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November 24, 1999

BY HAND

Marian R. Bruno, Esq.
Assistant Director Premerger Office
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20004

RE: [redacted] Exercise of Warrants to Acquire and [redacted] Shares

Dear Ms. Bruno:

Per our telephone call last Friday, this letter is to describe to you the circumstances pertaining to [redacted] acquisition and resale of shares of [redacted] [redacted] which acquired the shares through the exercise of warrants, never intended to "hold" more than 10% of the voting securities of [redacted] Moreover, [redacted] relationship to [redacted] is as a seller of services and an investor. Accordingly, it is our view that no Hart-Scott-Rodino filing is warranted, and we are seeking your confirmation of our conclusions.

The circumstances of the transaction are as follows:

1. On August 31, 1998, [redacted] entered into an agreement with [redacted] pursuant to which [redacted] would make airline seat inventory available on the [redacted] web site in exchange for a performance warrant that [redacted] would be able to convert to shares of [redacted] common stock.

2. Pursuant to a partial exercise of the warrant, on August 17, 1999 [redacted] acquired and immediately resold 1.8 million shares of [redacted] common stock in a registered public offering at $67 per share. Following the partial exercise of the warrant, [redacted] held a warrant to acquire 16,802,288 shares of common stock of [redacted] at an exercise price of approximately $.93/share.

3. Under an amendment to the warrant agreement dated November 12, 1999, [redacted] could opt for a cashless exercise, in return taking fewer shares of common stock of [redacted]. On that day it did so, exchanging the warrants for 16,525,834 shares of common stock. Our understanding is that this amount represents approximately

10.4% of the equity of priceline.com. It opted for the cashless exercise so that the one-year "holding period" of the stock, for purposes of Rule 144 under the Securities Act of 1933, would be deemed to have begun on August 31, 1998, the date of the original warrant agreement.

4. [redacted] intention in acquiring the shares was to resell them as soon as it was legally able to do so. To that end [redacted] had discussions beginning on Sunday, November 14, 1999, with [redacted] Founder and Vice Chairman and/or [redacted] Chairman and Chief Executive Officer of [redacted] to sell them $125,000,000 worth of [redacted] stock.

5. While the transfer agent drafted the [redacted] share certificates on November 12, 1999, [redacted] as selling agent for [redacted] did not pick up the shares until mid-day Monday, November 15, 1999. On Monday evening an agreement in [redacted] was reached pursuant to which [redacted] would sell [redacted] in shares valued at $125,000,000 to [redacted] his assignee or [redacted]

6. An agreement between [redacted] and [redacted] was executed late on Tuesday, November 16, 1999. The agreement provides for the sale of 2,085,767 shares of [redacted] common stock to [redacted] and it permits him to assign his rights to purchase such shares to [redacted] or to [redacted] This sale was made possible when the managing underwriter of [redacted]'s August 17, 1999 registered public offering agreed to release [redacted] from a lockup with respect to this stock. The consummation of the sale agreement reduced [redacted] ownership interest, as it stood at that time, to 8.8%.

7. On November 17, 1999 [redacted] and [redacted] amended their August 31, 1998 agreement to, among other things, (a) permit [redacted] and certain foreign-based carriers to become participating carriers in [redacted], and (b) to have [redacted] use its best efforts to cause the managing underwriter to release [redacted] from a lockup with respect to 8.4 million shares of [redacted] common stock.

8. The lockup having been released, on Thursday, November 18, 1999, [redacted] at [redacted] direction, sold 1,225,000 shares of [redacted] on the open market. This brought [redacted] current beneficial holdings to 8.1%. If the shares [redacted] is obligated to sell to [redacted] are included among [redacted] holdings [redacted] total holdings at the close of trading on November 18, 1999 were 9.4%.

Based on the above [redacted] never intended to hold more than 10% of the outstanding shares of [redacted], since its intention was immediately to sell below that level and it reached an agreement in principle to do so prior to the opening of trading on Tuesday, November 16, 1999. That agreement, pursuant to which [redacted] will be acquiring $125,000,000 in

[redacted] om shares, will be the subject of filings by [redacted] and [redacted], so it will be fully disclosed. Under these circumstances, we do not believe that it is necessary or appropriate for [redacted] file a Hart-Scott-Rodino Premerger Notification Form pertaining to this transaction provided that [redacted] otherwise meets the investment-only exemption.

It is our view that [redacted] involvement with [redacted] does meet the investment-only exemption. [redacted] has developed and patented online demand collection systems that enable consumers to name their own price for various goods and services. [redacted] first service was its demand collection system for leisure airline tickets. [redacted] was the first major airline to participate i [redacted] distribution channel. In that context, [redacted] egotiated an agreement with [redacted] that requires [redacted] approval of the addition of other airlines to the service and of the routings that other airlines may offer on the site. As stated above, this approval recently has been granted.

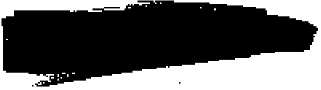
Although [redacted] possesses significant contractual rights to control what and how other airlines may participate in the [redacted] distribution channel, [redacted] airline ticket service is only one of many services that [redacted] offers. Even if that were not the case, we do not believe that the arm's-length, contractual relationship between [redacted] and [redacted] rises to the level of involvement necessary to remove [redacted] from the investment-only exemption.

The Bureau of Competition has stated that if an acquiring person purchases voting securities with the intention of influencing the basic business decisions of the issuer, or with the intention of participating in the management of the issuer, the exemption is unavailable.[1] The 1978 Statement of Basis and Purpose ("SBP") enumerated six factors that could be considered inconsistent with the investment-only purpose. Those factors are: (1) nominating a candidate for the Board of Directors of the issuer; (2) proposing corporate action requiring shareholder approval; (3) soliciting proxies; (4) having a controlling shareholder, director, officer or employee simultaneously serving as an officer or director or the issuer; (5) being a competitor of the issuer; or (6) doing any of the foregoing with respect to any entity directly or indirectly controlling the issuer.[2]

[redacted] contractual relationship with [redacted] does not fall within any of the above-listed factors. [redacted] does not have the power to nominate a member of the [redacted] Board of Directors. It has no intent of proposing corporate action requiring shareholder approval, and the original contract by which [redacted] acquired its contract rights did not require [redacted] shareholder approval. It will not solicit proxies and no controlling shareholder, director, officer, or employee of [redacted] will simultaneously serve as an officer or director of [redacted]. Moreover, [redacted] does not compete with [redacted]. Finally, [redacted] does not do any of the foregoing with respect to any entity controlling [redacted]

[1] [redacted]

[2] 43 Fed. Reg. 33,450, 33,465 (1978).



of my office, on Monday, November 22, 1999, presented situation to Patrick Sharpe as a hypothetical where a large manufacturer, in return for helping a small distribution outlet become viable, extracted certain contractual rights to retain exclusivity or to control the participation of competitors in that distribution outlet, if it chose to do so. Mr. Sharpe stated that, under the description provided, he did not believe that the exercise of the contractual rights would strip the acquiring person of the investment-only exemption. We believe that this is the correct result. First, as described above, acquired voting shares of with the intent to sell them. Second, none of the factors enumerated in the SBP is present. Third, even in a broader sense, will not be "influencing the basic business decisions" of or of "participating in the management" of the company.

Apart from exercising its rights under the contract it negotiated has no intention of exercising any other rights or additional influence as a consequence of its acquisition of ting securities. Any effect exercise of its contractual rights may have on business is unrelated to the kind of "influence" or "participation" prohibited by the FTC, and is the result of precisely delineated contractual terms. elationship to is that of a supplier with negotiated contractual rights over who may participate in the distribution channel, and any communications with will be undertaken only in that capacity. The contractual rights that egotiated at arm's length are subject to the terms and conditions written in the agreement between the two companies.

Any other result would effectively prohibit most contractual relationships between a pure investor and a company, for the exercise, and even the existence, of contractual rights necessarily effects the decisions of management to a certain degree, by imposing restrictions and obligations on what the company may do. Yet, many contractual relationships (such as licensing agreements) are permitted under the exemption and allow the investor to claim that the purchase of voting securities is "solely *for the purpose* of investment." That is the case here.

We would appreciate your calling me at the above number at your earliest convenience to let us know your views concerning the need for filing. In light of the fact that, in addition to the circumstances discussed above, this transaction is of no competitive significance, it is our hope that you will agree with us that no filing is warranted.

Thank you for your consideration.

Sincerely yours,

cc: J

11-29-99 - Advised counsel that must file, ~~[illegible]~~ over 10%, investment only does not apply; intent not relevant.