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[REDACTED]

June 4, 2004

Via Federal Express

B. Michael Verne  
Federal Trade Commission  
Premerger Notification Office  
Room 303  
6th Street and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

[REDACTED]

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

JUN 7 11:15

RE: Two Purchases from Identical Seller

Dear Mr. Verne:

This letter will serve to confirm your oral advice by telephone this morning. Since the parties will be relying on my understanding of your advice to close the first transaction shortly, please advise me at your earliest convenience if I have misunderstood your comments.

Statement of Facts

Seller, a corporation, controls, among other assets, Subsidiary 1 ("Sub 1") and Subsidiary 2 ("Sub 2"). The businesses of Sub 1 and Sub 2 are unrelated. Buyer, also a corporation, is negotiating with Seller to purchase Sub 1 and Sub 2, pursuant to what will, if the parties reach final agreement, be two separate contracts. Buyer intends to purchase all of the voting securities of Sub 1 for a price substantially below \$50 million. (The fair market value is similarly substantially below \$50 million.) Since the transaction will be in cash and the price is relatively small, the parties wish to proceed to close the sale of Sub 1 as soon as possible. The sale of Sub 1 is not contingent upon the sale of Sub 2, although the purchase price for Sub 1 will be somewhat higher (but still substantially less than \$50 million) if the sale of Sub 2 is not completed.

Buyer proposes then to merge Sub 2 into a subsidiary of Buyer. The value of Sub 2 substantially exceeds \$50 million, and a Hart-Scott-Rodino filing will be required. Implementation of the acquisition of Sub 2 will be significantly more complex and will take significantly longer than the sale of Sub 1 because, among other reasons, it will require a filing with the Securities and Exchange Commission.

Application of the Regulations

As we agreed this morning in our telephone conference, Buyer may proceed to close on the purchase of Sub 1 (with a value of less than \$50 million) immediately, without

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June 4, 2004  
Page 2

making a Hart-Scott-Rodino filing, since that transaction will not involve an acquisition of stock or assets with a value in excess of \$50 million.

A Hart-Scott-Rodino filing will be required prior to the consummation of the merger with Sub 2, with a value in excess of \$50 million. However, in making that filing, Buyer and Seller need not include in their filings the already-consummated sale of Sub 1 since, under 16 C.F.R. §801.14(a), the stock of Sub 1 would not be "voting securities of the acquired person" at that time, since Sub 1 will become a part of the Buyer's Person upon consummation of the purchase of all of the voting securities of Sub 1.

If any of the foregoing is not consistent with your understanding, please so advise me at your earliest opportunity since the parties will be proceeding with the sale of the stock of Sub 1. Thank you for your courtesy and assistance.

Sincerely,

[REDACTED]

[REDACTED]

Agree -  
B. Michael Verne  
6/7/04