802.50

[redacted]

[redacted]

Via Overnight Delivery

August 9, 2004

[redacted]

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

Dear Nancy:

This letter summarizes our telephone conversation of July 22, 2004 in which [redacted] also participated. The purpose of this call was to confirm with you our analysis of why a proposed acquisition by my client ("Buyer") of assets controlled by [redacted] client ("Seller") would not trigger the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a , as amended ("HSR Act").

As we explained, Buyer is a U.S. entity and Seller is a non-U.S. entity. Buyer is acquiring a line of business, the manufacturing assets of which are located outside of the U.S. Buyer is paying more than $500 million, and will allocate the bulk of the acquisition price to the purchase of these foreign assets. The products sold in this line of business ("Products") are sold through Seller's various worldwide sales subsidiaries. Buyer will acquire the portion of the assets of each of these sales subsidiaries that Seller uses to sell Products. That will include some of the assets of S1, consisting primarily of office equipment. S1 is the only U.S. subsidiary of Seller that sells Products. Buyer will allocate a de minimis amount of the acquisition price, well below $1 million, to the acquisition of the S1 assets.

According to Seller, all other Seller entities besides S1 collectively generated less than $15,000 of Product sales in or into the U.S. Furthermore, according to Seller, S1 booked about $55 million in Product sales during its most recent fiscal year. Of this amount, S1 shipped about $37 million in Product sales to U.S. customers, and about $18 million to non-U.S. customers. Moreover, only about $19.5 million of the sales booked by S1 were shipped into the U.S. according to Seller. The rest of S1's Product sales, valued at about $35.5 million, were shipped from their place of manufacture outside of the U.S. to locations also outside of the U.S. as designated by S1's U.S. and non-U.S. customers ("S1 Non-U.S. Products").

According to Seller, S1 Non-U.S. Products were never shipped into the U.S. Title to S1 Non-U.S. Products passed outside of the U.S. The risk of loss relating to S1 Non-U.S. Products passed from Seller to its U.S. and non-U.S. customers outside of the U.S. Moreover, S1 Non-U.S. Products were not designed for specific use in the U.S.

[redacted]

Based upon these facts, you confirmed that the parties to this transaction would not be required to file a Notification and Report Form pursuant to the HSR Act because this acquisition does not pass the size of transaction test. This is because the amount of the purchase price allocated to the purchase of US assets is well below $50 million, and the parties are entitled to exclude the portion of the purchase price allocated to the purchase of the non-U.S. assets. Although S1 booked $55 million in sales during its most recent fiscal year, Seller's foreign assets did not generate sales in or into the U.S. exceeding $50 million. This is because Products representing about $35.5 million of S1's $55 million in sales were never shipped into the US, and the indicia of beneficial ownership to the Products passed outside of the U.S.

I would appreciate your calling me at your earliest convenience to confirm that the analysis described herein is accurate. Thank you for your assistance.

Sincerely,

[redacted]

cc: [redacted]

8/11/04
Agree w/ analysis
N. Ovuka

M. Verne concurs

[redacted]