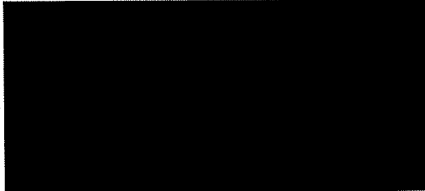


802.9



MV



October 7, 2005

*Contains Confidential Information*

**Via Electronic Mail & FedEx**

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

**Re: Reportability of confidential transaction under Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.**

Dear Mike:

I am writing to confirm my understanding of our telephone conversation on October 7, 2005 concerning whether the transaction, described in detail immediately below, is exempt from reporting under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Our client ("Acquirer") intends to acquire, pursuant to a Stock Purchase Agreement, 100% of the shares of a privately traded issuer ("Issuer"). Issuer is not a "foreign issuer" as defined by 16 C.F.R. § 801.1(e)(2)(ii), because it is incorporated in the United States. Nevertheless, Issuer's operations are conducted primarily through a company whose principal offices are located outside of the United States. Issuer and its subsidiaries generated, in total, less than \$53.1 million from sales in or into the United States in its most recent fiscal year.

As amended in April 2005, Section 802.4 provides in relevant part: "An acquisition of voting securities of an issuer . . . whose assets together with those of all entities it controls . . . consist of assets whose acquisition is exempt from the requirements of the Act pursuant to . . . this part 802 . . . is exempt from the reporting requirements if the acquired issuer . . . and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than [\$53.1M]."

As we discussed, Issuer's assets primarily are located outside of the United States, and as such, the acquisition of such assets would be exempt under part 802 - specifically Section 802.50 - if those non-U.S. assets did not generate \$53.1 million of sales in or into the United States in its most recent fiscal year. Because in this instance that is the case, Section 802.4 would permit the exclusion of the exempt, non-US assets from the determination of whether the \$53.1 million size-of-transaction threshold is exceeded. We agreed that the remaining inquiry under Section 802.4 concerns the fair market valuation of the non-exempt assets (i.e., the U.S. assets of Issuer). Under

[REDACTED]

Michael Verne  
October 7, 2005  
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Section 801.10(c), the fair market value of such assets must be determined by the Board of Directors of Acquirer or its designee, within the 60 days prior to closing. If the fair market value of the United States assets of Issuer does not exceed \$53.1 million, we believe that this transaction is not reportable under the HSR Act.

In summary, you confirmed our analysis. Specifically, the entire transaction as described above is exempt under Section 802.4 of the HSR Act if the value of the U.S.-based assets do not exceed \$53.1 million.

Please contact me at [REDACTED] as soon as possible if I have misunderstood our conversation or incorrectly set forth your understanding of the HSR Act.

cc: [REDACTED]

[REDACTED]

AGREE -  
B. Michael  
10/7/05

[REDACTED]