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802.63

December 5, 2000

By Hand
Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This is to confirm our conversation on November 28, 2000 in which you concluded that the transaction described below was exempt from filing pursuant to 16 C.F.R. § 802.63.

The ultimate parent entity includes among its holdings two corporations relevant to this transaction. S_1 is a franchisor and S_2 is in the business of making loans to franchisees of S_1. A franchisee is in default on debts owed to S_1, S_2 and other creditors. It owes $8.7 million to S_2 and $1.4 million to S_1. S_1 will pay S_2 for most of the franchisee's debt owed to it and S_2 will forgive the rest of the debt. The franchisee will then transfer its assets to S_1. Also in consideration for receipt of the assets, S_1 will forgive $1.4 million in debt owed to it and put a minimum of $1.7 million in escrow for unsecured creditors of the franchisee. The total of these and other assumed debts slightly exceeds $15 million.

You advised me that we could exclude from the calculation of the value of the transaction the sums owed to S_1 and S_2, pursuant to 16 C.F.R. § 802.63. That rule provides, in part, that an acquisition of collateral in connection with a *bona fide* debt workout is exempt from the act if made by a creditor in a *bona fide* credit transaction entered into in the ordinary course of the creditor's business. S_2 is in the business of making loans to franchisees such as the debtor, and S_1 regularly makes loans to its franchisees. Even though S_1 and S_2 are separate corporations, you concluded that since they both had the same ultimate parent entity, the $8.7 million in debt owed to S_2 as well as the $1.4 million owed to S_1 could be excluded from the calculation of the size of the

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transaction. These exclusions make the size of the transaction for Hart-Scott-Rodino purposes less than $15 million and, consequently, not reportable.

Thank you for your assistance. Should you disagree with the above conclusion, please advise me a[redacted]

Sincerely,

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AGREE.
B. Michael Verne
12/6/00

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