



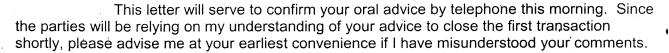
June 4, 2004

## 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



Dear Mr. Verne:



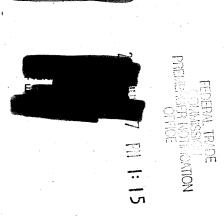
## Statement of Facts

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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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 hot 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,

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