



August 31, 2006



VIA FEDEX

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

Re: Interpretation of 16 C.F.R. §803.9(c)

Dear Ms. Ovuka:

The purpose of this letter is to confirm our telephone conversations yesterday with respect to the number of filing fees payable, in light of the provisions of 16 C.F.R. §803.9(c)¹, in connection with Notification and Report Forms filed with respect to the following transaction: Company A and Company B intend to enter into a joint venture by contributing their respective businesses to a newly formed limited liability company ("JV LLC"). Each of Company A and Company B will receive a 50% interest in JV LLC in exchange for their contributions, and thus each of Company A and Company B will "control" JV LLC for purposes of the Premerger Notification regulations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). Each of Company A and Company B is, in turn, owned equally by two separate persons, and thus each of Company A and Company B has two (2) ultimate parent entities. As a result, the proposed transaction would involve four (4) separate acquiring persons, and would require four (4) separate Premerger Notification and Report Forms to be filed.

The question discussed in our telephone conversations was whether, in light of the foregoing facts, the proposed transaction would require payment of four separate filing fees, as well, or whether 16 C.F.R. §803.9(c) would permit a lesser number of filing fees. In particular, the question was whether the word "same" as used in 16 C.F.R.

¹ 16 C.F.R. §803.9(c): "For a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the *same* for item 5 of the Notification and Report Form, only one filing fee is required in connection with the transaction."



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§803.9(c) means that the responses for both ultimate parent entities needed to be identical in terms both of North American Industrial Classification System ("NAICS") codes, and the actual dollar amounts reported under each NAICS code, or if "same" means that only the NAICS needed to be the "same" (even if the actual dollars reported under the NAICS codes were different for each filing person).

In our discussions, you agreed that for purposes of the above described transaction, if the responses by both of the ultimate parent entities of Company A (or by both of the ultimate parent entities of Company B), contained identical NAICS codes, the filings by the ultimate parent entities of that Company, would be deemed the same for purposes of 16 C.F.R. §803.9(c). In that instance, while such Company's ultimate parent entities would each be required to file separate Notification and Report Forms, only a single filing fee would be required. Thus, in the proposed transactions, if the Item 5 responses of both the ultimate parent entities of each of Company A and Company B, respectively, included identical NAICS codes, the pre-merger notification requirements under the Act would require four (4) separate Notification and Report Forms, but only two (2) separate filing fees, one paid by the ultimate parent entities of Company A and one paid by the ultimate parent entities of Company B.

Please contact me if I have not accurately described your understanding of our telephone conversation or if you have questions or would like any additional information. My direct line is [REDACTED].

Very truly yours,

[REDACTED]
[REDACTED]

cc: [REDACTED]

Agree
N. Ovuka