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802.1

January 6, 2006

VIA FACSIMILE

Ms. Nancy Ovuka
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: *Hart-Scott-Rodino Act Filing Requirements*

Dear Ms. Ovuka:

This letter will confirm our conversation this morning with you, [REDACTED] and myself. In that conversation we presented to you the following factual scenario:

1. Several months ago, the Buyer and Seller ("the parties") entered into a Letter of Intent ("LOI") for the purchase of certain assets constituting an "Operating Unit." The consideration described in the LOI was a specific amount of cash in excess of \$53.1 million plus certain "commitments" by Buyer, including agreements to lease and purchase certain equipment that was not part of the Operating Unit ("Equipment"). There was no separate dollar amount stated as a purchase price for that Equipment to be purchased.
2. The parties submit that the purchase of the Equipment, if analyzed separately from the purchase of the Operating Unit, would not be reportable because it would fall within the § 802.1 exemption for acquisitions of goods in the ordinary course of business, specifically § 802.1(b) – new goods and (d) – used durable goods.
3. The parties have continued to negotiate and the stated purchase price for the assets constituting the Operating Unit is now less than \$53.1 million (it is about \$50 million), but the parties still contemplate that the definitive agreement will contain the Buyer's commitments to lease and buy the Equipment that was the subject of the commitments in the LOI and may refer to the commitments as "consideration." There is still no purchase price specified in the agreement for the Equipment.

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- 4. The lease of the Equipment is to be at a market rate.
- 5. The purchase of the Equipment will be at market price.
- 6. The Buyer has determined it is not paying a premium for either the lease or purchase of the Equipment. However, the purchase price of the Equipment added to the purchase price of the Operating Unit, would exceed \$53.1 million - i.e., the purchase price of the Equipment will be in excess of \$4 million.

You agreed with us that the transaction as outlined above is not reportable because the lease and purchase of the Equipment would be exempt as transactions in the ordinary course of business and that this would not change because they are included in the same contract with the sale of the Operating Unit. Please let us know if the above does not accurately describe our conversation and your concurrence.

Very truly yours,

[Redacted signature block]

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1/11/06

Agree w/ conclusion.

H. Dinka

M. Kerne concurs

[Redacted block]