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CONFIDENTIAL

VIA ELECTRONIC MAIL

June 8, 2009

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mike:

I am writing to confirm our discussion of June 8, 2009 regarding the non-reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of the proposed transaction discussed below.

Proposed Transaction

The business of the acquiring party in the proposed transaction ("Purchaser") includes the sale and installation of security alarm equipment, and alarm system maintenance, repair, service and monitoring. Purchaser will be acquiring from a seller ("Seller") approximately 80,000 to 90,000 U.S. security alarm customer accounts (the "Proposed Transaction"). These security alarm customers pay a fee, typically on a monthly basis, for ongoing alarm system monitoring. These customers also may require alarm system maintenance, service and repair. The acquisition of these accounts includes related customer contracts, related accounts receivable, related customer records, rights to certain communications assets necessary to provide services to or in connection with the accounts being acquired, and certain transitional rights necessary to effectively transfer the accounts being sold. Please assume that the HSR size of the transaction test and size of the parties test would be met.

Seller also is a participant in the security alarm industry. Seller provides security alarm monitoring both for residential and commercial accounts. Seller has an independent dealer network that provides the sale, installation, and service of alarm systems. The accounts that Seller is selling to Purchaser are primarily residential accounts although included with those accounts are some accounts for small commercial customers (e.g., a small store). Seller's strategy is to shift its focus away from the residential aspect of its business to concentrate on



B. Michael Verne

June 8, 2009

Page 2

commercial accounts. As a part of this shift in its focus, Seller intends to cease its residential dealer program. (Seller presumes that a number of the terminated dealers will choose to remain in the security alarm business just without any affiliation with Seller.)

Following the Proposed Transaction, Seller still will continue serving residential accounts through providing monitoring, at least for the immediate future. There are a few thousand such residential accounts that Purchaser has declined to purchase and that will be retained by Seller following closing, although Seller may choose to sell those accounts in the future. Further, as a part of its monitoring business, Seller provides monitoring for approximately 50,000 to 60,000 primarily residential customer accounts that are owned by other parties (*i.e.*, security and alarm companies that do not have their own internal alarm monitoring capability and that contract on a wholesale basis with a party like Seller to provide monitoring services for their customers). These wholesale accounts are not part of the Proposed Transaction, and Seller will be maintaining its wholesale business going forward. Seller also will be maintaining and intends to grow its commercial business. Thus, Seller is not exiting the security alarm monitoring business.

Another legal entity that is part of the same ultimate parent as Seller also owns approximately 10,000 to 11,000 residential accounts that are monitored by Seller and are not part of the Proposed Transaction, although Seller's parent intends to sell these accounts as a part of the strategic move to focus on commercial accounts. The ultimate parent entity of Seller also has other subsidiaries involved in the security alarm monitoring business outside the United States.

Purchaser has acquired customer accounts in bulk from others in the security alarm industry on a number of occasions in the past and would intend to make additional such acquisitions in the future. The Proposed Transaction involves the acquisition of more security alarm customer accounts than in other individual transactions Purchaser has made in the past from other sellers, with the exception of the acquisition of customer accounts that have occurred as part of certain past purchases of entire businesses.

Analysis and Conclusions

You confirmed the following:

(1) The Proposed Transaction is not reportable under the HSR Act regardless of the value of the transaction or the size of the parties;

(2) The Proposed Transaction is exempt under the ordinary course statutory exemption contained in the HSR Act. 15 U.S.C. § 18a(c)(1) (exempting "acquisitions of goods or realty transferred in the ordinary course of business"). See Informal Staff Opinion 0709016;



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B. Michael Verne

June 8, 2009

Page 3

(3) The ordinary course HSR Act exemption applies to the acquisition of security alarm customer accounts where, as here, Seller will still continue to monitor security alarm accounts. The exemption applies even if Seller is exiting or intends to exit the provision of monitoring or other security alarm services and activities for residential customers given that it intends to continue to serve commercial accounts. See ABA Section of Antitrust Law, Premerger Notification Practice Manual (4th ed. 2007), Interpretation #8 ("if the bank were selling all of the assets of a subsidiary that represented all its consumer loans, but retained another subsidiary that handled its commercial loan business, the transaction would be exempt in the ordinary course.");

(4) The ordinary course HSR Act exemption applies where as here Purchaser has purchased security alarm customer accounts in bulk in the past and intends to do so in the future; and

(5) The ordinary course exemption still applies to the Proposed Transaction even if it involves the acquisition of more security alarm customer accounts than has occurred in past acquisitions by Purchaser or by others in the industry.

* * *

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[REDACTED]

AGREE
BM
6/9/09

[REDACTED]