[redacted]

801.10

[redacted]

ATTORNEYS AT LAW

March 29 , 2001

via **FACSIMILE**

Mr. Michael Verne
Federal Trade Commission
Premerger Notification Office, Room 303
6th Street and Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Mr. Verne:

This letter shall serve to confirm a telephone conversation on February 13, 2001, among you, [redacted] and myself, during which you agreed with our analysis that the transaction, as summarized below, does not require the filing of a Notification And Report Form For Certain Mergers And Acquisitions to comply with the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Briefly, we explained the transaction as follows:

- Individual A and Individual B are the ultimate parents of Corporation C;
- Corporation D is a wholly owned subsidiary of Corporation C;
- Corporation D has approximately $30 million of debt (the "Debt") with unrelated third party lenders (the "Lenders") with respect to which Individual A and Individual B have personal loan guarantees;
- Corporation E is acquiring all of the issued and outstanding voting securities of Corporation D from Corporation C; and
- In connection with the acquisition of the voting securities of Corporation D, Corporation E is expending approximately $54 million at closing, of which approximately $30 million is being paid to the Lenders to payoff the Debt, while the balance is being paid to Corporation C (the sole shareholder of Corporation D).

[redacted]

As a general rule, in the context of an acquisition of voting securities, the dollar value of the liabilities of the acquired person is not aggregated with the purchase price in calculating the size of the transaction. The Federal Trade Commission (the "FTC") has, however, recognized that in some instances when the liabilities of an acquired entity are personally guaranteed by persons who control the acquired entity, the general rule does not always control. Specifically, in ABA Premerger Notification Manual Interpretation 118 ("Interpretation 118"), an acquiring person agreed to make a partial pre-payment of a loan in exchange for a lender's agreement to cancel the personal loan guarantees of certain shareholders of the acquired person. In that instance, the FTC determined that the acquisition price equaled the sum of the cash purchase price plus the value of the benefit afforded the shareholders with respect to the cancellation of the guarantees of the loan.

We believe that in the context of the factual circumstances set forth in this letter, the payment of the Debt to the Lenders by the acquirer (Corporation E) should not be included in calculating the size of the transaction. Specifically, we believe that the factual scenario set forth in this letter is distinguishable from Interpretation 118. In particular, the cessation of the loan guarantees in the facts set forth above is a function of the entire loan being extinguished, not the result of a bargained for agreement between the Lenders and the acquiring entity solely for the benefit of the personal guarantors. Accordingly, we believe that the general rule controls the required analysis: in the context of an acquisition of voting securities, the dollar value of the liabilities of the acquired person is not aggregated with the purchase price in calculating the size of the transaction.

During our conversation, you agreed with the foregoing analysis and with our conclusion that neither Corporation E nor Individuals A and B would need to file a Notification and Report Form regarding the transaction described herein. Moreover, in light of Interpretation 118, you noted that even if additional value should be afforded to the termination of the loan guarantees, such value would approach zero.

Accordingly, please be advised that, as we discussed, neither Corporation E nor Individuals A and B will file a Notification and Report Form regarding the above described transaction. Thank you very much for your time and assistance in this matter. Should you have any comments or questions regarding this letter, or if I have incorrectly characterized your concurrence with our analysis, please feel free to telephone me at the above number.

AGREE. THE DISTINCTION IN #118 IS THAT THE DEBT CONTINUED TO EXIST B[redacted] THE SHAREHOLDER WAS RELIEVED OF HIS GUARANTEE. N. OVUKA CONCURS.

Best R[redacted]

3/30/01

cc: [redacted]

[redacted]