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802.51

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FEDERAL TRADE COMMISSION

May 13, 2005

VIA FACSIMILE (202) 326-2624 AND U.S. MAIL

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

Re: Acquisition of Shares of Company A

Dear Ms. Ovuka:

As per our conversation earlier today, I am writing to you to confirm your conversation earlier this month with my colleague, [REDACTED], with regard to the determination that the following described transactions would be exempt from the Hart-Scott-Rodino Premerger Notification requirements set forth in the Hart Scott Rodino Antitrust Improvements Act of 1976 (the "Act") pursuant to the newly revised 16 C.F.R. 802 et. seq., and specifically under Section 802.4 and Section 802.50 of Title 16 of the Code of Federal Regulations (the "CFR"):

Proposed Transaction 1:

Company A, a Delaware corporation, is acquiring substantially all of the voting securities of Company B (and potentially a second entity, Company B1), from Company C and Company D (the shareholders of Companies B and B1)¹. Since this transaction is an acquisition of voting securities of foreign issuers which do not hold assets located in the United States or have sales in or into the United States over \$53.1MM, it is exempt under Section 802.51 of the CFR.

Proposed Transaction 2:

As part of the consideration for the above described transaction, Company A will issue to Company C and Company D, shares of Company A's common stock representing approximately 20% of the outstanding shares of Company A on the date of the acquisition. Although Company A is a United States entity, it is a holding company which does not do business in the United States. Company A has numerous subsidiaries, all of which are incorporated and do business outside of the United States,

¹ Note that Companies B, B1, C and D are all European entities. Neither Company B nor Company B1 had, individually or in the aggregate, assets in or sales in or into the United States of over \$53.1MM in such company's most recent fiscal year.

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and Company A, through its subsidiaries, derives all of its revenues in one European country. Other than its interests in the aforementioned foreign subsidiaries, Company A has minimal assets in the United States (the total of which do not exceed the \$53.1 Million threshold).

Exemptions:

We are relying on Sections 802.4 and 802.50(a) of the CFR as exempting the second proposed transaction from the notification requirements of the Act. Section 802.4, as recently revised, exempts from the notification requirements, the following:

“an acquisition of voting securities of an issuer...whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to Section 7A(c) of the Act, **this part 802**, or pursuant to §801.21 of this chapter, is exempt from the reporting requirements if the acquired issuer...and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than \$50 million (as adjusted)...(emphasis added).

Additionally, the relevant part of Section 802.50(a) of the CFR exempts the following:

“The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million (as adjusted) during the acquired person's most recent fiscal year.”

In combination, since the assets of Company A consist primarily of securities of its subsidiaries, each of which are foreign entities and none of which hold assets in the United States, and since the acquired assets did not generate any sales in or into the United States in Company A's most recent fiscal year, Rules 802.4 and 802.50 would exempt the transaction from reporting under the Act.

Based on our conversation and your conversations with Mr. Walter, we understand that given the above set of facts, Company A will not be required to submit a Hart-Scott-Rodino Premerger Notification filing to the Federal Trade Commission or the Department of Justice for the transactions outlined above. Please contact us immediately if our understanding of the reporting requirements with respect to this transaction is incorrect.

Sincerely,



*Confirmed w/ writer
that analysis is correct.*

5/17

h. n. l.