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February 28, 2005

BY TELECOPIER

Mr. Michael Verne,
Pre-Merger Notification Office,
Bureau of Competition, Room 300,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Dear Mike:

Thank you for your help on Thursday in analyzing the "acquisition price" for the transaction described orally to you as follows:

Party A and Party B are signatories to a joint venture agreement pursuant to which profits and losses are being shared. The joint venture does not own any tangible or intangible property. All property used in the joint venture's business operations are owned separately by one or the other of the two parties. Party A, which owns the greater portion of the property used in the business operations, receives the largest portions of the profits (or losses) and is responsible for most, but not all, of the operations of the joint venture.

The parties propose to end their joint venture. To do so, they plan to enter into a Transaction Agreement which contemplates the execution upon closing of two further agreements: (1) an Asset Purchase Agreement and (2) a Cancellation Agreement. Pursuant to the Asset Purchase Agreement, Party A will obtain certain of the separate tangible and intangible assets used in the joint venture's business operations that are currently owned by Party B and, pursuant to the Cancellation Agreement, the parties will agree to cancel their joint venture agreement effective December 31, 2004. The consideration paid by Party A to Party B is as follows:

1. Party A will pay Party B $500,000.00, which is associated with certain tangible and intangible assets;

2. Party A will pay Party B $46.5 million in connection with the termination of the joint venture agreement;

3. Party A will surrender a claim that Party B owes it approximately $3 million for losses incurred by the joint venture in 2004, which is not disputed by Party B;

4. Party A will assume Party B's share of certain contingent obligations of the venture which share could total as much as $10 million; and

5. Party A will augment at closing the amounts set forth in items 1 and 2 above by an amount in the nature of interest based on the prevailing LIBOR rate calculated for the period from January 1, 2005 to the Closing Date. If the Closing Date were April 1, 2005, the amount of this augmentation would be approximately $470,000, if a LIBOR rate of 4% is assumed for the entire period.

I asked you for guidance in determining the "acquisition price" for this transaction and whether it would exceed the $53.1 million size of transaction test and thereby trigger a Hart-Scott-Rodino filing.

Overall, you concluded that no filing was required for this transaction because it did not meet the $53.1 million size of transaction test. You confirmed that item 1 would be considered part of the "acquisition price" of assets, but that item 2 does not constitute consideration for the acquisition of assets and would not be considered in calculating the "acquisition price," because it is a payment for termination of an agreement. Items 3 and 4 also do not represent consideration for the acquisition of assets unless they are tied to the assets being acquired, which they are not in this case. You also noted that item 4 would not be valued at $10 million but at some smaller value that would

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need to be determined. Finally, with respect to item 5, you concluded that, because this augmentation payment in the nature of interest accrues before Closing, the augmenting payment with respect to item 1 would be taken into consideration in determining the "acquisition price."

Please let me know if this letter accurately reflects our discussions and thanks very much for your help.

Sincerely yours,

[redacted]

AGREE -
B Mehl
2/28/05