

Bankruptcy

HP

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November 21, 1991

Material may be subject to the confidentiality provision of Section 7A of the Clayton Act which restricts release under the Freedom of Information Act.

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FEDERAL TRADE COMMISSION

Re: HSR Filing Interpretation

Dear Hy:

Further to our telephone conversation of today, you requested that I set forth the facts which we discussed in order to allow you to provide me in writing with the Federal Trade Commission's opinion on certain aspects of the Hart-Scott-Rodino premerger notification regulations.

Facts

Our client is Bankrupt Corporation ("Bankrupt"). Bankrupt is controlled by a solvent company ("Parent"). Bankrupt is currently in bankruptcy reorganization under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code") before a United States Bankruptcy Court (the "Court"). Bankrupt owns 100% of the voting stock of a first tier subsidiary ("Subsidiary A"). Subsidiary A in turn owns 100% of the voting securities of a second tier subsidiary of Bankrupt ("Subsidiary B").

Bankrupt has entered into an agreement, through Subsidiary A, to sell 100% of the voting securities of Subsidiary B to a third party purchaser. This agreement does not require the filing of a Notification and Report Form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") because the purchaser fails to meet the size-of-the-person test.

The Court has issued an order to the effect that no direct or indirect subsidiary of Bankrupt may be sold without the approval of the Court pursuant to an order of the Court. Under the applicable provisions of the Bankruptcy Code, the Court has ordered publication of the terms of the existing purchase agreement and must entertain any superior bids for the voting stock of Subsidiary B submitted by other interested purchasers

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within twenty (20) days of the Court's order. The deadline for the submission of bids is December 2; the Court will select the final purchaser at a hearing on December 5. For reasons relating to Bankrupt's reorganization, Bankrupt must close the sale of Subsidiary B by December 31, 1991. There are at least three (3) additional potential bidders for Subsidiary B known to Bankrupt. All three meet the size-of-the-person test of the Act and, therefore, if the Court selects the bid of any one of the three, Bankrupt and such successful bidder will be required to file a Notification and Report Form under the Act.

Pursuant to the Bankruptcy Code at 11 USC § 363, the trustee, in this case Bankrupt, is authorized to use, sell or lease property of the bankrupt's estate after notice and hearing before the appropriate bankruptcy court. 11 USC § 363(b)(2) further provides that:

"(2) If notification is required under subsection (a) of section 7A of the Clayton Act (15 USC 18a) in the case of a transaction under this subsection, then ---

(A) notwithstanding subsection (a) of such section, such notification shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of receipt of such notification, unless the court, after notice and hearing, orders otherwise."

Interpretation

I would appreciate it if you would confirm in writing your oral advice that, under the facts as I have described them above, upon selection of the final purchaser by the Court and the filing of the appropriate Notification and Report Form by Bankrupt and the ultimate purchaser of Subsidiary B, 11 USC § 363 shall apply and the applicable waiting period for closing the transaction shall be ten days from the receipt by the FTC of the filing rather than the customary thirty days.

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ok's

Your prompt response would be much appreciated.

Regards.

Very truly yours,

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By

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