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December 15, 2004

BY CERTIFIED MAIL

Pre-merger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 303
Washington, D.C. 20580
Attention: Nancy Ovuka

2004 DEC 22 PM 1:50

FEDERAL TRADE
COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

Re: Advice Concerning Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Ms. Ovuka :

This letter is to confirm the advice you provided during our telephone conversation on December 14, 2004 regarding the position of the Federal Trade Commission with respect to the acquisition of the voting securities of a corporation on terms as described below.

As presently contemplated, one of three prospective investment groups (the "Acquirer") will acquire a Corporation ("Target"), whereby Acquirer will pay Target approximately \$35 million in cash in exchange for Series A Preferred shares of Target.

Contemporaneously, and pursuant to resolutions of Target's pre-transaction board of directors, a third party lender ("Lender") will lend approximately \$15 million to Target. Immediately following the closing, certain of and the current stockholders of Target will convert their pre-transaction shares into new preferred shares of Target stock. Upon receipt of funds from both Acquirer and Lender, Target will redeem certain shares belonging to its pre-transaction shareholders. The resulting capitalization of Target will consist of Acquirer holding approximately 65% of the Corporation's voting securities, management holding approximately 21% and an option pool of approximately 14%.

Target has requested guidance as to whether, given the factual circumstances of the proposed acquisition, pre-merger notification pursuant to the Act and the implementing rules is required. The advice that you provided is that for purposes of calculating the aggregate value of the securities to be acquired pursuant to the transaction described above, it is not necessary to aggregate the value of the securities to be acquired by Acquirer and the value of the debt to be undertaken by Target. Consequently, the Act's pre-merger notification filing requirements do not apply to the above described

transaction because the Acquirer will not acquire voting securities worth in excess of \$50 million.

Please confirm this advice in writing at your earliest convenience. Thank you very much for your continued assistance with this matter.

Best regards.



12/22/04

Informed writer that
advice is accurate.

N. Ovaka

M. Verse

Concurs