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May 16, 1996

BY FACSIMILE - (202) 326-2624

Ms. Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

Dear Ms. Ovuka:

Pursuant to our conversation this morning, we are writing to request an opinion from the Federal Trade Commission's Premerger Notification Office as to whether our client shall be required to file a Notification and Report Form for Certain Mergers and Acquisitions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, amended (the "HSR Act"). As you will recall, during this conversation we discussed that a limited liability company, similar to a partnership, may be exempt from filing under the HSR act. In connection with our request, we have set forth below the facts and circumstances, on an anonymous basis, of the proposed transaction as they exist on the date hereof.

Company A, a [REDACTED] corporation, together with Company B, [REDACTED] corporation and commonly owned sister company of Company A (Company A and Company B will be collectively referred to herein as "Company AB"), and Company C, a [REDACTED] engage in the same business in some of the same locations within the same state. Pursuant to standard analysis under the HSR Act, Company AB and Company C would each pass the Size of Person and Size of Transaction Test, thus otherwise triggering the requirement to file under the HSR Act.

Company AB and Company C have signed a letter of intent to enter into an arrangement whereby Company AB and Company C

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shall create a [REDACTED] limited liability company (the "LLC") pursuant to the [REDACTED] Limited Liability Law. Company AB and Company C shall for the foreseeable future be the only members of the LLC, each holding a membership interest in the LLC of 51% and 49%, respectively. Each of Company AB and Company C shall contribute as capital substantially all of their assets and properties to the LLC and the LLC shall assume certain debts, liabilities and obligations of Company AB and Company C, in exchange for their membership interests, subject to the terms of a definitive Purchase Agreement, and related documents, to be entered into among Company AB, Company C and the LLC.

Purchase Agreement

The LLC, pursuant to the terms and conditions of the Operating Agreement which governs its operations (the "Operating Agreement"), shall be managed as follows:

1. The LLC's business shall be managed and controlled by its Members, Company AB and Company C, exclusively in their membership capacity. No "manager" will be appointed, whether a member or outside third party, to manage the LLC.

2. The Chief Executive Officer and the President and Chief Operating Officer of the LLC shall be two employees from, and the sole stockholders of, Company C (collectively, the "Senior Officers"). The Senior Officers shall appoint all other officers of the LLC, provided, however, that the appointment of any senior management officer of the LLC earning compensation in excess of a certain threshold per annum shall be subject to the approval of Company AB.

3. The day-to-day operations of the LLC shall be vested in and shall be conducted by the Senior Officers. In the absence of one of the Senior Officers, the other Senior Officer shall have the right to assume all of the responsibilities of both Senior Officers or appoint another person to assume such position, subject to the approval of Company AB.

4. If Company C sells or assigns all of its membership interests in the LLC, Company AB shall have the right to assume all of the day-to-day operations of the LLC. No provision is made for the management of the LLC by a third party. Only when all of the original principals of Company AB and Company C are no longer available will new senior executives (possibly a third party) be appointed by two-thirds of the aggregate share of the membership interests in the LLC ("Supermajority").

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5. Major events and other significant matters relating to the operations of the LLC shall require the approval of a Supermajority of the members of the LLC (which in effect means that Company AB and Company C must unanimously agree). Such events and matters include any merger, reorganization, consolidation, recapitalization, or combination of or with the LLC; the issuance of any membership interests, or any sale, transfer, lease, sublease, assignment, conveyance or disposition of, or the granting of any option to acquire, the membership interests of the LLC or the assets and properties of the LLC other than in the ordinary course of its business and operations; any dissolution, liquidation or winding up of the business or operations of the LLC, or voluntary appointment of a receiver, trustee or other fiduciary to conduct or supervise the business and affairs of the LLC or its assets and properties or any voluntary filing of a petition for bankruptcy or declaration of insolvency or submission of a plan for the benefit of creditors of the LLC; the making or incurrence of any significant capital expenditures; incurrence, creation, assumption or guaranteeing of indebtedness, directly or indirectly, in excess of the LLC's credit facility; any commitment or agreement with any lender or material amendment, modification or supplement to any existing loan or indebtedness agreement or banking arrangements; issuance of debt securities in excess of a certain amount; additional capital calls for contributions to the LLC; the execution and delivery of any agreement regarding any material real property transactions, including, without limitation, the execution and delivery of any lease, as lessee or sublessee, or contract for the sale or purchase of real property; creation, termination and funding of any pension and deferred benefit plans and any other employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended; any transactions, including, but not limited to, a sale, transfer or distribution or payment of any money or property, a loan or advance of money or property, an investment in or purchase or repurchase of any membership interest, indebtedness or property, with a member or affiliate or relative of a member, unless in the ordinary course of business, fully disclosed in writing to all members, upon terms not less favorable to the LLC than would be obtainable in a comparable arm's length transaction with a third party who is not a member, an affiliate or a relative of a member; and any agreement, arrangement or commitment to do any of the foregoing.

6. Any other action required to be taken by the LLC shall be authorized by a Supermajority of the members of the LLC except as otherwise set forth in the Operating Agreement.

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7. The members of the LLC shall act as agents of the LLC.

8. Company AB and Company C shall each designate a principal of their respective companies to provide any consent or approval required by each of Company AB and Company C in the management of the LLC pursuant to the terms of the Operating Agreement of the LLC.

9. The LLC can be dissolved by a vote of the Supermajority of the members.

Based on the foregoing facts, please advise us as to whether Company AB and Company C are required to file a Notification and Report Form for Certain Mergers and Acquisitions in connection with the formation of the LLC and the contribution of substantially all of their assets and properties to the LLC.

If you have any questions regarding the foregoing, please do not hesitate to contact me at [REDACTED] or [REDACTED]

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Very truly yours,
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