

## Via Paceinile

Thomas Hancock, Esq. Federal Trade Commission Premercar Notification Europe

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Dear Mr. Hancock:

In our telephone conversation today, I referred to our

Act of 1975, as amended. As you requested, I am writing to set forth the new facts and the questions I posed to you.

Corporation A holds approximately 48% of the

in several enterprises. Neither Corporation A nor its ultimate parent entity regularly lends money.

directors.

Thomas Hancock, Esq.

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Corporation A made a substantial loan to X, which was secured by X pledging to Corporation A his 20% of the common shares of the Issuer (the "Fledged Shares"). The loan and pledge agreement was negotiated at arms' length. The loan is now in default. Were Corporation A to acquire the Pledged Shares through foreclosure, it may not resell those shares, either because of unfavorable market conditions or because if prefers to hold a larger stake in the Issuer.

Corporation A is now considering three options. My question is whether some or all of these options are exempt from premerger reporting under the HSR Rules.

- 1. Under the loan and pledge agreement, Corporation A terminate this power to vote the shares by curing the default.
- 2. Under U.C.C. 19-505, Corporation A may give notice to X that it proposes to retain the Pledged Shares in satisfaction of X's debt. Title to the shares would
- 3. Under U.C.C. \$9-504, Corporation A may sell the

the sale, and may be the highest, if not the only bidder. A would acquire full title and interest if it purchases the Pledged Shares at such a sale.

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business, premerger reporting would not be required under any of these options, since all are, at most, an acquisition of collateral . . . in foreclosure, or upon default, . . . by a creditor. I also suggested that under option 1, where Corporation A votes the Pledged Shares only as pledgee, it would not make an acquisition of the shares thereby since (a) K would retain the beneficial interest of those shares, (b) cash dividence and proceeds from the disposal of the shares could only be applied to reduce X's debt, and (c) since X could cure the

I recognize that it an person or entity other than A

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Thomas Hancock, Esq.

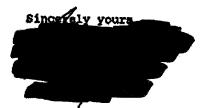
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default at any time, the situation was analogous to a revocable proxy which is, to my understanding, not an acquisition under the Rules.

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