

October 13, 2004

Via Electronic Transmission

Mr. Michael Verne
Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Ave. N.W.
Room 303
Washington, D.C. 20580

Re: Confirmation of Conversation of October 8, 2004

Dear Mike:

On Friday, October 8, you, [REDACTED] and I discussed the Hart Scott Rodino Act ("HSR") issues raised by a transaction involving the formation of a "Newco" as an acquisition vehicle. This letter is intended to confirm the conclusion reached in our conversation.

The transaction is structured in the following way. A group of investors will form Newco. After formation, Newco, which is its own ultimate parent, will merge into the acquired corporation. The acquired corporation will be the surviving entity in the merger. Its shares will be converted into certificates redeemable in cash, while the shares of Newco will be converted into shares of the surviving corporation.

The merger of Newco and the acquired corporation will be notified under HSR. Our question concerned the formation of Newco itself and whether that formation also required a premerger notification filing. If examined in isolation, the formation of Newco would be reportable under Section 801.40 of the HSR Rules. Notwithstanding this fact, we understand – based on Interpretation 175 of the Premerger Notification Practice Manual (3d ed.) and our telephone conversation with you – that no filing is required because Newco is being formed "in connection with a merger" under Section 801.40.

[REDACTED]

[REDACTED]

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I believe this letter accurately recites the substance of our conversation and the conclusion the three of us reached. If, however, you disagree with it in any way, I would be grateful if you would contact [REDACTED] or me at your earliest convenience.

Thank you for your time and guidance.

Very truly yours,

[REDACTED]

[REDACTED]

AGREE -
B. Mitchell
10/14/04

[REDACTED]