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CONFIDENTIAL

VIA ELECTRONIC MAIL

November 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 a telephone conversation we had on Friday, November 18, 2005 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of proposed transactions discussed below.

PROPOSED TRANSACTIONS

A private limited company ("Newco") is being formed under the laws of the United Kingdom to acquire and operate two businesses: (1) a U.S. issuer ("U.S. Target") valued at in excess of \$53.1 million but less than \$212.3 million; and (2) a foreign issuer ("Non-U.S. Target") with no U.S. assets and sales in or into the United States of less than \$53.1 million in its most recently completed fiscal year.

Share Capital

The share capital of Newco will be made up of four different classes of shares:

- A Shares - held by a venture capital firm ("Company A");
- B Shares - held by individuals who will be brought in to manage Newco and its subsidiaries;
- C Shares - held by the sellers of the U.S. Target; and
- D Shares - held by the sellers of the Non-U.S. Target.¹

¹ I did not reference the D shares during our conversation but understand that the existence of these shares will have no impact on the analysis.

Voting Rights

The voting rights of the shares at shareholders' meetings will be as follows:

- A Shares - 49.9%;
- B Shares - 35.1%; and
- C Shares and D Shares together - 15%.

The consent of the holders of the A Shares will be required for certain key decisions (including the appointment of any director to the board). The consent of the holders of the C Shares and D Shares will be required for certain key decisions.

Economic Rights

If Newco is sold or liquidated, the percentage of the proceeds of a sale or liquidation which will be received by the holders of each class of shares will vary depending on the sale price or liquidation value. It is likely that the holders of the A Shares will receive more than 50% of the economic value on a sale or liquidation.

Structure of the Board

On completion of the proposed transaction, it is anticipated that the board of directors of Newco will either be made up of 5 individuals or 3 individuals.

If there are 5 Newco directors, the initial composition of the board of directors of Newco will be as follows:

- 3 of these directors will be the individual owner managers holding B Shares; and
- 2 of these directors will be appointed by the holders of the A Shares (the "Company A Director(s)").

If there are 3 Newco directors, the initial composition of the board of directors of Newco will be as follows:

- 2 of these directors will be the individual owner managers holding B Shares; and
- 1 of these directors will be a Company A Director, that is appointed by the holders of the A Shares.

At the board of directors level, each director will have one vote on each decision. The consent of the holders of the A Shares will be required for certain key decisions. The appointment of a Company A Director will not require the approval of the shareholders or the board of directors. The appointment of a director, who is not a Company A Director, will either be made (i) by a majority of the shareholders, or (ii) by the board of directors as a whole and will be

subsequently approved by the shareholders (voting in the proportions set out above) at the next annual general meeting which is called. The holders of the A Shares will be able to block the appointment of a director but will not be able to force the other shareholders to accept the appointment of any director (save in the case of the appointment of a Company A Director).

Increased voting rights

In very specific circumstances, the holders of the A Shares will have the ability to trigger increased voting rights at the shareholder level (perhaps up to 85% of the votes). These circumstances are likely to include serious financial underperformance by Newco and its subsidiaries. In these circumstances, Company A would transfer some of its shares to an independent appointee so as to keep its voting rights at the shareholder level at less than 50%.

Funding Arrangements

Immediately prior to the purchase of the two targets, Newco will be funded as follows:

- Company A and the management of Newco will subscribe for shares in Newco;
- Company A will lend money to Newco (which will issue loan stock, a type of non-voting stock, in return); and
- A bank will make various loan facilities available to Newco, some to support the acquisition of the targets and others to finance ongoing working capital.

Immediately prior to the purchase of the two targets, Newco will have no assets other than cash. The value of the cash held by Newco will be less than \$106.2 million excluding cash to be paid to the sellers of U.S. Target and expenses related to the purchase of U.S. Target. The ultimate parent of U.S. Target has more than \$10.7 million in total assets but does not have total assets or annual net sales equal to or greater than \$106.2 million.

ANALYSIS AND CONCLUSIONS

You confirmed our understanding that the proposed transactions described above will be exempt under the HSR Act. Specifically, based on our conversation, you agreed as follows:

1. The formation of Newco is exempt under the HSR Act. I understand that the formation of Newco will be HSR Act exempt regardless of the value of the voting securities to be acquired in Newco by any shareholder at the time of formation since Newco will only hold cash which is an HSR exempt asset. *See* 16 C.F.R. § 802.4.

2. Newco will be deemed its own ultimate parent entity for HSR purposes, that is it will not be deemed controlled by Company A or any other entity for HSR purposes. We discussed that the tests for control applicable to Newco are the holding of 50% or more of the voting securities, and the contractual right to appoint half or more of the board of directors. *See* 16 C.F.R. § 801.1(b).

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You confirmed that the percentage rights to profits in Newco or assets upon dissolution was not relevant to the control of Newco for HSR purposes since Newco is a corporate entity with voting securities.

3. The acquisition of the Non-U.S. Target is HSR exempt regardless of its value as it does not hold assets in the U.S. and did not have sales in or into the United States exceeding \$53.1 million in its most recent fiscal year. *See* 16 C.F.R. § 802.51.

4. As the value of the acquisition of U.S. Target is less than \$212.3 million, the acquisition is not reportable unless the size of the parties test is met. *See* 15 U.S.C. § 18a.

5. As Newco is a newly formed entity with no regularly prepared financials, in determining the total assets of Newco, cash that will be used as consideration in the acquisition of U.S. Target and cash that will be used for expenses incidental to the acquisition of U.S. Target should be excluded. *See* 16 C.F.R. § 801.11(e). As neither Newco or the ultimate parent entity of U.S. Target is at least a \$106.2 million person for HSR purposes, the size of the parties test is not met, and accordingly the acquisition of U.S. Target is HSR Act exempt. *See* 15 U.S.C. § 18a.

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. [Signature]
11/23/05