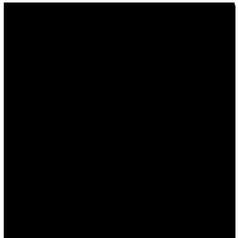


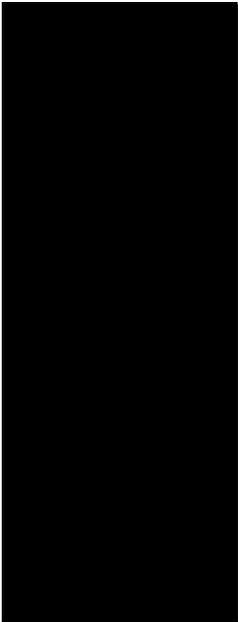


October 15, 2012



**VIA E-MAIL**

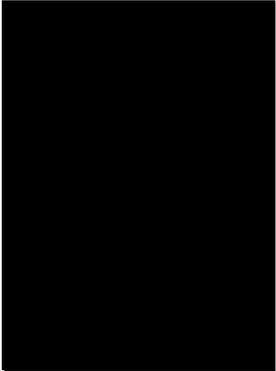
Mr. B. Michael Verne  
Federal Trade Commission  
Bureau of Competition  
Premerger Notification Office  
600 Pennsylvania Avenue, NW  
Room 303  
Washington, DC 20580



Dear Mike:

This letter seeks to confirm that an acquisition of stock, as described below, would not be a reportable transaction under the Hart-Scott-Rodino Act of 1976 ("HSR Act"). The details of the proposed transaction follow.

Pursuant to a letter of intent, Acquiring Entity will acquire 100% of the issued and outstanding stock of Target, a privately held S corporation. The stock of Target consists of one class of voting shares (stock that carries voting rights with regard to the election of directors), which are held by a single shareholder and one class of non-voting shares (stock that does not have voting rights with regard to the election of directors), which are held by a number of different shareholders, but not by the holder of the voting shares. The vast majority of the shares of Target are non-voting shares. Please assume for purposes of this analysis that the Size of the Parties Test is met.



The allocation of the purchase price for 100% of Target's stock is determined and being made pursuant to a shareholder agreement which was entered into several years ago and which requires that the purchase price be allocated equally across shares regardless of whether the share is a voting or non-voting security. Thus, while the total payment to be made by Acquiring Entity for Target's stock is greater than \$68.2 million (the amount that must be exceeded to meet the HSR Size of the Transaction Test), the portion of the purchase price payment allocated to the voting shares pursuant to the shareholder agreement is an amount well below \$68.2 million.

The above-referenced shareholder agreement which allocates consideration for the purchase of all shares was drafted and effectuated several years ago for

Mr. Michael Verne  
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tax reasons and as a means of estate planning. In other words, the allocation of consideration between voting and non-voting shares was not structured for purposes related to potential obligations under the HSR Act.

Based upon the foregoing scenario, we have concluded as follows:

- (1) Any consideration for the non-voting shares of Target is not included in the HSR valuation as the acquisition of non-voting securities is HSR exempt regardless of the value (see, e.g., <http://www.ftc.gov/bc/hsr/informal/opinions/0709007.htm>);
- (2) Because the purchase price will be distributed on a per share basis (pursuant to the shareholder agreement), the purchase price of the voting securities is determined for HSR purposes;
- (3) The HSR analysis is not impacted by whether a single shareholder currently holds all the voting and some of the non-voting shares of Target, or if multiple shareholders of Target currently hold the voting and/or non-voting shares of Target; and
- (4) This transaction will not be regarded as a transaction or device for avoidance under 16 C.F.R. § 801.90.

Assuming the above conclusions are accurate, it appears the transaction would not be reportable under the HSR Act. Please advise if this does not accurately reflect the current position of the Premerger Notification Office. Should you have any questions regarding the above, please do not hesitate to contact me.

Thanks, as always, for your help and guidance.

Very truly yours,



AGREE -  
B  
10/16/12  
K. WALSH CONCURS