchase of all of the voting securities of Debtor will meet the size of transaction test, as pursuant to Section 801.10(a)(2)(i) and Interpretation 91 of the Premerger Notification Practice Manual, Fourth Edition, the fact that the Newco arranges for a loan to the Debtor, enabling it to pay an outstanding obligation, does not affect the consideration paid for the stock of Debtor.

Please let me know as soon as possible if you agree with the above analysis. As always, thank you for your time and assistance.

[redacted]

[redacted]

AGREE -
B
6/3/08