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March 1, 2005

BY HAND DELIVERY

Michael B. Verne, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Telephone Conversation on February 25, 2005

Dear Michael:

This letter confirms the following conclusions from our telephone conversation on February 25, 2005 relating to reporting requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), as amended, 15 U.S.C. §18a:

1. That a single buyer's acquisition of three separate corporations in a single transaction should be analyzed as three separate acquisitions if each acquired corporation is its own ultimate parent entity, notwithstanding that the three corporations have identical shareholders, each of which has identical percentage interests in each of the three corporations.

2. That the purchase price for the voting securities of each of the three corporations, which has not been allocated among the corporations by the parties, is not "determined" under HSR rule 801.10(a)(2)(ii).

3. That an acquiring person can rely in the manner described below on offers and informal indications of interest by third parties as a basis for determining the fair market value of a company's voting securities.

4. That an acquiring person can account for the value of outstanding debt of a corporation to be acquired in determining the fair market value of its voting securities (*i.e.*, reducing the fair market value by the amount of the debt).

5. That internal valuation analyses used for purposes other than HSR fair market valuation are not determinative when an acquiring person has in good faith used a different methodology for the HSR fair market valuation.

The facts we discussed are as follows:

Our client ("Buyer") has entered into a single non-binding letter of intent ("LOI") to acquire 100% of the voting securities of three corporations (X, Y, and Z) for $98.7 million. This amount could be increased by up to $6.3 million in the event that existing debt of X, Y, or Z is paid off prior to closing. The parties have not agreed, in the LOI or elsewhere, to any particular allocation of the proposed purchase price between X, Y, and Z.

The voting securities of X, Y, and Z are currently held by the same group of shareholders ("Shareholders") and each Shareholder holds the same percentage (below 50%) of X as it holds in Y and Z. X, Y, and Z each produce a distinct type of product, although they are operated as vertically integrated businesses. Our view is that each of X, Y, and Z is its own ultimate parent entity because no single Shareholder (either individually or by attribution) holds 50% or more of its voting securities.

Based upon these facts, we understand that you agree that, for purposes of the HSR Act, Buyer needs to analyze its acquisitions of voting securities of X, Y, and Z separately.

We also understand that you agree with our view that the purchase price for the voting securities of any of X, Y, or Z is not determined. Buyer will thus need to determine separately the fair market value of the voting securities of X, Y, and Z to assess whether each acquisition may be reportable under the HSR Act. (The acquisitions will close after March 2, 2005, so the adjusted $53.1 million size-of-transaction threshold will apply.)

For purposes of fair market valuation under the HSR Act, Buyer should make a good faith determination of what a third-party would pay for the voting securities of each corporation in an arm's length transaction between a willing buyer and a willing seller.

In doing so, Buyer intends to rely on information from external sources regarding the standalone fair market values of X and Y. Specifically, Buyer is aware that a third party in fact entered into a letter of intent only eight months ago to acquire 100% of the voting securities of X for approximately $23 million. Buyer is also aware of two informal but recent third-party indications of interest to acquire 100% of the voting securities of Y for $25 million. Additionally, a representative of Shareholders informed Buyer that they rejected a $25 million offer for Y because they believed they could obtain $30 million for the Y business. Buyer believes that these offers are more informative than the results of any financial analysis that could be performed by Buyer, in part because these offers incorporate the analyses of third parties regarding expected synergies in each particular case – something that Buyer cannot easily quantify. In fact, Buyer relied on some of this same information in the ordinary course of business in internal documents supporting an increase in the proposed purchase price.

Using this information, Buyer (through the entity delegated by the Board of Directors of its ultimate parent) has determined that the fair market value of X is $23 million and the fair market value of Y is $28 million. Based on our conversation, we understand that you agree with our view that this approach is an acceptable manner for Buyer to determine in good faith the fair market value of X and Y.

Buyer has also determined the fair market value of Z to be $47.7 million by subtracting the fair market value of X ($23 million) and Y ($28 million) from the purchase price of $98.7 million, which buyer believes represents the fair market value of X, Y, and Z together. Buyer believes this is a conservative approach to the valuation of Z because it essentially allocates to Z all of the synergies of the combined operation of X, Y, and Z. Based on our conversation, we understand that you agree with our view that this approach is an acceptable manner for Buyer to determine in good faith the fair market value of Z.

The fair market values of X, Y, and Z as determined by Buyer also account for the value of debt on the books of X, Y, and Z because such debt obviously reduces the price any party would be willing to pay for the relevant company's voting securities. We understand that the staff of the Premerger Notification Office has long taken the position that the value of an acquired company's debt is already incorporated into the purchase price of voting securities (and therefore should not be added to the purchase price). Buyer's approach to the fair market value of voting securities is consistent with that position. Based on our conversation, we understand that you agree with our view that this approach is acceptable.

Finally, we explained that some of the preliminary internal valuations prepared by Buyer for purposes other than the HSR fair market valuation indicate a value of more than $53.1 million of the purchase price for Z, in part because they incorporate certain tax and accounting assumptions. However, these valuations were not intended to determine what a third-party would pay to acquire the voting securities of Z on a standalone basis in an arm's length transaction. Based on our conversation, we understand that you agree with our view that these other valuations are not determinative.

We would greatly appreciate if you could call [redacted] to confirm that this letter accurately summarizes our conversation and your views on the issues described. Thank you for your attention to this matter.

Very truly yours

[redacted]

AGREE -
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