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CONFIDENTIAL

VIA ELECTRONIC MAIL

July 28, 2006

Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

2006 JUL 31 AM 7:00

Dear Nancy:

I am writing to confirm my understanding of telephone conversations we had today concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of a proposed transaction discussed below.

Proposed Transaction

Please assume for purposes of our hypothetical set forth below that the Size of the Parties Test is met. Pursuant to an Agreement and Plan of Merger, our client, Acquiring Parent, will acquire 100% of the issued and outstanding voting securities of Target, a privately held corporation that is ultimately controlled by its majority owner, Target Parent. The structure of the transaction involves a merger whereby Target will be merged with and into Merger Sub, a wholly owned subsidiary of Acquiring Parent, with Target being the surviving corporation. Accordingly, Target will become a wholly owned subsidiary of Acquiring Parent.

While the overall payment being made by Acquiring Parent as a part of the transaction is between $100-$200 million, the part of the payment for the stock of Target carrying current rights to elect directors is cash in an amount between $40-$50 million – an amount below the $56.7 million HSR Size of the Transaction Test. This payment amount is based on the per share value that Acquiring Parent will pay for the currently outstanding voting securities of Target.

The additional payments by Acquiring Parent are for the following: (1) the acquisition of the preferred stock of Target, stock that does not have voting rights with regard to the election of directors; (2) the pay off of all of the debt owed by Target, consisting of debt owed to Target Parent and to third parties; (3) transaction expenses; and (4) the cancellation of outstanding warrants and options of the Target. The options and warrants will not be exercised and converted into common stock of Target prior to closing. None of the options and warrants

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currently carry any voting rights with regard to the election of directors of any entity. If the amounts of these additional payments are included in the valuation for HSR purposes, the Size of the Transaction Test would be met.

Analysis and Conclusions

You confirmed that the transaction described above is not reportable under the HSR Act as the $56.7 million Size of the Transaction Test is not met.

You also confirmed the following:

(1) Preferred stock – the consideration for the preferred stock is not included in the HSR valuation as the acquisition of non-voting securities is HSR exempt;

(2) Pay off of debt – it is the position of the FTC Premerger Notification Office that in the acquisition of voting securities amounts paid for the pay-off of debt owed by the target should not be included in the HSR valuation. See ABA Section of Antitrust Law, Premerger Notification Manual, Interpretation No. 93 (3d Ed. 2003). It does not matter if the debt is owed by Target to third parties and to Target Parent;

(3) Transaction expenses – amounts paid for the reimbursement of expenses incurred by Target and Target Parent as a result of the transaction, such as attorney and investment banker fees, are not included in the valuation for HSR purposes. Further bonuses paid to directors, officers and employees of target (including stay-put and retention bonuses and pay-outs connected with employment as a result of a change of control) in connection with the transaction are not included in the valuation for HSR reportability regardless of whether some of the recipients of such payments also hold a non-controlling amount of voting securities of Target; and

(4) Option and Warrants – the cancellation of the options and warrants which do not entitle the holders to current voting rights with regard to the election of directors is an exempt event for HSR purposes as these are convertible voting securities under 16 C.F.R. § 802.31. (You addressed a similar issue in FTC Informal Interpretation No. 0603028.) Even though the option and warrant holders will receive the same net consideration as a part of this transaction that they would have received if the options and warrants were exercised immediately prior to closing, the cancellation of the options and warrants is nevertheless a non-reportable part of the transaction. Accordingly, the consideration paid to the holders of the options and warrants as a part of this transaction is not included in the valuation for HSR purposes. Under the HSR Act, it also does not matter if most of the warrants and options are held by the parent of the target. In this instance, Target Parent holds all of the warrants of Target.

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We understand from our conversation that this transaction will not be regarded as a transaction or device for avoidance under 16 C.F.R. § 801.90 as the transaction has not been structured in any way for purposes of not filing under the HSR Act.

* * *

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]

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agree

M. Vivas concurs

N. Ovuka

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