

[REDACTED]
[REDACTED] 801-2
[REDACTED]
December 29, 2006

VIA EMAIL

B. Michael Verne
Premerger Notification Office, Bureau of Competition
Federal Trade Commission
Room 303
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Advice Confirmation

Dear Mr. Verne:

Company A and B are significant competitors of one another. On several occasions in recent years, Company B has negotiated with Company A regarding a possible acquisition of Company A. Company A and B have not been able to reach agreement on a transaction because of their disagreement on valuation, among other issues.

The two companies' businesses are characterized by long term contracts with durations that can be as long as twenty years. Company B has been in discussions with Company C, a customer of Company A. Company C would like to contract with Company B, but Company C will have to buy out the remaining term of its contract with Company A. Company C is insisting as a condition of a new contract with Company B that Company B be responsible for the cost of the Company C's contractual buyout from Company A. As a consequence, negotiations have commenced among Company A, Company B, and Company C regarding the value of the buyout of Company C's contract with Company A.

The parties propose that Company B will pay to Company C an amount to exceed \$100 million in order to induce the Company C to enter into a long term, 15 year contract with Company B. Company C will use a portion of the money it receives from Company B to buy itself out of its contract with Company A. The amount Company C will pay to Company A will likely exceed the \$50 million (as adjusted) notification threshold of the Hart-Scott-Rodino Act. Assuming Company A accepts Company C's offer, Company B will offer employment to the employees of Company A that work exclusively with Company C under its existing long term contract. Those employees constitute between 18% and 25% of Company A's employees. Company A has more than five other long term contracts that it will continue to service.

Based on these facts, our advice to the client, with which we hope you will concur, is that these transactions involve the creation rather than the acquisition of an asset, and are not reportable

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regardless of the amount of money involved. If you do not agree with this conclusion, please contact me as soon as possible.

Very truly yours,



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