801.10

[redacted]

[redacted]

April 1, 2004

[redacted]

VIA FACSIMILE

CLIENT/MATTER NUMBER

[redacted]

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
2004 APR 1 P 2: 14

Dear Mr. Sharpe:

I am writing to confirm our understanding of the telephone conversation we had on Thursday, April 1, 2004, concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed transaction discussed below.

Proposed Transaction

Our client is a minority stake holder (49%) in a joint venture involving three companies ("Companies"), all of which are commonly controlled by the same natural person. The voting securities are not publicly traded. Our client intends to acquire the remaining interests (51%) in the Companies by purchasing the remaining outstanding voting securities of the Companies for a cash payment at closing of approximately $20 million, and a payout under an earn out provision, which is capped at $5 million and conditioned upon the occurrence of certain events. Moreover, our client will pay a $2 million bonus to the ultimate parent of the Companies which is conditioned on the occurrence of certain events, and which is for future services to be performed by the ultimate parent of the Companies related to a separate transaction.

Our client acquired its current 49% interest in the Companies in two separate, non-HSR reportable, transactions. It first acquired a 40% interest for approximately $24.1 million, and then, in a subsequent transaction, acquired an additional 9% interest for approximately $5.4 million. Since the purchase of these shares, the value of the Companies has declined such that the Company shares held by our client have less value today than when acquired.

Our client believes that based on a good faith fair market valuation, the value of the Companies' shares it currently holds is sufficiently small (below $25 million) such that the value for all the Companies is below $50 million, including the cash payment at closing, and assuming *arguendo* the maximum $5 million earn out payable for the additional shares (Our

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client believes that the earn out's actual fair market value is well below the $5 million maximum).

Conclusions

if LLC or partnership interests are being acquired ~~that~~ the underlying assets (100%) should be the fair market value

You confirmed that the appropriate way to value this transaction is to combine the fair market value of the shares previously purchased with the purchase price for the remaining shares. See 16 C.F.R. §§801.10, 801.13. The purchase price for the additional shares would include the cash payment at closing, as well as the fair market valuation of the earn out. You agreed that the $2 million bonus to the ultimate parent of the Companies which is conditioned on the occurrence of certain events, and which is for future services to be performed, should not be included in the value of the Companies. You also confirmed that the correct way to value the shares of the Companies already held is based on the current fair market value of those shares, not the price previously paid. Thus, you agreed that since the value of the Companies has declined since the initial purchases, it is appropriate to consider that decline in conducting a fair market valuation of those shares. [illegible]

Assuming that the maximum purchase price for the remaining securities of the Companies is at most $25 million, and that the current value of the shares already held is below $25 million, you concluded that the proposed acquisition of the voting securities of the Companies would not be reportable under the HSR Act since the $50 million Size of the Transaction Test would not be met. See 15 U.S.C. § 18a(a).

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

[redacted]

If v/s are being acquired I concur with this letter. If partnership or LLC interests are being acqured then exception is noted. PS 4/1/2004

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