801.1(f)(1)
801.10(c)(3)

[redacted]

[redacted]

June 15, 2004

[redacted]

BY FEDERAL EXPRESS AND E-MAIL

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

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
2004 JUN 16 PM 1:20

Re: **Hart-Scott-Rodino Compliance Inquiry**

Dear Ms. Ovuka:

This letter summarizes the telephone conversation yesterday among you, me and [redacted] Esq. of [redacted] and [redacted] It sets forth the various considerations resulting in the conclusions set forth in Section C hereof regarding the treatment of the acquisition described below under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and the rules promulgated thereunder. 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 an Agreement and Plan of Merger (the "Agreement"), a subsidiary of the acquiring person (the "Acquiror") will be merged with and into the acquired person (the "Target"), and the Target will be the surviving corporation (the "Merger"). The Target has issued and outstanding Class A Common Stock that entitles its holders to vote for the directors of the acquired person and therefore is a voting security within the meaning of 16 C.F.R. § 801.1(f)(1) and issued and outstanding Class B Common Stock that does not entitle its holders to vote for its directors and accordingly is not a voting security within the meaning of that rule.

Immediately prior to the Merger, the equity securities of the Target will be held as set forth below:

[redacted]

Stockholder	Class A Common Stock (voting)	Class B Common Stock (non-voting)	Total number of shares
Natural Person 1	1	99	100
Natural Person 2 and 3 Revocable Trusts	1	99	100
Natural Person 3 and Spouse	1	99	100
Natural Person 4 and Spouse and 2 Revocable Trusts	1	99	100
Total	4	396	400

The voting securities are 1% of the issued and outstanding equity securities of the Target (4 ÷ 400 = 0.01). The non-voting securities are 99% of the issued and outstanding equity securities of the Target (396 ÷ 400 = 0.99).

At the effective time of the Merger, each of the four issued and outstanding shares of the Class A Common Stock of the Target and each of the 396 issued and outstanding shares of the Class B Common Stock of the Target will be converted into the right to receive a pro rata share of about $122 million of common stock of the Acquiror (the "Purchaser Stock Consideration").

B. Allocation of Purchaser Stock Consideration.

Based upon the pro rata allocation of the Purchaser Stock Consideration between all of the issued and outstanding equity securities of the Target as provided for in a formula in the Agreement, the Acquiror will provide $1,220,000 million of the Purchaser Stock Consideration in exchange for the voting securities of the Target ($122,000,000 * 0.01 = $1,220,000). Pursuant to the same formula, the Acquiror will provide the remaining $120,078,000 of the Purchaser Stock Consideration in exchange for the nonvoting securities of the Target ($122,000,000 * 0.99 = $120,078,000).

C. Analysis.

You confirmed that only the value of the voting securities of the Target being acquired by the Acquiror must be counted for purposes of the $50 million size-of-transaction test set forth in Section 7A(a)(2)(B)(i) of the HSR Act. The value of the non-voting securities of the Target is not counted for purposes of determining if this threshold is met. Accordingly, the consideration being provided by the Acquiror to the Target's Stockholders (the "Stockholders") pursuant to the Merger in exchange for the 4 shares of the Class A Common Stock of the Acquiror constitutes the acquisition price for purposes of the $50 million size-of-transaction test.

You further advised us that the acquisition price of the voting securities of the Target being acquired by the Acquiror is not determined for purposes of 16 C.F.R. § 801.10(a)(2)(ii). The acquisition price is undetermined because the Agreement does not expressly allocate the amount of the Purchase Stock Consideration between the Target's voting and non-voting securities. You therefore advised us that the board of directors of the Acquiror or its designee will have to perform a fair market valuation of the Target's voting securities pursuant to the procedure stated in 16 C.F.R. § 801.10(c)(3) in order definitively to determine whether or not the instant acquisition meets the $50 million size-of-transaction test.

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] when you have the chance to confirm whether or not this letter correctly represents our discussion and the advice that you gave to Mr. [redacted] and me. Thank you for your prompt assistance regarding this inquiry.

Very truly yours,

[redacted]

[redacted]

cc: [redacted]

6/16/04
Confirmed advice by telephone.
N. Ovuka
M. Verne concurs