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802.51
802.4

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CONFIDENTIAL

VIA FACSIMILE

March 23, 2005

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mike:

I am writing to confirm my understanding of telephone conversations we had on March 15, 2005 and March 23, 2005 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed transaction discussed below.

Proposed transaction

Our client ("Purchaser") intends to acquire, pursuant to a Share Purchase Agreement, 100% of the shares of three corporations: Company 1, Company 2 and Company 3 (collectively referred to as "Companies.") None of the Companies are publicly traded. While the shares of each of the Companies will be acquired from a separate seller, the Companies are directly or indirectly owned and controlled by a common foreign corporate parent.

Company 1 and Company 3 are "foreign issuers" under 16 C.F.R. § 801.1(e)(2)(ii) in that they are not incorporated in the United States, are not organized under the laws of the United States and do not have their principal offices in the United States. Company 1 and Company 3 do not directly, or indirectly through controlled entities, have any sales in or into the United States or hold any assets in the United States.

Company 2 is a "United States issuer" under 16 C.F.R. § 801.1(e)(1)(ii) as it is incorporated in the United States and has its principal offices in the United States. Company 2 indirectly holds some assets outside of the United States through entities it controls. While the overall purchase price for the shares of all of the Companies will exceed the $53.1 million HSR size of the transaction threshold, the amount allocated to Company 2 under the Share Purchase Agreement net of financial debt is well below $53.1 million.

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In addition to purchasing the shares of the Companies, Purchaser will purchase, for the amount of the loan balances, loans that have been made to the Companies by the sellers. Pursuant to a promissory note, Company 2 owes $45 million to the entity selling its shares. In addition to purchasing that loan for $45 million, Purchaser will buy the smaller loans owed by Company 1 and Company 3 to their respective sellers.

Conclusions

You confirmed that the entire transaction described above is exempt under the HSR Act. Specifically, you confirmed the following:

(1) The acquisition of Company 1 and Company 3, the foreign issuers, is exempt under 16 C.F.R. § 802.51. This exemption applies so long as Company 1 and Company 3 collectively did not make sales in or into the United States of over $53.1 million in the most recent fiscal year or collectively hold assets in the United States with an aggregate value over $53.1 million. See 16 C.F.R. § 802.51.

(2) As this transaction involves the acquisition of non-publicly traded voting securities, the value for HSR purposes of the shares of Company 2 is the purchase price as allocated for those shares in the Stock Purchase Agreement (including any exhibits). See 16 C.F.R. § 801.10(a)(2)(i). Here, the acquisition of Company 2 will be exempt since the purchase price described above for Company 2 is well below the $53.1 million size of the transaction threshold. Even if, hypothetically, the purchase price allocation for Company 2 exceeded $53.1 million under the Stock Purchase Agreement, the transaction may be exempt under revised 16 C.F.R. § 802.4 which becomes effective on April 7, 2005 for transactions closing on or after that date. Under the new 16 C.F.R. § 802.4, Purchaser would be able to exclude the value of foreign assets held by Company 2 (assuming those assets did not in aggregate generate sales in excess of $53.1 million in or into the United States during the most recent fiscal year) in determining if the value of the non-exempt assets held by Company 2 is below $53.1 million, which would make the acquisition exempt.

(3) Purchaser's acquisition of the outstanding loans to the Companies is exempt. The same would apply if Purchaser acquired or paid off any other liabilities or debt of the Companies, regardless of whether the debt was owed to a seller or a third party. The purchase price for the loans would not be included in valuing Company 2 for HSR purposes. This means that none of the consideration for the purchase of the loans would be included in determining if the $53.1 million size of the transaction threshold is met. You explained that this position was consistent with the long standing position of the FTC Premerger Notification Office that debt or other assumed liabilities are not included in the purchase price for acquisitions of voting securities. The exclusion from the HSR valuation of any consideration for the purchase of the loans is not impacted by whether the loans are purchased immediately before or after, or at the same time as the purchase of the shares. Further, the exclusion from the HSR valuation of any consideration for the purchase of the

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loans is not impacted by whether there are any loan guaranties released or extinguished through the purchase of the loans.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

[redacted]

Agree-
B. Michael Verne
3/23/05

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