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ATTORNEYS AT LAW

March 7, 2003

Via Facsimile: 202/326-2624

Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Application of Hart-Scott-Rodino Antitrust Improvements Act

Dear Nancy:

I am writing to confirm your advice regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), to the transaction described below, as we discussed yesterday during our telephone conversation. Based on your advice, the parties will not make any filings under the HSR Act. Accordingly, please call me to confirm that this letter does not in any way misstate your views on the matter.

As we discussed, Company Y has agreed to purchase 100% of the capital stock, including outstanding warrants and options, of Company X for approximately \$53 million. Company Y's capital stock includes both common stock and preferred stock, as well as options and warrants to purchase common stock and preferred stock. The common stock ("Common Stock") consists of the following three classes: (i) Class A Common Stock ("Class A Common"), the shares of which entitle the holder presently to vote for the election of directors; (ii) Class B Common Stock ("Class B Common"), the shares of which do not presently entitle the holder to vote for the election of directors, but are convertible into Class A Common at any time upon the election of the holder; and (iii) Class C Common Stock ("Class C Common"), the shares of which do not presently entitle the holder to vote for the election of directors, but are convertible into Class A Common upon the occurrence of certain specified events, such as the sale of all of the capital stock of Company X as contemplated by these facts. The shares of preferred stock, of which there is only one class ("Preferred Stock"), do not entitle the holder to vote for the election of directors and are not convertible into Common Stock. There are approximately 83,000 shares of Class A Common outstanding, 112,000 shares of Class B Common outstanding, 85,000 shares of Class C Common outstanding, 114,000 shares of Preferred Stock outstanding and options and warrants outstanding to acquire approximately a further 1,600 shares of Preferred Stock, 23,000 shares of Class A Common and 45,000 shares of Class C Common.

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The acquisition price of \$53 million will be allocated among the holders of each class of capital stock, including the warrants and options, in accordance with a schedule that will be attached to the stock purchase agreement. Therefore, we consider that the "acquisition price" for each such class has been determined. This schedule will take into account a "liquidation preference" for the Preferred Stock of approximately \$17 million that is accruing daily, such that the first \$17 million of the acquisition price will be allocated to the holders of the Preferred Stock and the remainder will be allocated to the holders of the Common Stock, options and warrants.

Based on the foregoing facts, you concurred with our analysis that the parties to this acquisition are not required to file a Notification and Report Form under the HSR Act. We agreed that the Preferred Stock is neither a "voting security" nor "asset" under the HSR Act and its related rules. Because the \$50 million threshold to invoke the HSR Act reporting requirements only applies to the value of voting securities or assets, the value of the Preferred Stock is excluded from the calculation. If the Preferred Stock is excluded from the schedule for the distribution of the purchase price, the \$50 million threshold will not be met. Further, we acknowledged that, based on the \$17 million "liquidation preference" of the Preferred Stock and irrespective of this schedule, it is reasonable to conclude that the value of the remaining capital stock, including options and warrants, could not satisfy the \$50 million threshold. Therefore, the transaction is not reportable under the HSR Act.

For the sake of completeness, I note that we did not determine whether the Class B Common or Class C Common would be exempt under Section 802.31 of the rules under the HSR Act and, as a result, would also be excluded from the determination of the value of the transaction. This determination seemed unnecessary because the exclusion of the Preferred Stock, itself, makes the transaction non-reportable under the HSR Act.

Please call me at [REDACTED] to confirm that this letter correctly reflects our conversation and that it does not mischaracterize the view of the Premerger Notification Office. Unless I hear from you to the contrary, I will advise my client to rely on our discussions and not to make a filing under the HSR Act. Thank you very much for taking the time to discuss this matter with me, and I look forward to hearing from you soon.

Very truly yours,

[REDACTED SIGNATURE]

3/10/03

Confirmed advice.
(It may be that Class C is "voting" stock since [REDACTED] it most likely will be converted prior to purchase by Company Y)

cc: [REDACTED]