FI 15, 801.21

October 28, 2004

Facsimile: 202-326-2624

Mr. James Ferkingstad
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Confirmation of Advice Regarding Formation of Limited Liability Company

Dear Mr. Ferkingstad:

On Tuesday, October 26, 2004 and Thursday, October 28, 2004, you and I spoke regarding a transaction that included the contribution of assets to a newly formed limited liability company and the subsequent sale of interests by its members to a single purchaser that in the aggregate constitute control of the limited liability company. I am writing to confirm your advice with respect to whether that transaction is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR"), and the rules (the "Rules") promulgated thereunder.

FACTS:

Step 1: Companies A, B, C and D, each a corporation, will form a limited liability company (the "LLC") under Delaware law. Each company will contribute to the LLC all or substantially all of its assets used in its business. The LLC will assume the net indebtedness for borrowed money of each company incurred in connection with its business (approximately $10.7 million in the aggregate at September 30, 2004 of which approximately $5.6 million is owed by company B and approximately $6.4 million is owed by company D). The fair market value of the assets being contributed by companies A, B, C and D is approximately $17.5 million, $17.8 million, $7.1 million and $22.1 million, respectively, at September 30, 2004. In consideration of the contribution of assets, companies A, B, C and D will receive membership interests of approximately 32.62284%, 22.59151%, 15.63994% and 29.1457%, respectively, in the LLC. These percentages represent the right to the profits of the LLC and the net assets of the LLC upon dissolution. Company A and company C are controlled by the same shareholder,

Shareholder 1, and thus are within the person Shareholder 1. Company B and company D are not controlled by any shareholder and, therefore, each is their own person.

Step 2: Immediately following the formation of the LLC and the contributions by companies A, B, C and D as described above, a newly formed corporation ("Purchaser") that is unrelated to companies A, B, C and D and their shareholders, will acquire from companies A, B, C and D membership interests in the LLC that will aggregate approximately 70.69% of the outstanding membership interests in the LLC for cash of approximately $38 million. Companies A, B, C and D will use the monies they receive from the sale of a portion of their membership interest in the LLC to Purchaser to purchase all or a portion of the shares of certain of their shareholders.

Step 3: At the time of the closing of the formation of the LLC as described above and following the sale by companies A, B, C and D of membership interests to Purchaser, the LLC will incur indebtedness of approximately $30 million in term loans and $12 in revolving credit and capital expenditure facilities that will be used, in part, to refinance the indebtedness for borrowed money assumed by the LLC in connection with the contributions by companies A, B, C and D of their businesses (approximately $10.7 million at September 30, 2004) and to make a post closing distribution of approximately $19.4 million in cash to its members, which at that time will consist of companies A, B, C and D as well as Purchaser. Companies A, B, C and D will use the monies they receive in the distribution to make a pro rata distribution to their continuing shareholders.

FORMATION OF THE LLC AND HSR FILING REQUIREMENTS:

The formation of a limited liability company is governed by Formal Interpretation 15 issued February 1999 and amended July 1999 and March 2001. The March 2001 amendment states that "This Formal Interpretation, therefore, changes the PNO's treatment of an LLC as follows: The PNO will henceforth treat as reportable the formation of an LLC if (1) two or more pre-existing, separately controlled businesses will be contributed, and (2) at least one of the members will control the LLC (i.e. have an interest entitling it to 50 percent of the profits or 50 percent of the assets of the LLC upon dissolution)."

The March 2001 amendment also states that "The acquisition of a membership interest in an existing LLC will be a potentially reportable event (1) if it results in the acquiring person holding 100 percent of the membership interests in the LLC and (2) that person has not previously filed for and consummated the acquisition of control of the LLC."

ANALYSIS:

While two or more separate pre-existing businesses will be combined in the LLC in step 1, the formation does not result in those businesses being under common control. The acquiring person Shareholder 1 will acquire the greatest membership interest in the LLC, 48.26278%, which is less than a controlling interest. Although Purchaser will acquire a

controlling interest in the LLC in step 2, for purposes of HSR, the steps to a transaction do no occur simultaneously. Thus the formation of the LLC is limited to the transactions described in step 1. Accordingly, the formation of the LLC is not a reportable event. If we assume that Shareholder 1 will acquire a controlling interest in the LLC rather than the percentage set forth above, then Shareholder 1 would be an acquiring person and deemed to be making two separate acquisitions, the acquisition of company B's business from the acquired person company B and the acquisition of company D's business from the acquired person company D. For either of these acquisitions to be reportable, the size of transaction and size of parties tests must be met. The fair market value of the assets being contributed by company B to the LLC is approximately $17.8 million at September 30, 2004. As a result, for purposes of HSR, the size of Shareholder 1's acquisition of the assets of company B is only approximately $17.8 million, which does not satisfy the size of transaction test. Similarly, the fair market value of the assets being contributed by company D to the LLC is approximately $22.1 million at September 30, 2004. Thus, for purposes of HSR, the size of this acquisition is only approximately $22.1 million and does not satisfy the size of transaction test.

The acquisition by Purchaser of a controlling interest in the LLC in step 2 for cash also is not reportable because Purchaser is acquiring an interest in an existing limited liability company but will not, as a result of the acquisition, hold 100% of the outstanding membership interests in the LLC. Purchaser's acquisition from companies A, B, C and D of membership interests in the LLC for cash is not the formation of a new limited liability company because Purchaser is not contributing a business to the LLC. As well, the purchase by companies A, B, C and D of all or a portion of the shares of certain of their shareholders is not reportable under Rule 802.30, which provides that repurchases of voting securities by the issuer, even if not pro rata, are exempt.

The distribution by the LLC of cash to the members in step 3 is not reportable as cash is not considered an asset of the person from whom it is acquired and the cash distributed in step 3 does not affect the analyses of steps 1 and 2 because the three steps are separate events.

CONCLUSION:

This transaction is not reportable because none of the steps is a reportable event.

I wish to thank you in advance for your time and consideration in this matter. If you have any questions, please telephone me at [redacted].

Very truly yours,

[redacted]

10/29/04 Agree JF