801.1(f)
7A(a)(3)

[redacted]

[redacted]

[redacted]

April 8, 2004

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
-9 A 11:56

BY MESSENGER AND FEDERAL EXPRESS

Ms. Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303, 6th Street and
Pennsylvania Ave. N.W.
Washington, DC 20580

Re: Hart-Scott-Rodino Compliance Inquiry

Dear Ms. Ovuka:

This letter summarizes the telephone conversation that we had yesterday. It sets forth the various considerations resulting in the conclusion that the acquiring person and the acquired person in the transaction discussed in our conversation and described below are not required to make filings pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). For the sake of clarity, I have expanded upon the facts that we discussed in our conversation in certain places in this letter.

A. Transaction Summary.

Pursuant to a stock purchase agreement (the "Agreement"), the acquiring person will acquire all of the issued and outstanding equity securities of the acquired person from the shareholders of the acquired person in exchange for $129,447,000 in cash at closing (the "Cash Purchase Price"). Additionally, the acquiring person may pay the shareholders of the acquired person $10 million of additional cash in consideration of certain post-closing contingencies.

The acquired person is a S corporation within the meaning of Sections 1361 and 1362 of the Internal Revenue Code. It has 10,000 shares of issued and outstanding equity securities. One hundred of these equity securities are voting securities within the meaning of 16 C.F.R. § 801.1(f)(1), i.e., they confer upon their holders the right to vote for the directors of the issuer. The remaining 2,900 equity securities are not voting securities within the meaning of 16 C.F.R. § 801.1(f)(1), i.e., they do not confer upon their holders any right to vote for the directors of the issuer. The equity securities are held as follows:

[redacted]

Shareholder	Voting Common Stock	Non-Voting Common Stock	Number of Shares Owned
Husband	50	2,475	2,525
Wife	50	2,475	2,525
Irrevocable Trust I	0	2,475	2,475
Irrevocable Trust II	0	2,475	2,475
Total	100	9,900	10,000

The voting securities are 1% of the issued and outstanding equity securities of the acquired person (100 ÷ 10,000 = 0.01). The non-voting securities are 99% of the issued and outstanding equity securities of the acquired person (9,900 ÷ 10,000 = 0.99).

The Agreement provides that the Cash Purchase Price will be allocated on a pro rata basis among all issued and outstanding equity securities of the acquired person due to its status as a S corporation. An S corporation cannot have different classes of stock except for differences in voting rights among shares of common stock. Therefore, the Cash Purchase Price must be allocated on a pro rata basis among all shares. Internal Revenue Code Sections 1361(b)(1)(D) and 1361(c)(4).

B. Allocation of Purchase Price.

Based upon the pro rata allocation of the Cash Purchase Price between all of the issued and outstanding equity securities of the acquired person, $1,294,470 of the Cash Purchase Price is being paid for the voting securities of the acquired person ($129,447,000 * 0.01 = $1,294,470). Based upon that allocation, the remaining $128,152,530 of the Cash Purchase Price is being paid for the nonvoting securities of the acquired person ($129,447,000 * 0.99 = $128,152,530). Although the amount of any contingent payments will be paid to the shareholders on a pro rata basis, the maximum amount that the acquiring person could pay for the voting securities of the acquired person under the Agreement would be $11,294,470 even assuming that the maximum amount of the potential $10 million of contingent payments was allocated to voting securities.

C. Analysis.

Among other threshold requirements, the HSR Act only requires filings where, as a result of the acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person in excess of $50 million. As discussed

[redacted]

above, this acquisition cannot result in the acquired person holding more than $50 million of the voting securities or assets of the acquired person. Accordingly, no filing is required for this acquisition under the HSR Act.

I understand that the Premerger Notification Office does not confirm informal advice in writing. However, I would appreciate it if you would call me at [redacted] as soon as reasonably possible to confirm whether or not this letter correctly represents our discussion and the advice that you gave me. Thank you again for your assistance.

Very truly yours,

[redacted]

[redacted]

cc: [redacted]

4/8/04
Confirmed advice w/
writer by telephone.
The value of the voting
securities being
acquired does not
exceed $50 million.
M. Ovuka
M. Verne concurs