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December 12, 2005

Contains Confidential Information

VIA EMAIL & US MAIL

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th Street & Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Application of § 802.4

Dear Mike:

I am writing to confirm my understanding of our telephone conversation on December 12, 2005, concerning whether the transaction described below is exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Our client intends to acquire 100 percent of the voting securities of a non-public corporation (the "Company"). The Company is not a "foreign issuer" as defined by 16 C.F.R. § 801.1(e)(2)(ii), because it is incorporated in the United States. Nevertheless, it has substantial non-U.S. businesses that are conducted through wholly owned, foreign subsidiaries (roughly half its revenues come from overseas). The Company's total sales in its most recent fiscal year are less than $53.1 million, so it follows that the sales in or into the United States attributable the non-U.S. operations are below the $53.1 million threshold in 16 C.F.R. § 802.50.

As amended in April 2005, 16 C.F.R. § 802.4 provides in relevant part: "An acquisition of voting securities of an issuer . . . whose assets together with those of all entities it controls . . . consist of assets whose acquisition is exempt from the requirements of the Act pursuant to . . . this part 802 . . . 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 [$53.1M]."

[redacted]

As we discussed, the direct acquisition of the Company's assets located outside of the United States would be exempt under § 802.50, given that the sales in or into the United States attributable to the non-U.S. assets were below $53.1 million in the Company's most recent fiscal year. Accordingly, the non-U.S. assets are excluded from the determination of whether this acquisition qualifies for the § 802.4 exemption. To determine whether the transaction qualifies for the § 802.4 exemption, a fair market valuation must be done with respect to the non-exempt assets (in this case, the assets located in the United States). Pursuant to 16 C.F.R. § 801.10(c), the fair market value of such assets must be determined within 60 days prior to closing by the board of directors of the acquiring person, or the board's designee. You agreed that, if the fair market value of the Company's assets located in the United States does not exceed $53.1 million, this transaction would qualify for the § 802.4 exemption and would not be subject to the reporting and waiting period requirements of the HSR Act.

Please contact me at [redacted] as soon as possible if I have misunderstood our conversation or incorrectly set forth your views. Thank you.

Very truly your,

[redacted]

Agree.
B Verne
12/12/05