



March 9, 2009

By Email

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

Re: Hypothetical Transaction

Dear Mike:

I am writing to confirm the substance of our telephone conversation on Friday, March 6, 2009, concerning identifying the filing party under the Hart-Scott-Rodino Act ("HSR Act") for a potentially reportable transaction. As you will recall, given the facts of the proposed transaction, you agreed that the "acquiring person" is the entity that will hold the acquired person after consummation of the transaction, and not the acquiring entity's current majority shareholder.

We represent Company A which will acquire, through a stock purchase, Company B, a closely-held corporation. As a result of the acquisition, Company B will become a wholly-owned subsidiary of Company A.

In consideration for the acquisition, Company B shareholders will receive newly-issued voting securities in Company A, as well as a cash payment. Company B shareholders will hold approximately 20% of Company A's outstanding voting securities after consummation of the transaction.

Currently, Company A is controlled by a single shareholder ("Shareholder C") that beneficially owns approximately 55% of Company A's outstanding voting securities. After consummation of the acquisition, the issuance of new Company A securities will dilute Shareholder C's stake in Company A to approximately 40%. As a result, Shareholder C no longer will control Company A.





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Rule 801.2 states that the acquiring person in a transaction is “[a]ny person which, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly” An acquiring person holds, pursuant to Rule 801.1(c)(8), “all assets and voting securities held by the entities which it controls directly or indirectly.” Because Shareholder C will not control Company A after the transaction is consummated, it never will “hold” the securities of Company B. Accordingly, Shareholder C is not the “acquiring person” within the HSR Act. Rather, Company A is the acquiring person in the proposed transaction -- and the reporting person if notification under the HSR Act is required -- notwithstanding Shareholder C’s control of Company A prior to consummation of the transaction.

If you disagree with anything I have stated in this letter, please contact me as soon as possible. Thank you for your assistance and advice in this matter.

Sincerely,



AGREE -
BV
3/9/09

