

Agree 801.1

DECEMBER 18, 2007

Kate Walsh
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303, 600 Pennsylvania Ave. N.W.
Washington, DC 20580

VIA E-MAIL

RE: Hart-Scott-Rodino ("HSR") Compliance Inquiry

Dear Ms. Walsh:

This letter summarizes the telephone conversation which we had earlier this afternoon regarding the potential filing requirements for one of our clients under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended (the "Act"), and the rules promulgated thereunder. Specifically, this letter restates the various facts related to our client's potential acquisition and the conclusions we reached regarding the treatment of such acquisition under the Act.

SUMMARY OF THE TRANSACTION

Pursuant to an Agreement and Plan of Merger (the "**Merger Agreement**"), a subsidiary of our client (the "**Purchaser**") will purchase all of the issued and outstanding common stock of a U.S. corporation (the "**Target**"). The Target's issued and outstanding common stock consists of (1) Class A voting common stock that entitles its holders to vote for the directors of the Target, and, therefore, is a voting security within the meaning of 16 C.F.R. § 801.1(f)(1); and (2) Class C non-voting stock that does not entitle its holders to vote for the Target's directors and, accordingly, is not a voting security as defined by the Act. The Target's Class A voting securities constitute 17.1% of the Target's issued and outstanding equity securities. The Class A voting securities are owned entirely by one individual (the "**Principal Shareholder**"). The Target's Class C non-voting securities constitute 82.9% of the

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Target's issued and outstanding equity securities. The Principal Shareholder holds approximately 10% of the outstanding Class C non-voting securities. The remainder of the Class C securities are owned by various individuals and entities. In total, the Principal Shareholder holds approximately 25% of the Target's issued and outstanding equity securities, and other individuals and entities hold approximately 75% of the Target's issued and outstanding equity securities.

Upon the consummation of the transaction contemplated in the Merger Agreement, the Purchaser will acquire all of the Target's issued and outstanding securities (voting and non-voting) for a total purchase price of approximately Sixty Million Dollars (\$60,000,000) (the "**Purchase Price**"). The Merger Agreement provides that the Purchase Price will be paid by the Purchaser to the Target's stockholders (the "**Stockholders**") pro rata based upon their respective percentage ownership of all of the Target's issued and outstanding equity securities. Therefore, the Purchaser is paying approximately Ten Million Two Hundred and Sixty Thousand Dollars (\$10,260,000) to acquire all of Target's issued and outstanding Class A voting common stock, and is paying approximately Forty-Nine Million Seven Hundred and Forty Thousand Dollars (\$49,740,000) to acquire all the Target's issued and outstanding Class C non-voting common stock.

ANALYSIS

Based upon our discussion of the above cited facts, you confirmed that only the value of the Target's voting securities being acquired by the Purchaser will be counted for purposes of the "size of transaction" test set forth in Section 7A(a)(2)(B)(i) of the Act. The value of the Target's non-voting securities is not counted for purposes of determining if the "size of transaction" threshold is met or exceeded. Accordingly, the consideration being provided by the Purchaser to the Stockholders pursuant to the Merger Agreement in consideration for all of the issued and outstanding Class A voting common stock, approximately Ten Million Dollars (\$10,000,000), constitutes the acquisition price for the "size of transaction test." Therefore, the acquisition price of the transaction contemplated in the Merger Agreement is less than the "size of transaction threshold," currently Fifty Nine Million Eight Hundred Thousand Dollars (\$59,800,000), and the Act does not mandate an HSR filing.

I would appreciate it if you would call or e-mail me at your earliest convenience to confirm this letter correctly represents our discussion and the advice that you provided me earlier today. Thank you for your assistance in this matter.

Sincerely,

A large black rectangular redaction box covering the signature area of the letter.