

801.1(b)



October 10, 2006

**VIA FAX (202/326-2624)
AND FEDERAL EXPRESS**

Mr. Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mike:

The purpose of this letter is to confirm our telephone conference today in which you concluded that, under the facts described below, the entities described below do not control the Company. In particular, our inquiry related to the interpretation of the staff of the Federal Trade Commission of Rule 801.1(b) relating to whether the entities described below control the Company. The relevant facts, as we discussed them, are as follows:

Facts

Our client (the "Company") is contemplating entering into a transaction to acquire all of the outstanding shares of capital stock of the target company ("Target"). Both the size-of-person and size-of-transaction tests are met and a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), is required with respect to the proposed transaction. The Company is a publicly-traded company. Target is a privately held company.

LLC ("LLC") is the direct record owner of fifty-one percent (51%) of the outstanding shares of capital stock of the Company. LLC has no power to vote or dispose of shares of the Company's capital stock. LLC is not deemed to be the beneficial owner of those shares under the Securities Exchange Act of 1934, as amended, by virtue of the terms of the Amended and Restated Limited Liability Company Agreement of LLC (the "LLC Agreement"), and as reported in the joint Schedule 13D filing of LLC, A and B discussed below.

A and B are the two members of LLC, each holding a 50% ownership interest in LLC. A and B are unaffiliated entities, each having its own separate ultimate parent entity. The LLC Agreement provides, among other things, that 50% of the capital stock of the Company held of record by LLC is deemed to be owned by each of A and B.



Voting. The LLC Agreement provides for pass-through voting of the shares of capital stock of the Company held by LLC based on A's and B's respective membership interests in LLC. Each of A and B will direct the voting of the shares of Company capital stock beneficially owned by it as it sees fit, without any agreement, arrangement or understanding between them regarding the voting of the shares. In furtherance thereof, LLC granted to each of A and B an irrevocable proxy, coupled with an interest, to vote the shares of Company capital stock it beneficially owns in connection with any matter submitted to a vote of shareholders of the Company. Neither A nor B has the power to direct the voting of the shares held by the other party.

Board of Directors. The board of directors of the Company consists of ten members. Under the terms of the LLC Agreement, LLC will use commercially reasonable efforts to cause the Company's board of directors to include at least six designees of LLC, initially to be comprised of an equal number of designees of A and B. Each of A and B will select such designees as it deems appropriate, without any agreement, arrangement or understanding between them to work collectively to achieve the appointment of the parties' designees to the Company's board of directors. There is no agreement between A and B to effectuate their respective director selections outside of each party's individual voting power and there is no agreement between A and B to vote for each other's designees.

Disposition. Each of A and B has full dispositive power over the shares of Company capital stock it beneficially owns, but does not have similar power over the shares beneficially owned by the other party. The LLC Agreement provides that the LLC may not transfer shares that are beneficially owned by A and B for a period of two years after the date of the LLC Agreement, unless A and B consent in writing. The terms of the LLC Agreement do not allow either A or B to direct the disposition of the shares beneficially owned by the other party. Once the two-year restricted period has elapsed, each party may transfer the shares it beneficially owns provided it complies with the volume limitations and other provisions of the LLC Agreement for an additional two-year period. After the expiration of this two-year period (four years after the date of the LLC Agreement), each of A and B is free to transfer the shares it beneficially owns provided the requirements of the LLC Agreement are met. In no event can either A or B dispose of, or direct the disposition of, the shares beneficially owned by the other party.

Proceeds from the Disposition of Shares. The LLC Agreement provides that to the extent any shares of the Company's capital stock deemed to be owned by A or B are transferred in accordance with the LLC Agreement, the net proceeds of the transfer are distributed to the party on whose behalf the shares are transferred. A and B each have the right to obtain the benefit of any increase in the value of, and the risk of any loss in the value of, the shares beneficially owned by them.

Dividends. Pursuant to the LLC Agreement, all cash dividends received by the LLC in respect of the shares of the Company's capital stock are to be distributed to A and B in accordance with their respective ownership interests in LLC.



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Schedule 13D. A and B jointly filed a Schedule 13D with the Securities and Exchange Commission relating to the above arrangement. In that filing, both A and B disclaimed beneficial ownership of the shares of the Company's capital stock reported therein as beneficially owned by the other party. LLC disclaimed beneficial ownership of any shares of the Company's capital stock.

Conclusion

Based on these facts, you concluded that neither A nor B controls the Company within the meaning of Rule 801.1(b) and that the Company is its own ultimate parent entity.

Please call me immediately at [REDACTED] should the position of the Federal Trade Commission staff with regard to this matter be different from that set forth above. In addition, please retain this letter in your files. I appreciate very much your assistance and helpful advice on this matter.

Very truly yours,
[REDACTED]

ABEE
B. Michael
10/10/06

[REDACTED]