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PREMERGER NOTIFICATION OFFICE
WASHINGTON, DC
200 APR -5

April 5, 2004

073988.0103

VIA FACSIMILE

Mr. B. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: *Hart-Scott-Rodino Act ("HSR Act") Filing Requirements*

Dear Mr. Verne:

We are writing to confirm our understanding of the conversation among you, [REDACTED], of the law firm [REDACTED] and the undersigned on March 16, 2004.

[REDACTED]'s client, the ultimate parent entity ("UPE") of a corporation ("Corp. A") and a limited partnership ("LP"), and a co-owner, will transfer to [REDACTED] client, Corp. B, 100% of the voting securities of Corp. A and 100% of the limited partnership interests in LP. At this time, the parties have decided on a base price of \$95 million. To that figure the parties add the prepayment penalties to be paid by Corp. B on the loans that will be prepaid at closing -- \$3.85 million, for a total of \$98.85 million.

It is our position that, for purposes of calculating the size-of-transaction under the HSR Act, the entire debt of Corp. A including prepayment penalties, should not be included in the purchase price. Interpretation 93, ABA SECTION OF ANTITRUST LAW, Premerger Notification Practice Manual (3rd ed. 2003). Likewise, the agreement among the parties provides that the purchase price will be reduced by the debt of Corp. A to be prepaid at closing, \$51.3 million, all of the prepayment penalties, \$5 million, and Corp. A's debt not to be prepaid, \$2.5 million, which total \$58.8 million. That amount should be subtracted from \$98.85 million, which leaves \$40 million approximately. We also noted that Corp. A's debt is not guaranteed by its UPE and Corp. B will wire the funds to prepay the debt and the prepayment penalties directly to the creditor.

The final calculation in the size-of-transaction determination would be to add the positive estimated working capital adjustment, if any, to the \$40 million figure. If that amount is less than \$10 million, approximately, the size-of-transaction would not exceed the \$50 million threshold.

The LP's debt of \$6.3 million and a portion of the prepayment associated with that debt of \$500,000, will be deducted from the purchase price to be paid to the Sellers, but are not deducted

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Mr. B. Michael Verne

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from the size-of-transaction as the debt of an LP must be added to its purchase price for HSR purposes.

Please let us know if the above does not accurately reflect our telephone conversation or if you disagree with our analysis. We very much appreciate your help on this matter and do not hesitate to contact the undersigned at [Redacted] if you have any questions.

Very truly yours,

[Redacted Signature]

By:

[Redacted Signature]

cc:

[Redacted]

AGREE -
B. Michael Verne
4/5/04

[Redacted]