801.11(e)

[redacted]

July 31, 2006

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Mr. Verne:

We are writing to follow up on the discussion that you and [redacted] had on Wednesday, July 12th concerning the proposed transaction involving our respective clients and to confirm that you concur that no filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), would be required to be made by any of the parties to the proposed transaction.

Description of the Transaction

As discussed, the proposed transaction (the "Transaction") effectively involves the formation of an unincorporated entity (the "Newco" described below) by a group of opportunity funds (the "Investors"), one or more equity partners of the Investors (each, a "Co-Investor"), and the Seller (as defined below), through contributions by the Investors and each Co-Investor of cash to Newco and the direct and indirect contribution[1] by the Seller of the voting securities of several U.S., Canadian and United Kingdom corporations and unincorporated entities (collectively, the "Acquired Companies") that are currently owned by a group of stockholders, members and/or partners (collectively, the "Seller Owners"). For a number of reasons, including reasons relating to international tax planning, the proposed transaction will be accomplished through a series of steps, as discussed below.

Prior to the consummation of the Transaction, it is expected that (A) the Seller Owners will form a new foreign limited partnership (the "Seller") and will transfer or cause to be transferred to the Seller all of the issued and outstanding equity interests of the Acquired Companies and (B) the Investors and the Co-Investor(s) will form and own a new limited partnership ("Newco") which will (i) form and own (x) a U.S. corporation ("U.S. Acquiror"), which at closing will acquire all of the issued and outstanding equity interests of the Acquired Companies that are U.S. entities (collectively, the "U.S. Acquired Companies") and (y) a Canadian corporation ("Canadian Acquiror" and, together with the "U.S. Acquiror," the "Acquirors"), which at closing will acquire all of the issued and outstanding equity interests of

[1] In return for equity interest and an equalization payment.

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the Acquired Companies that are Canadian entities (collectively, the "Canadian Acquired Companies"). The Acquirors will acquire the U.S. Acquired Companies and the Canadian Acquired Companies from the Seller in exchange for a combination of cash and non-voting shares in the capital stock of one or more of the Acquirors.

Immediately following the completion of the steps described above, the Seller will contribute to Newco all of the shares in the Acquiror(s) received by it in connection with such steps and all of the issued and outstanding equity interests of the Acquired Companies that are United Kingdom entities (collectively, the "U.K. Acquired Companies") in exchange for a Class B limited partner interests in Newco and additional cash. The Class B limited partner interest will entitle the Seller to 50% of the voting power of Newco's limited partners and to 50% of the ordinary course distributions to Newco's limited partners. However, the Class B limited partner interest will be subject to certain preferential returns in favor of the Class A limited partner interests held by the Investors and the Co-Investors such that the Seller could receive less than 50% of distributions to the limited partners upon a liquidation of Newco or other extraordinary event.

Analysis

For the reasons discussed below, we believe no filings are required under the HSR Act in connection with the Transaction.

As discussed above, we believe the Transaction is essentially the formation of an unincorporated entity ("Newco") through the contribution by the Investors and the Co-Investor(s) of cash and the contribution by the Seller of the shares of the Acquiror(s) received by it in the initial step of the Transaction in exchange for the contribution by the Seller of all of the voting securities of the U.S. Acquired Companies and the Canadian Acquired Companies to the Acquirors and all of the equity interests in the U.K. Acquired Companies. If viewed as a separate transaction, the contribution of the U.S. Acquired Companies and the Canadian Acquired Companies to the Acquirors in which the Seller receives non-voting shares should also be viewed as the formation of a corporate joint venture through the contribution by Newco to the Acquirors of the cash received by Newco from the Investors and the Co-Investor(s) (as well as the proceeds from borrowings under an acquisition loan that will be funded at closing) and the contribution by the Seller to such Acquiror(s) of the voting securities of such Acquired Companies. We believe that no filing under the HSR Act should be required in connection with the formation of Newco, or in connection with the formation of such Acquirors if such formation were to be viewed as a separate transaction.

Filing Requirements for the Investors or the Co-Investors

Under Rule 801.50(b), a party to the formation of an unincorporated joint venture entity is required to file under the HSR Act if it acquires control of the newly-formed entity and the other requirements of the Rule are satisfied. In this case, after completion of the Transaction, none of the Investors or the Co-Investors will own fifty percent (50%) or more of the interests in Newco. Because none of the Investors or Co-Investors will "control" Newco within the meaning

of the Rules under the HSR Act, no filing by any of them will be required in connection with the formation of Newco.

If the contribution of the U.S. Acquired Companies and the Canadian Acquired Companies to the Acquirors in which the Seller received shares were viewed for purposes of Rule 801.40 as a separate formation transaction in which each of Newco and the Seller acquired shares of the Acquirors, Newco would not be required to make a filing under the HSR Act because it will not have net sales or total assets of $11.3 million or more. As noted above, Newco (which will be its own "ultimate parent entity") will be a newly-formed entity that will have no regularly prepared balance sheet, and it is expected that at the time of the Transaction its only asset will be the cash that will be delivered to the Seller in connection with the contribution of the Acquired Entities to the Acquirors. Under Rule 801.11(e)(1), such cash would be disregarded for purposes of determining the amount of its assets. Consequently, Newco would not be required to make a filing by operation of Rule 801.40(c) because it would not have the required amount of assets.

Filing Requirements for the Seller Owners and Seller

We also believe that no filing under the HSR Act is required to be made by the Seller Owners or the Seller.

No filing would be required in connection with transfer by the Seller Owners of all of the equity interests of the Acquired Companies to the Seller (which constitutes a formation transaction under Rule 801.50) because, among other things, none of the Seller Owners will control the Seller after giving effect to that transaction.

The contribution by the Seller to Newco of the equity interests in the Acquiror(s) received by it in connection with the acquisitions by the Acquirors described above and all of the equity interests in the U.K. Acquired Companies in exchange for 50% of the limited partnership interests of Newco would be exempt from the reporting requirements by operation of Rule 802.4(a) and Rule 802.30(c). Under Rule 802.4(a), the acquisition of interests of an issuer, whose assets consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to Section 7(A)(c) of the HSR Act, part 802 of the HSR Rules or Section 801.21 of the HSR Rules, is exempt from the reporting requirement if the acquired issuer does not hold non-exempt assets with an aggregate fair market value of more than $56.7 million. Rule 802.30(c) provides that, for purposes of applying Section 802.4(a) to an acquisition that may be reportable under Rule 801.50, assets or voting securities contributed by the acquiring person to a new entity upon its formation are assets or voting securities whose acquisition by that acquiring person is exempt from the requirements of the HSR Act. Upon consummation of the Transaction, the only assets of Newco will be shares of the Acquirors, whose only assets will be the voting securities of the Acquired Companies, which were sold and contributed by the Seller to the Acquirors and the shares of the U.K. Acquired Companies contributed to Newco by the Seller. Therefore, with respect to the Seller and the Seller Owners, Newco will not hold non-exempt assets of more than $56.7 million, and the Seller and the Seller Owners would not be subject to the reporting requirements.

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Similarly, if the sale and contribution of the voting securities of the U.S. Acquired Companies and the Canadian Acquired Companies to the U.S. Acquiror and the Canadian Acquiror, respectively, were viewed as separate formations of corporate joint ventures under Rule 801.40, no filing by the Seller or the Seller Owners would be required because any shares received by the Seller in any acquiror to which Acquired Companies are contributed will be non-voting shares.

Filing Requirement for Newco

For the reasons outlined above, we believe the Transaction is properly characterized as a formation transaction under Rule 801.50, and perhaps a separate formation transaction under Rule 801.40. If, however, the Staff were to view the transaction as the indirect acquisition by the Investors and Co-Investor(s), through Newco, of fifty percent (50%) of the voting securities of the Acquired Companies, which, as discussed, is also a way of viewing the Transaction from an economic perspective, no filings under the HSR Act should be required.

Newco will be a newly-formed partnership formed under a jurisdiction other than the United States and it is expected either that no person will be entitled to 50% or more of the profits of Newco, or of its assets upon dissolution, or that any person that is entitled to 50% or more of the profits of Newco or of its assets upon dissolution would be another newly-formed entity. Therefore, Newco or any such controlling person would be its own "ultimate parent entity" for purposes of the HSR Rules. As a newly-formed entity, Newco (or any such controlling person) will not have a regularly prepared balance sheet and at the time of the closing of the Transaction, and, as noted, it is expected that Newco (or any such controlling person) will hold no assets other than the cash contributed to, or borrowed by, it that will be used to acquire the interests in the Acquired Companies. Pursuant to HSR Rule 801.11(e)(1), in calculating the total assets of an acquiring person that does not have a regularly prepared balance sheet, such acquiring person's total assets are equal to all assets held by the acquiring person at the time of the acquisition less all cash that will be used by the acquiring person in an acquisition of the voting securities or non-corporate interests of an acquired person. Therefore, by operation of Rule 801.11(e)(1), Newco (or any such controlling person) would not satisfy the size-of-person test. While the size-of-person test does not apply to transactions subject to Section 7a(a)(2)(A) of the HSR Act, we believe the size of the Transaction should be calculated by reference to the value of the 50% of the Acquired Companies that the Investors and Co-Investor(s) will indirectly own after consummation of the Transaction, which will be approximately $175 million, rather than by reference to the entire value of the Acquired Companies. In addition, we note that approximately fifty percent (50%) of the value of the Acquired Companies will be attributable to the Acquired Companies that are Canadian or U.K. entities, the acquisition of which would be exempt under Rule 802.51. Therefore we believe the Transaction does not meet the size-of-transaction test of Section 7a(a)(2)(A) of the HSR Act. Accordingly, we believe that, if the transaction were viewed as an acquisition by Newco (or any controlling person of Newco), no filing by Newco (or any such controlling person) would be required because Newco (and any such controlling person) would not satisfy the "size-of-person" test.

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For the reasons outlined above, we believe that no filings will be required under the HSR Act in connection with the Transaction, and, as discussed, we would appreciate your confirming your concurrence with that view. Please do not hesitate to call [redacted] if you have any questions or would like any additional information.

Very truly yours,

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AGREE -
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