

ABA # 296

May 16, 2000

**BY TELECOPY TO (202) 326-2624**

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

Re: Proposed Transaction

Dear Mr. Verne:

The purposes of this letter are to confirm our recent telephone conversation regarding the position of your office with respect to the formation of a holding company to own the stock of a corporation the acquisition of which has previously been granted early termination and to provide you with a description of a transaction contemplated by our client, the acquired party, as well as our conclusions that a new filing is not necessary.

Counsel for the acquiring party, [REDACTED] and I would like to call you to discuss our conclusions. Should you have any questions concerning this matter or desire any additional information, my direct telephone number is [REDACTED]

Thank you for your assistance.

Sincerely,  
[REDACTED]  
[REDACTED]

**TRANSACTION DESCRIPTION**

[REDACTED]  
[REDACTED] is its own ultimate parent entity within the meaning of the Regulations (the "Regulations") of the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

[REDACTED] are each owned by the same shareholders in the same percentages. Neither [REDACTED] nor any shareholder of [REDACTED] is a "\$100 million person" under the Regulations. [REDACTED] is not a "\$10 million person" under the Regulations. If [REDACTED] were merged into a single entity, that entity would not be a "\$100 million person" under the Regulations.

[REDACTED] is the ultimate parent entity of [REDACTED].  
[REDACTED] have entered into a letter of intent providing for the purchase of [REDACTED]. [REDACTED] filed Premerger Notification and Report Forms with respect to the purchase. The filings were assigned Transaction Identification Number [REDACTED] by the Premerger Notification Office. The applicable waiting period commenced on March 31, 2000, and early termination of the waiting period was granted effective April 11, 2000.

It is contemplated that [REDACTED] will expand the areas in which they conduct their operations. In that event, management believes that a holding company would be the preferable organizational form, with separate subsidiaries for the separate states in which operations will be conducted. It is believed that such a structure will simplify administrative, operational and tax issues.

Approximately 12 shareholders own approximately 80% of each of [REDACTED] (the "Majority Shareholders"), and approximately 50 shareholders own the approximately remaining 20% (the "Minority Shareholders"). It is contemplated that the [REDACTED] shareholders will

[REDACTED]

receive consideration of cash and [REDACTED] stock. It is also contemplated that the selling shareholders will have to make certain representations and warranties to which indemnification will apply and that part of the consideration will be escrowed during the indemnification period. It is believed that some of the Minority Shareholders would rather receive consideration of all cash without escrow and would rather not make the representations and warranties to which indemnification would apply (other than ownership of the [REDACTED] stock).

As a result of the foregoing, it is proposed that a Delaware corporation be formed to serve as a holding company for [REDACTED] Holding"). Prior to the purchase by [REDACTED] the shareholders of [REDACTED] would contribute their stock in [REDACTED] to Holding in exchange for Holding stock. Prior to the purchase by [REDACTED] the sole activity of Holding will be ownership of the [REDACTED] and possibly the acquisition of a minority of the Holding stock as described below. Because of the identical percentage ownership of [REDACTED] and [REDACTED] the shareholders would own Holding stock in the same percentages as they currently own [REDACTED]. This would accomplish the business purpose of the preferable organizational form. [REDACTED] would purchase the stock of Holding rather than the stock of [REDACTED] the stock of [REDACTED].

To the extent that one or more of the Minority Shareholders do not readily agree to the terms of the purchase (warranties, representations, indemnifications, holdbacks, etc.), Holding may offer to purchase the shares of such Minority Shareholder for all cash, with no escrow, in the same dollar value per share as the cash and stock consideration to be paid by [REDACTED] but with limited representations and warranties, for the purpose of facilitating the purchase by [REDACTED]. Regardless of the number of [REDACTED]

Minority Shareholders that may be purchased by Holding, if any, Holding will be its own ultimate parent entity.

**QUESTIONS**

Will the acquisition by Holding of all of the [REDACTED] and the [REDACTED] stock as described above, or the acquisition by Holding of any part or all of the Holding stock owned by the Minority Shareholders as described above, require a new filing under the Act or the Regulations? Will the subsequent acquisition of Holding by [REDACTED] require a new filing under the Act or the Regulations?

**OUR UNDERSTANDING**

The acquisition of the [REDACTED] stock by Holding is an exempt transaction because there is no "\$100 million person." The acquisition of certain Holding stock by Holding is likewise an exempt transaction because there is no "\$100 million person." [REDACTED] has filed with respect to the acquisition of [REDACTED] and early termination has been granted. [REDACTED] did not need to file with respect to the acquisition of [REDACTED] because [REDACTED] not a "\$10 million person." It is our understanding the Premerger Notification Office will disregard the change in ownership of [REDACTED] and [REDACTED] from individual shareholders to Holding for purposes of the Act and the Regulations because there has been a filing with respect to the substance of the transaction and early termination has been granted with respect to that filing.

Based on the foregoing, it is our understanding that neither the acquisitions of Holding as described above, nor the acquisition of Holding by [REDACTED] will not require a new filing under the Act or the Regulations.

[REDACTED] AGREE - NO NEW FILING IS REQUIRED.

B. [REDACTED] 5/17/00