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May 26, 2005

Hand Delivery

Michael B. Verne  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
Room 303  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Re: May 26, 2005 telephone call

Dear Mike:

I am writing to confirm the advice that you provided to [redacted] and I this afternoon. In our telephone call, we posed the following scenario:

A is buying the IP assets of B for \$7.8 million. In a separate but virtually simultaneous transaction, A is purchasing 100% of B's voting securities for \$44.4 million in cash and stock. The total value of the consideration being paid will equal \$52.2 million. A is also paying an additional \$7.8 million to B's employees who are entitled to these payments in connection with their employment when there is a change of control. Some but not all of these employees are shareholders.

You agreed that we should exclude the entire \$7.8 million cash payment to employees for HSR purposes because payments made pursuant to a company's change of control plan are not included in calculating the size-of-transaction. Accordingly, the value of this transaction would fail to meet the size-of-transaction test and it would not be reportable.

I understand that the Premerger Notification Office does not confirm informal advice in writing. However, if this letter misconstrues or misrepresents our conversations in any way, I would appreciate it if you would call me at the number provided above as soon as reasonably possible and inform me of any such inaccuracies. Thank you for your assistance on this matter.

Sincerely,



AGREE -  
B. Mueller  
5/26/05

cc:

