802.51(b); 801.1(g)(1) and (3)

[redacted]

December 19, 1994

[redacted]

VIA TELECOPIER (202-326-2624)

Richard Smith, Esq.
Federal Trade Commission
Bureau of Competition
Premerger Office
Washington, D.C.

Re: Premerger notification requirements

Dear Mr. Smith:

Reference is made to our telephone conversation of December 7, 1994. We had discussed the HSR notification requirements in connection with an acquisition of voting securities coupled with (i) an option to acquire additional voting securities and (ii) a voting agreement covering the shares subject to the option for the duration of the option period.

A. Corporate Relationships

The Acquired Person ("A") and the Acquiring Person ("B") are both foreign persons. A currently holds 51% of the voting securities of the entity being acquired ("C"). C is a foreign issuer which holds 100% of the voting securities of a U.S. issuer with annual net sales and total assets exceeding $25 million.

B. The Transaction

The proposed transaction is structured as an acquisition of voting securities. In a first step, B will acquire 25.5% of the voting securities of C for a purchase price exceeding $15 million.

[redacted]

In addition, A and B have entered into two agreements: (i) an option agreement concerning the acquisition by B of the remaining 25.5% of the voting securities of C which are not being acquired in the first step of the transaction (the "Option Shares"), and (ii) a shareholder agreement regulating, inter alia, the voting rights of the Option Shares.

C. The Option Agreement

Pursuant to the Option Agreement, B has a call option to acquire the Option Shares by a certain date in 1997 and A has a put option to sell the Option Shares to B during the same time period (the "Option Period"). The price for the Option Shares has been fixed and does not depend on the financial performance of C. A will be entitled to receive the dividends, if any are declared, on the Option Shares for the year 1996.

D. The Shareholder Agreement

C has a supervisory board consisting of 12 members and a management board consisting of five members. The management board is elected by the supervisory board.

Out of the 12-member supervisory board, six members are employee representatives and the remaining six members are shareholder representatives elected by the shareholders. The Chairman of the supervisory board is a shareholder representative who casts the deciding vote in the event of a deadlock on the board. A is currently able to elect all six shareholder representatives on the supervisory board, including the Chairman.

Pursuant to the Shareholder Agreement, upon acquiring the initial 25.5% interest in C, B will be entitled to elect two out of the six shareholder directors, including the Chairman. In addition, A has agreed, during the Option Period, to vote the Option Shares (following mutual consultation) always in the same way as B votes its shares. B will therefore be able to elect all six shareholder representatives (including the Chairman) on the supervisory board. As a practical matter, however, B will nominate only two shareholder representatives and A will continue to nominate two shareholder representatives. The remaining two shareholder representatives will continue to be independent (outside) members of the supervisory board.

With respect to decisions taken by the supervisory board, A has agreed that its nominees will always vote with B's

nominees, also with respect to the appointment of the management board. If one of A's nominees does not comply with those provisions, A will immediately remove such member and appoint a substitute member.

These voting agreements are enforceable under applicable law and may not be rescinded during the Option Period.

E. Summary

To summarize, B will acquire presently record and beneficial ownership of 25.5% of C's voting securities and also the right presently to control six votes of the 12-member supervisory board (plus the deciding Chairman vote in the event of a deadlock).

It is also certain that B will acquire the Option Shares upon an exercise of the put/call mechanism and may already direct the voting rights associated therewith (through the voting agreement). Because the option price is fixed, B bears the risk of economic loss (or the potential gain) of the Option Shares. However, A will continue to be entitled to dividends for the year 1996, if any are declared and distributed.

In light of the foregoing, I would appreciate your informal advice (by telephone) as to whether the Premerger Office would consider the transaction presently reportable in light of B possibly acquiring presently beneficial ownership to 51% of C's voting securities. You may assume that the size-of-person and size-of-transaction test are satisfied.

If you have any questions, please do not hesitate to call me.

Sincerely yours,

[redacted]

[redacted]

12/22/94 - After discussion with John Siggle, called writer and advised that in the PNN Office's view the filing must be made before B purchases the 25.5% of C's voting stock since the option and stockholders agreements give B control over C and such stock acquisition is not exempt under 802.51(b).

R B Belfmith