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October 8, 2004

BY FACSIMILE AND HAND DELIVERY

Michael B. Verne, Esq.
Premerger Notification Office
Federal Trade Commission
Room H-314
Sixth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Non-Reportability of Secondary Acquisition When Primary Acquisition is Exempt Pursuant to 16 C.F.R. § 802.51(b)

Dear Mike:

This letter will confirm our telephone conversation on Wednesday, October 6, 2004, regarding the non-reportability of a secondary acquisition when the primary acquisition is exempt from reporting under the Hart-Scott-Rodino Act of 1976, as amended ("HSR"), pursuant to 16 C.F.R. § 802.51(b). For purposes of our discussion, I informed you that we should assume that the HSR size-of-person and size-of-transaction tests are met.

As we discussed, Company X, which is a foreign person and its own ultimate parent entity ("UPE"), will acquire 100% of the outstanding voting securities of Company A, which is a foreign issuer and its own UPE.[1] Company A, in turn, holds approximately 33% of Company B, a foreign issuer and its own UPE. X already holds approximately 33% of the outstanding voting securities of B. Consequently, subsequent to its acquisition of A, X will hold approximately 66% of the outstanding voting securities of B. Following X's acquisition of A as described

[1] Company X will acquire the shares of Company A through a foreign person that is an entity included within Company X.

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above, X will launch a private offer for the remaining outstanding voting securities of B. At the conclusion of the private offer, X will hold between 66% and 100% of B's outstanding voting securities. Neither A nor any of its controlled entities has assets located in the United States in excess of $50 million or sales in or into the United States in excess of $50 million in its most recent fiscal year. In contrast, B has assets in the United States in excess of $50 million and has sales in or into the United States of over $50 million in its most recent fiscal year.

Based on the facts set forth above, you agreed that A does not "control" B under HSR because it holds less than 50% of the outstanding voting securities of B. Therefore, you confirmed that the acquisition of 100% of the outstanding voting securities of A by X is exempt from HSR reporting under 16 C.F.R. § 802.51(b). You further confirmed that X's secondary acquisition of B is not reportable under HSR, notwithstanding that B's assets in and sales in or into the United States are in excess of the 16 C.F.R. § 802.51(b) thresholds. You informed me that it is the position of the Premerger Notification Office of the Federal Trade Commission that, in the context of the acquisition of a foreign issuer by a foreign person, the secondary acquisition of either a United States or a foreign issuer is not reportable under HSR based on principles of comity. You further confirmed that X's subsequent acquisition of the remaining outstanding voting securities of B through the private offer would be exempt from HSR pursuant to 15 U.S.C. § 18a (c)(3), because at this point X would hold approximately 66% of the outstanding voting securities of B as a result of the prior acquisition of A.

Please let me know as soon as possible if this letter does not accurately summarize our conversation. Many thanks for your assistance.

Very truly yours,

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Agree - N. Ouuka concurs.
B. Mueller
10/12/04

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