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July 5, 2002

BY FACSIMILE
Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: HSR Valuation Methodology

Dear Mike:

I am writing to confirm the appropriate Hart-Scott-Rodino ("HSR") valuation methodology for a transaction that we discussed in various telephone conversations starting on June 20, 2002.

Specifically, a group of affiliated companies – corporations A, B, C, and D and partnership E - are planning to consolidate into one company and on the same day engage in an initial public offering ("IPO"). Each of A, B, C, D, and E is its own ultimate parent entity for HSR purposes, although they share substantially similar, although not identical, owners. On the day of the consolidation and IPO (hereafter the "IPO Day"), the following steps could occur.

(1) The partners of E will contribute their interests in E to A in exchange for shares of A voting securities.

(2) The stockholders of A will then contribute their shares of A to B in exchange for shares of B voting securities.

(3) The stockholders of B will then contribute their shares of B to D in exchange for shares of D voting securities.

(4) The stockholders of C will contribute their shares of C to D in exchange for shares of D voting securities.

(5) D, who will then hold 100% of the interests of the former A, B, C, and E, will have an IPO. 1/

I understand from our telephone conversations that any stockholders of D prior to the IPO Day who are also stockholders or partners of A, B, C, or E would not have to report their acquisition of shares of D voting securities on the IPO Day because their acquisition of such shares would be exempt under 15 U.S.C. 18a(c)(10) (the "(c10) exemption"). Despite the fact that they will receive additional shares of D voting securities on the IPO Day, their percentage ownership of D's voting securities will necessarily decrease on that day.

I also understand that because D will hold 100% of the securities or interests of A, B, C, and E on the IPO Day, it is not necessary to analyze for HSR purposes each step that will occur on that day (such as A's acquisition of 100% of the partnership interests of E or B's acquisition of the securities of A). Instead, we would have to analyze D's acquisition of 100% of the interests of each of A, B, C, and E separately. D could have to report its acquisition of 100% of the voting securities of A, B, or C or 100% of the partnership interests of E if, among other things, the value of 100% of the voting securities of any of A, B, or C or the value of 100% of the assets of E exceeds $50 million and no exemption applies. I understand that D does not have to aggregate the valuations for A, B, C, and E to determine if the size-of-transaction test would be satisfied, but may analyze its acquisition of each entity separately, even though it would acquire each of them on the same day and even though some of them might combine amongst themselves on the IPO Day before D acquires them.

Finally, I understand from our conversations that any stockholder or interest holder of A, B, C, or E who does not hold any voting securities of D before the IPO Day could have to report his acquisition of voting securities of D on the IPO

1/ Alternatively, it is possible that the partners of E will contribute their interests in E to A in exchange for shares of A voting securities and then the stockholders of A, B, and C will contribute their shares of A, B, and C to D in exchange for shares of D voting securities. D will then have an IPO.

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Day if, among other things, he would acquire in excess of $50 million worth of voting securities of D on the IPO Day and an exemption would not apply.

It is necessary to determine in advance of the IPO Day the amount of shares of D voting securities that the owners of A, B, C, and E will receive in exchange for their interests in A, B, C, and E. For these purposes, it is presently anticipated that each individual entity A, B, C, and E would be valued based upon its pro-rata contribution to the ultimate IPO valuation of D using the implied multiple of forecasted 2003 EBITDA. We have preliminary assessments from investment bankers of what they estimate D's IPO value would be if the transaction were to occur today, but ultimately the actual IPO valuation could turn out to be higher or lower. The estimated IPO valuation reflects an estimated public market valuation of the companies on a combined basis. Not surprisingly, substantial value creation takes place as a result of the combination of these companies and the de-leveraging that takes place as a result of the public offering. Thus, the pro-rata allocation of the estimated public market value to any one of the individual entities would represent a substantial premium to the value that a third party would be willing to pay for such entity on a stand-alone basis today.

I understand that the appropriate valuation methodology for D to adopt in the present transaction is for its board or its delegee to do a good faith fair market valuation of each of A, B, C, and E separately as of any day within 60 days prior to an HSR filing or closing if no HSR filing is necessary. Specifically, D's board or its delegee plans to determine what it believes a third party in an arms length transaction would pay for 100% of the voting securities of each of A, B, and C separately and what a third party in an arms length transaction would pay for 100% of the assets of E. I understand that if D's board or its delegee concludes in good faith that, as of any day within 60 days prior to the IPO Day, a third party would pay $50 million or less for the voting securities of <u>each</u> of A, B, and C, and $50 million or less for the assets of E, D would not have to report its acquisition of 100% of the voting securities of A, B or C or 100% of the assets of E, regardless of whether the fair market value of A, B, C, and E collectively exceeds $50 million.

We are likely to conclude that the size-of-transaction test would not be satisfied under the valuation methodology described above. However, we would likely reach a different conclusion if D were required to value A, B, C, and E based on a pro rata allocation of each company's share of the combined company's

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estimated IPO valuation. Also, it is possible, but we will not know until the day of the IPO, that the owners of C, for example, could acquire shares of D voting securities on the IPO Day in exchange for their shares of C that collectively exceed $50 million in valuation.

Would you please confirm that the proper valuation methodology that D should adopt to value each of A, B, C, and E separately for size-of-transaction test purposes would be for its board or its delegee to do a good faith fair market valuation of what a third party would pay for each company on a stand alone basis, and <u>not</u> to use a pro rata allocation of each company's share of the combined company's estimated IPO valuation and <u>not</u> to estimate the value of the shares of D voting securities that will be used for consideration for the shares or partnership interests of A, B, C, or E?

As always, Mike, thanks for your help.

Best regards,

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AGREE.
7/9/02

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