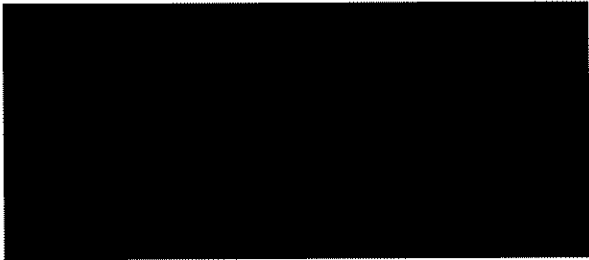


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January 27, 2006

VIA FEDERAL EXPRESS & E-MAIL

James Ferkingstad  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303, 600 Pennsylvania Ave. N.W.  
Washington, DC 20580

2006 JAN 31 AM 11:57

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

Re: Harte-Scott-Rodino Compliance Inquiry

Dear Mr. Ferkingstad:

This letter summarizes the telephone conversation which we had yesterday regarding the potential filing requirements for one of our clients under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended (the "Act"), and the rules promulgated thereunder. Specifically, this letter restates the various facts related to our client's potential acquisition and the conclusions we reached with you yesterday regarding the treatment of such acquisition under the Act.

Transaction Summary

Pursuant to a Stock and Asset Purchase Agreement (the "**Purchase Agreement**"), a subsidiary of our client (the "**Acquiror**") will purchase all of the issued and outstanding common stock of a U.S. corporation (the "**Target**"). The Target's issued and outstanding common stock consists of (i) voting common stock that entitles its holders to vote for the directors of the Target, and, therefore, is a voting security within the meaning of Section 16 C.F.R. §801.1(f)(1), and (ii) non-voting common stock that does not entitle its holders to vote for the Target's directors and accordingly is not a voting security within the meaning of that rule.

Immediately prior to the consummation of the acquisition, the equity securities of the Target will be held as follows:



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<u>Stockholder</u>	<u>Voting Common Stock</u>	<u>Non-Voting Common Stock</u>	<u>Total Number of Shares</u>
Natural Person 1	5,000 shares	20,000 shares	25,000 shares
Natural Person 2	5,000 shares	20,000 shares	25,000 shares
Irrevocable Deed of Trust of Natural Person 1 dated December 23, 2003		25,000 shares	25,000 shares
Irrevocable Deed of Trust of Natural Person 2 dated December 29, 2003		25,000 shares	25,000 shares
<b>TOTAL</b>	10,000 shares	90,000 shares	100,000 shares

The Target's voting securities constitute 10% of the Target's issued and outstanding equity securities (10,000 divided by 100,000 = 0.1). The Target's non-voting securities constitute 90% of the Target's issued and outstanding equity securities (90,000 divided by 100,000 = 0.9).

Upon the consummation of the acquisition, the Acquiror will acquire all of the Target's issued and outstanding securities (voting and non-voting) for a total purchase price of approximately \$145 million (the "**Purchase Price**"). The Purchase Agreement provides that the Purchase Price will be paid by the Acquiror to the Target's stockholders (the "**Stockholders**") pro rata based upon their respective percentage ownership of all of the Target's issued and outstanding equity securities. Therefore, based on such pro rata allocation, approximately \$14.5 million of the Purchase Price is being paid for the Target's voting common stock and approximately \$130.5 million is being paid for the Target's non-voting common stock.

### Analysis

Based upon our discussion of the above facts yesterday and the no action letter dated June 15, 2004 posted by the Federal Trade Commission on its website regarding a similar but not identical transaction involving a merger (a copy of which is attached for your convenience), you confirmed that only the value of the Target's voting securities being acquired by the Acquiror must be counted for purposes of the \$50 million size-of-transaction test set forth in Section

[REDACTED]

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7A(a)(2)(B)(i) of the Act (indexed currently at \$53.1 million and soon to be \$56.7 million). The value of the Target's non-voting securities is not counted for purposes of determining if this threshold is met. Accordingly, the consideration being provided by the Acquiror to the Stockholders pursuant to the Purchase Agreement in consideration for the 10,000 shares of the Target's voting common stock constitutes the acquisition price for purposes of examining the \$50 million size-of-transaction test.

Because the Purchase Agreement expressly allocates the amount of the Purchase Price between the Target's voting and non-voting securities, the acquisition price is considered "determined" for purposes of Section 16C.F.R. §801.1(a)(2)(i). Because the Acquiror, the Target and the Stockholder's specifically agreed that \$14.5 million of the Purchase Price should be allocated as the consideration to be paid for the 10,000 shares of the Target's voting common stock, no pre-merger notification filing is required under the Act, as the \$14.5 million does not exceed the \$50 million size-of-transaction test threshold.

I understand that the pre-merger notification office does not confirm informal advice in writing. However, I would appreciate it if you would call me at [REDACTED] at your earliest convenience to confirm this letter correctly represents our discussion and the advice that you provided me. Thank you for your prompt assistance regarding this inquiry.

Very truly yours,  
[REDACTED]

[REDACTED]

Enclosure

Condensed 1/27/06  
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[REDACTED]