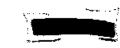


8011(4); 8011(b)



## **MEMORANDUM**

## VIA TELECOPY (202) 326-2624

TO:

Mr. Dick Smith

FROM:

RE;

Analysis of Proposed Transaction under the Hart-Scott-Rodino Antitrust

Improvements Act of 1976, as amended

DATE:

June 26, 1998

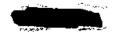
Thank you for confirming that the transaction described in the outline that we sent to you earlier today was not subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Your confirmation was based on the following additional facts:

- None of Purchaser, Holdings or Parent have prepared and will not have prepared any financial statements prior to the acquisition of Target.
- 2 Upon issuance, the Capital Holdings Warrants and Income Holdings Warrants will not have any voting rights with respect to Holdings.
- 3. In accordance with 16 C.F.R. § 801.11(c), we advised you that this calculation will yield a value of less than \$10 million.
- The transaction outline assumed that both Holdings and Parent were formed using the so called "LLC partnership model," although we discussed that had either or both of Holdings or Parent been formed using the so-called "LLC corporate model," your conclusion would not have changed since we advised you that: (a) no person or entity will "hold" fifty percent or more of the voting securities of Parent; (b) no person or entity will have the contractual right to appoint fifty percent or more of the board of directors/managers of Parent; and (c) no person or entity (other than Parent) will have the contractual right to appoint fifty percent or more of the board of directors/managers of Holdings.

As always, we thank you for your prompt assistance. If the foregoing does not reflect your understanding, please contact us. My direct number is



## SIDLEY & AUSTIN



## The Transaction

For purposes of this outline, assume that the "size-of-transaction" and \$100 million element of the "size-of-person" tests are met.

[Qui Tangle]

1 "Purchaser," a recently formed public limited company organized under the laws of England

- "Purchaser," a recently formed public limited company organized under the laws of England and Wates proposes to commence a tender ofter pursuant to which rurchaser would seek to acquire all of the outstanding capital stock of "Target," a public limited company incorporated and registered in England and Wates for cash in an amount exceeding \$15 million (the "Transaction"). Target owns a wholly-owned United States subsidiary ("U.S. Sub") that has annual net sales in excess of \$25 million. Accordingly, for Hart-Scott-Rodino purposes, the acquisition of Target could be potentially subject to the reporting requirements of the Act if the applicable "size-of-person" and "size-of-transaction" tests were met. See 16 C.F.R. § 802.51(b) (1997).
- 2. Purchaser is a wholly-owned subsidiary of "Holdings", a recently formed limited liability company organized under the laws of England and Wales, which in turn is a wholly-owned subsidiary of "Parent," a recently formed limited liability company organized under the laws of England and Wales ("Parent").
- 3 None of Porchaser, Holdings or Parent have traded since formation.
- 4. At least cleven (and possibly more) employees (each an "Employee" and together, "Employees") of "Alpha," a public limited company organized under the laws of England and Wales, will hold all of the issued and outstanding membership interests of Parent.
- No Employee will have a right to fifty percent or more of the profits of Parent or have the right to fifty percent of Parent's assets upon dissolution.
- No person or entity will have the contractual right to appoint 5fty percent or more of the board of directors of Holdings or Purchaser.
- 7 For Hart-Scott-Rodino purposes, Parent would be deemed to be its own sole "ultimate parent entity" and would be the sole "ultimate parent entity" of each of Holdings and Purchaser.
- Until immediately prior to the time that Purchaser will purchase the shares of Target pursuant to the Transaction, it is anticipated that none of Purchaser, Holdings or Parent will have any significant assets or liabilities or engage in activities other than those incident to its formation and capitalization and the transactions contemplated by the Transaction.
- 9. In addition, two tranches of warrants will be issued by Holdings ("Holdings Warrants"). Tranche 1 ("Capital Holdings Warrants") will be issued to Alpha and tranche 2 ("Income Holdings Warrants") will be issued to an additate of Alpha. The Holdings Warrants will be issued for a nominal value and will be exercisable for a numinal amount. After the Holdings Warrants become exercisable, at the option of Holdings, the Holdings Warrants can be exercisable for a number of Holding Shares.



19. Funding to finance the Transaction will be at two levels: (i) Alpha will provide financing to Holdings; and (ii) either Alpha or a third party will provide financing to Furchaser.

