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March 1, 2001

Karen Berg, Esq.
Federal Trade Commission
Bureau of Competition, Room 303
600 Pennsylvania Avenue, NW
Washington, DC 20580

Comments with Respect to Proposed
Amendments to Rules 802.50 and 802.51

Dear Ms. Berg:

As a lawyer who frequently represents clients in acquisitions of foreign assets and of voting securities of foreign issuers, I wish to submit the following comments to the proposed amendments to Sections 802.50 and 802.51 of the Premerger Notification Rules (the "Rules").

1. Sales in or into the United States. With respect to proposed Sections 802.50(a), 802.51(a)(2) and 802.51(b)(2) of the Rules, I object to the new requirement of combining the sales of the acquired person in or into the U.S. during the acquired person's most recent fiscal year with such sales since the end of that fiscal year for the following reasons:

- The measuring period for sales in or into the U.S. is potentially longer than one year (and in some cases close to two years) which is inconsistent with the rest of the Hart-Scott-Rodino regulatory scheme in which the related concepts of "net sales" and "dollar revenues" are normally based on one full year of operations.
- Requiring the calculation of sales in or into the United States since the end of the preceding fiscal year will lead in certain cases to uncertainty as to whether or not a transaction is reportable and places on the parties to a transaction the added burden of monitoring the sales of a foreign target while negotiations are in progress.

• The proposed rule may lead, in certain cases, to inequitable results and its effect seems to be to penalize acquisitions that take place late in the year. The following examples will illustrate:¹

Example 1. During 2002, A, a foreign person, proposes to acquire B, a foreign issuer. B's sales in or into the U.S. during 2001 were \$25 million. B has no assets in the U.S. As of March 31, 2002, the year-to-date sales of B in or into the U.S. were \$10 million. The parties plan to close on May 30, 2002 and conclude that no filing will be required. However, due to A's difficulties in obtaining financing, the closing date is postponed to November 30, 2002.

As of August 31, 2002, the year-to-date sales in a into the U.S. amounted to \$26 million. The transaction is now reportable although the same acquisition would have been exempt a few months earlier.

Example 2. Same facts but the closing is now delayed until February 2003. The sales of B in or into the U.S. for 2002 were \$36 million. The acquisition is exempt.

• The increase in the dollar threshold for sales in or into the U.S. from the current \$25 million for one fiscal year to \$50 million for a period of up to two fiscal years would not be a meaningful increase.

For these reasons, I recommend retaining the current concept of measuring the level of sales in or into the U.S. by reference to the most recent fiscal year of the acquired person.

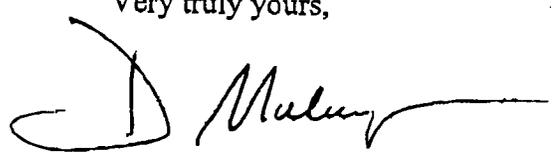
2. Multiple Foreign Issuers. Finally, I believe that § 802.51(b)(3) should be re-numbered § 802.51(c) since it is apparently meant to apply to both 802.51(a) and (b).

¹ These examples assume that the jurisdictional tests of the Act are satisfied and that the proposed amendments to § 802.50 and § 802.51 are in effect.

PAUL WEISS, RIFKIND, WHARTON & GARRISON
Karen Berg, Esq.

Thank you for your consideration of these comments.

Very truly yours,



Didier Malaquin

VIA FACSIMILE