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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and STATE OF ILLINOIS and STATE OF NEW YORK and COMMONWEALTH OF MASSACHUSETTS *Plaintiffs,* v. MARQUEE HOLDINGS, INC. and LCE HOLDINGS, INC. *Defendants*.	Civil Action No. 05 CV 10722 Judge Kimba Wood Filed: December 22, 2005

COMPETITIVE IMPACT STATEMENT

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust

Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Plaintiffs the United States, the State of Illinois, the State of New York, and the Commonwealth of Massachusetts filed a civil antitrust Complaint on December __, 2005, alleging that a proposed merger of Marquee Holdings, Inc. ("AMC") and LCE Holdings, Inc. ("Loews") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that AMC and Loews both operate motion picture theatres throughout the United States, and that they each operate first-run, commercial motion picture theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. The merger would combine the two leading theatre circuits in the above listed markets and give the newly merged firm a dominant position in those localities: in Chicago North the newly merged firm would have a 100% market share (by revenue); in Midtown Manhattan, the newly merged firm would have a 88% market share (by revenue); in downtown Seattle the newly merged firm would have a 100% market share (by revenue); in downtown Boston, the newly merged firm would have a 100% market share (by revenue); and in north Dallas the newly merged firm would have a 78% market share (by revenue). As a result, the combination would substantially lessen competition and tend to create a monopoly in the markets for theatrical exhibition of first-run, commercial films in the above listed local markets.

The prayer for relief seeks: (a) an adjudication that the proposed merger described in the Complaint would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing

the consummation of the transaction; (c) an award to each plaintiff of the costs of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits AMC to complete its merger with Loews, yet preserves competition in the markets in which the transactions would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment, which is explained more fully below, requires AMC and Loews to divest one theatre to acquirers acceptable to the United States in each of the listed markets, except Chicago, where it orders AMC and Loews to divest two theatres. Unless the United States grants a time extension, the divestitures must be completed within sixty (60) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, the defendants must maintain and operate the six theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Cook County, Illinois; New York County, New York (Manhattan); King County, Washington; Suffolk County, Massachusetts; and Dallas County, Texas.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. THE ALLEGED VIOLATIONS

A. The Defendants

Marquee Holdings, Inc. is a Delaware corporation with its headquarters in Kansas City, Missouri. It is the holding company of AMC Entertainment Inc. AMC owns or operates 216 theatres containing 3,300 screens at locations throughout the United States. AMC had revenues of approximately $1.8 billion during 2004. JP Morgan Partners and Apollo Management LP are the controlling shareholders of AMC.

LCE Holdings, Inc. is a Delaware corporation with its headquarters in New York City, New York. It is the holding company of Loews Cineplex Entertainment Corporation. Loews owns or operates 128 theatres containing 1,424 screens at locations throughout the United States. Loews operates theatres under the Loews Theatres, Cineplex Odeon, Star Theatres, and Magic Johnson Theatres brands. Loews had revenues of approximately $1 billion during 2004. Bain Capital Partners, Carlyle Group, and Spectrum Equity Investors are the controlling shareholders of Loews.

B. Description of the Events Giving Rise to the Alleged Violations

On June 30, 2005, Marquee and LCE entered into a merger agreement. Under the merger agreement, LCE would merge into Marquee and Loews would merge into AMC. The current

shareholders of LCE would control 40% of the combined company's outstanding common stock while the current shareholders of Marquee would control 60% of the combined company's outstanding common stock. The merger is a $4.1 billion transaction.

AMC and Loews compete in the theatrical exhibition of first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas; they compete to attract movie-goers to their theatres and the exclusive right to show films in Chicago North, Midtown Manhattan, and downtown Seattle. The proposed merger, and the threatened loss of competition that would be caused by it, precipitated the government's suit.

C. **Anticompetitive Consequences of the Proposed Transaction**

The Complaint alleges that the theatrical exhibition of first-run, commercial films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas each constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. First-run, commercial films differ significantly from other forms of entertainment. The experience of viewing a film in a theatre is an inherently different experience from a live show, a sporting event, or viewing a DVD or videotape in the home. Ticket prices for first-run, commercial films are also generally very different than for other forms of entertainment. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to other forms of entertainment so as to make the increase unprofitable.

Moviegoers typically do not want to travel very far from their homes to attend a movie. From a moviegoer's standpoint, theatres outside Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas are not acceptable substitutes for theatres within those areas. A small but significant increase in the price of tickets for first-run films in those

areas would not cause a sufficient shift to theatres outside those areas to make the increase unprofitable.

From a distributor's standpoint, there is no alternative to screening its first-run, commercial films in first-run, commercial theatres. From the distributor standpoint as well, a small but significant decrease in prices (*i.e.*, a decrease in film rental fees) would not cause a sufficient shift by distributors to other locations outside of these markets to make the decrease unprofitable to exhibitors.

The Complaint alleges that the merger of AMC and Loews would lessen competition substantially and tend to create a monopoly in the markets for exhibition of first-run, commercial films in the relevant markets. The proposed transaction would create further market concentration in already concentrated markets, and the merged firm would control a majority of box office revenues and the majority of first-run, commercial theatres in those markets. In Chicago North, the merged firm would control all four first-run, commercial theatres with a market share position of 100%, as measured by box office revenues. Prior to the merger, AMC had the highest market share in Chicago North, with 60% of box office revenues. In Midtown Manhattan, the merged firm would control the only first-run theatres with stadium seating,[1] with a market share position of approximately 88% of box office revenues. Prior to the merger,

[1] Stadium seating theatres are theatres in which each row of seats is set on a tier that is higher than the tier on which the row in front of it is set. Moviegoers prefer stadium seating theatres over sloped floor theatres and are willing to pay more to view movies in stadium seating theatres. Exhibitors also view stadium seating theatres as superior to, and more competitively significant than, sloped floor theatres. For example, exhibitors are more likely to build new theatres in areas where the existing theatres are sloped floor than in areas where the existing theatres are stadium seating. Almost all newly constructed theatres are stadium theatres.

Loews had the highest market share in Midtown Manhattan, with 54% of box office revenues. In downtown Seattle, the merged firm would control all three first-run, commercial theatres and with a market share position of 100% of box office revenues. Prior to the merger, AMC had the highest market share in downtown Seattle, with approximately 56% of box office revenues. In downtown Boston, the merged firm would control both first-run, commercial theatres, with a market share position of 100%. Prior to the merger, Loews had the highest market share in downtown Boston, with approximately 64% of box office revenues. In north Dallas, the merged firm would control three of four stadium seating theatres, including the only two in north central Dallas, and five of the seven first-run, commercial theatres. The merged firm would enjoy a market share position of approximately 78%. Prior to the merger, AMC had the highest market share in north Dallas, with approximately 43% of box office revenues.

According to the Herfindahl-Hirschman Index ("HHI"), a widely-used measure of market concentration defined and explained in Exhibit A, the merged firm's post-transaction HHI in Chicago North would be 10,000, representing an increase of 4,814 points. In Midtown Manhattan the merged firm's post-transaction HHI would be 7,779, representing an increase of 3,633 points. In downtown Seattle, the merged firm's post-transaction share would be 10,000, representing an increase of 4,921 points. In downtown Boston, the merged firm's HHI would be 10,000, an increase of 4,635. In north Dallas, the merged firm's HHI would be 6,393, an increase of 2,976. These substantial increases in concentration would likely lead the merged firm to raise ticket prices.

Distributors license movies by film "zones" that reflect specific local areas. Generally, only one theatre within a zone will play a particular movie. There are two types of zones: "free

zones" (or "non-competitive zones") and "competitive zones." Free zones contain only a single theatre. Competitive zones contain two or sometimes more theatres competing for the exclusive license to exhibit a movie within the zone. The merger would convert four film zones in which AMC and Loews compete with each other for exclusive licenses to exhibit movies into zones in which there would be little or no such competition. In the Times Square zone in Midtown Manhattan, the merged firm would control all of the first-run, commercial theatres. Similarly, the merged firm would control all three first-run, commercial theatres in the film zone in downtown Seattle. In Chicago, the merged firm would control two adjacent film zones as a result of the transaction.

The proposed Final Judgment would leave the merged firm in control of only one film zone in Chicago North. Moviegoers will not be harmed by the merged firm's control of a film zone in Chicago North, as Chicago movie-goers tend to view theatres in an adjoining film zone as good substitutes, and the theatres tend to draw customer from overlapping areas. The proposed Final Judgment will preserve the premerger competitive situation in which movie-goers have two competitive exhibitors from which to choose, with each exhibitor operating both a stadium seating theatre and a slope floor theatre.

By reducing non-price competition, the merger would also likely lead to lower quality theatres by reducing the incentive to maintain, upgrade and renovate theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and North Dallas. Theatres compete on quality and other non-price factors such as sound systems, maintenance and cleanliness, and seat quality. Theatres also compete on quality through the number and range of showtimes. The merger would lessen the incentives that AMC and Loews have to maintain the quality, or

potentially upgrade, their theatres in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. As a result, the merger will have the likely effect of reducing the quality of the viewing experience for movie-goers in those markets. It also may allow the merged entity to reduce the number of shows as there no longer would be competitive pressure to continue early and late shows.

New entry into the Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas markets for exhibition of first-run, commercial films would be highly unlikely to eliminate the anticompetitive effects of this transaction. Entry is difficult in these markets because available, suitable land is scarce and new entrants are often reluctant to enter in areas where existing stadium theatres are located. With the exception of the theatre in north Dallas, all of the theatre assets to be divested are located in densely-built downtown or central city areas that are characterized by significant regulatory barriers to entry. In north Dallas, the theatre to be divested is located in an area north of downtown in north central Dallas. That area of Dallas has been substantially built out and generally lacks the amount of land that a large scale retail development that contains a theatre would require.[2] No new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years in any of the markets.

For all of these reasons, plaintiff has concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial films in Chicago

[2] In recent years, most new theatres are built as part of broader commercial developments that include other retail establishments. The new commercial developments that include theatres are often malls, shopping centers, or so-called lifestyle centers. As a result, the land required for a new theatre would also need to contain space for other elements of the commercial development as well.

North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas, eliminate actual and potential competition between AMC and Loews, and likely result in increased ticket prices and lower quality theatres in those markets. The proposed merger therefore violates of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would preserve existing competition in the theatrical exhibition of first-run films in Chicago North, Midtown Manhattan, downtown Seattle, downtown Boston, and north Dallas. It requires the divestiture of a total of six theatres in the five markets: Webster Place 11 (Chicago North); City North 14 (Chicago North); E-Walk 13 (Midtown Manhattan); Meridian 16 (downtown Seattle); Fenway 13 (downtown Boston); Keystone Park 16 (north Dallas). The divestitures will preserve choices for movie-goers and distributors. The divestitures will make it less likely that ticket prices will increase, theatre quality will decline, the number of theatres to which movie studios distribute their movies will decline, or movies will be distributed to lower quality theatres in the listed markets as a result of the transaction.

Unless the United States grants an extension of time, the divestitures must be completed within 120 calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, AMC and Loews must maintain and operate the six theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations.

The divestitures must be to a purchaser or purchasers acceptable to the United States in

its sole discretion, after consultation with the States of Illinois and New York, and the Commonwealth of Massachusetts as appropriate. Unless the United States otherwise consents in writing, the divestitures shall include all the assets of the theatres to be divested, and shall be accomplished in such a way as to satisfy the United States that such assets can and will be used as viable, ongoing first-run theatres.

If defendants fail to divest these theatres within the time periods specified in the Final Judgment, the Court, upon application of the United States, is to appoint a trustee nominated by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that AMC and Loews will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. Under Section V(d) of the proposed Final Judgment, the compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the theatres remaining to be divested, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. Timeliness is paramount. After appointment, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. Section V(g) of the proposed Final Judgment provides that if the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiffs and defendants, who will each have the right to be heard and to make

additional recommendations.

If the defendants or trustee are not able to obtain a landlord's consent to sell one of the theatres to be divested, Section VI of the proposed Final Judgment permits the defendants to select an alternative theatre that competes effectively with the theatre for which landlord consent was not obtained to divest. The United States, in its sole discretion, after consultation with the States of Illinois and New York and Commonwealth of Massachusetts as appropriate, shall determine whether the theatres offered are actually competing with those that could not be divested due to a failure to obtain landlord consent. This provision will insure that any failure by the defendants to obtain landlord consent by the defendants does not thwart the relief obtained in the proposed Final Judgment.

The proposed Final Judgment also prohibits the defendants from acquiring any other theatres in Cook County, Illinois; New York County, New York (Manhattan); King County, Washington; Suffolk County, Massachusetts; and Dallas County, Texas without providing at least thirty (30) days' notice to the U.S. Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino ("HSR") premerger notification statute.

IV. **REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act,

15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

John R. Read
Chief, Litigation III
Antitrust Division
United States Department of Justice
325 7th Street, NW Suite 300
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the

parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against AMC's merger with Loews. Plaintiff is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the exhibition of first-run, commercial films in the relevant markets identified in the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;
>
> (B) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy

secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

"Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). Thus, in conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460-

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[3] 119 Cong. Rec. 24598 (1973) (statement of Senator Tunney). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

62. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not

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[4] *Cf. BNS*, 858 F.2d at 464; 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist' s reducing glass"); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id*. at 1459-60.

VIII. **DETERMINATIVE DOCUMENTS**

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: December 20, 2005

Respectfully submitted,

_____/s/_____

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EXHIBIT A
DEFINITION OF HHI AND
CALCULATIONS FOR MARKET

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.