801.1(f)

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CONFIDENTIAL

VIA ELECTRONIC MAIL

December 5, 2005

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

Dear Mike:

On November 23, 2005, I sent you a letter confirming my understanding of a telephone conversation we had on November 18, 2005 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of proposed transactions. You agreed that the transactions as described would be HSR exempt. I spoke with you again on November 30, 2005 regarding an additional factual possibility, outlined below, which you confirmed also would not trigger an HSR reporting obligation.

As previously described, a private limited company, Newco, is being formed under the laws of the United Kingdom to acquire and operate two businesses, U.S. Target and Non-U.S. Target. You had confirmed that Newco would be its own ultimate parent for HSR purposes at the point of closing on the acquisition of these two companies as there was no shareholder holding 50% or more of the voting securities of Newco and no entity with the contractual right to appoint half or more of the board of directors of Newco. The largest shareholder of Newco, Company A, will only hold 49.9% of the voting securities of Newco at closing through its holding of the A shares of Newco. In addition, Company A, through its holding of the A shares would have the right to appoint without any other shareholder approval a minority of the directors of Newco.

The follow-up inquiry relates to the potential increased voting rights for the A shares of Newco. As previously described, 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. When we first spoke, I indicated that 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%. While it is still the most likely outcome that Company A would take measures to keep its voting rights at less than 50%, it is possible that Company A would continue to hold all of the A shares after the increased voting rights are triggered.

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You confirmed during our conversation on November 30, 2005 that the possible increase in voting rights for the shares of Newco after the closing on the proposed acquisitions of U.S. Target and Non-U.S. Target would have no impact on the conclusion that these proposed acquisitions by Newco are not HSR reportable. You agreed that the determination that Newco is its own ultimate parent, *i.e.*, not controlled by Company A or any other entity, and the size of the parties test analysis would be based on the conditions that would be true at closing, and would not be influenced in any way by post-closing changes that may effect, for example, the control of Newco.

You also confirmed that the possible increase in voting rights for the A shares under certain contingent circumstances would not trigger any other HSR reporting obligation, even if Company A continued to hold all of these shares. In other words, Company A will not be deemed to have made a potentially reportable acquisition from Newco if at some point in the future events occurred, such as a decline in the financial position of Newco, resulting in Company A obtaining increased voting rights through its holding of the A shares. You agreed that the obtaining of the increased voting rights would not be deemed a potentially HSR reportable "conversion" under 16 C.F.R. § 801.1(f)(3). The Statement of Basis and Purpose to the HSR rules distinguishes a conversion (which involves an exercise of a right inherent to the ownership of voting securities to exchange those securities for other voting securities that currently allow the holder to vote for directors) from an "automatic maturation of an inchoate right" such as rights accruing to holders of preferred stock upon a failure to pay dividends. *See* 48 F.R. 34429 (July 29, 1983); 43 F.R. 33463 (July 31, 1978). You agreed that the increased voting rights in the Company A shares would be viewed as an automatic maturation of an inchoate right, and accordingly not a potentially reportable HSR event. Mechanically, if a trigger event were to occur, Company A would need to serve a written notice on Newco before the increased rights went into effect. This would, among other things, allow Company A the ability to assign away some of the Company A shares if it so chose to avoid having control of Newco for purposes such as corporate consolidation. My understanding is that the fact that Company A would need to give notice before the increased rights went into effect would not change the conclusion that the increased voting rights are still treated as a non-reportable automatic maturation of an inchoate right.

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,

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Agree -
B. Michael Verne
12/5/05

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