

VC
10/11/96

Company B can
appoint a director

[Redacted]

on this case 10/21/96 A.V.
by nominate & cannot

convertible securities.

October 23, 1996

Via Telecopy

Victor Cohen, Esq.
Premerger Notification Office
Bureau of Competition, Room 303

Dear Mr. Cohen:

This letter is to confirm the conversation held on October 11, 1996 among you, [Redacted] and me concerning the filing status of a party to an acquisition.

We provided you with the following facts: Company A plans to acquire a business from Company B. The acquisition is structured as the sale of both assets and the capital stock of one subsidiary of Company B. In consideration for the business, Company B will receive \$100,000,000 in cash and shares of Class A

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my
nom

Company B will be a party to a Stockholders Agreement with the stockholders of Company A pursuant to which it will have the contractual right to designate a member of the Board of Directors of Company A. The Stockholders Agreement will not provide Company B with the right to vote any shares of Company A's capital

current right to vote for members of the Board of Directors of Company A. However, in the event of a default in the payment of dividends or the redemption

have the right to elect one-third of the board of Directors of the Company A so long as the default continues. The shares of Preferred Stock are also entitled to certain rights under Delaware law to vote on certain extraordinary transactions, such as mergers, charter amendments, etc.

Victor Cohen, Esq.
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Based on the foregoing facts, you agreed with our analysis that a Notification
Company A as an acquiring person and by Company B as an acquired person.

Furthermore, you also agreed with our analysis that Company B is not an
acquiring person due to its acquisition of the Preferred Stock. We agreed that the
Preferred Stock is not a "voting security" under the Hart-Scott-Rodino Antitrust
Improvements Act of 1976 and related regulations as (i) the Preferred Stock does not
currently entitle the holder thereof to vote for the election of directors, (ii) the
Stockholders Agreement merely provides Company B with a right to nominate a
number of the Board of Directors but does not confer voting rights or the right to

NOTE

that, in the event that a stockholder violates the Stockholders Agreement, Company B
will have the right to sue the stockholder but will not have the right to vote the
stockholder's shares.

Based on our discussion, your review of certain internal memoranda and

[REDACTED]

File [REDACTED] with the Commission of the report that reflects data will remain

Thank you very much for taking the time to discuss this matter with us.
Please call me if you should have any further questions or comments on this matter.

Best regards.

[REDACTED]