801.10

[redacted]

WRITER'S DIRECT

[redacted]

May 31, 2001

BY FACSIMILE AND BY FEDERAL EXPRESS
BY FACSIMILE TO: (202) 326-2624

Michael B. Verne
Compliance Specialist
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Letter of Confirmation

Dear Mr. Verne:

Yesterday, May 30, 2001, I called you with [redacted] [redacted] to review the Hart-Scott-Rodino filing obligations of a hypothetical asset acquisition. I write to confirm our conversation. The hypothetical and HSR analysis that we discussed are described below.

Hypothetical:

Certain fixed assets of B are to be acquired by A for $45 million. A does not want to buy B's accounts receivable, which B carries on its books at a value of $10 million. Accordingly, A and B agree that, B's accounts receivable will not be sold to A at closing. Rather, following the closing, A will serve as collection agent for B's accounts receivable. The collection period will last from 90 to 180 days. At the end of the collection period, any uncollected accounts receivable will be purchased by A from B at book value.

HSR Analysis:

First, in analyzing the HSR filing requirements of the above-described hypothetic[redacted] and I directed you to Interpretation 131 in the Premerger Notification Manual (ed. Prager, 1991).

Consistent with Interpretation 131, you advised that, if a reasonable basis exists, A should value the contingent payment that it may have to make at the conclusion of the collection period for B's uncollected receivables. This amount, if any, should be added to the $45 million purchase price to determine the total value of the assets to be acquired. See Premerger Notification Manual, Interpretation 131 ("The arrangement may, however, have been a contingent additional payment for the other assets acquired from the Seller. If the amount of this contingent payment could reasonably have been valued by the Buyer, it should (under present staff procedures) have been included in the acquisition price of the assets being purchased.")

If a reasonable basis for valuation does not exist, then the purchase price cannot be determined and A's Board should make a good faith determination of the fair market value of the assets to be acquired.

* * *

Please call me if you believe that this letter does not accurately reflect our discussion of yesterday, or is otherwise in error. Thank you for your attention to this matter.

Sincerely,

[redacted]

AGREE –
[illegible]
6/6/01

cc: [redacted]