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March 19, 2001

VIA HAND DELIVERY

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Ms. Constance K. Robinson
Director of Operations and Merger Enforcement
Antitrust Division
Department of Justice
Room 10103
601 D Street, NW
Washington, DC 20530

Re: Comment on Proposed Rules 802.50 and 802.51;
Hart-Scott-Rodino Antitrust Improvements Act of 1976

Dear Mr. Clark and Ms. Robinson:

On January 25, 2001, the Federal Trade Commission and the Department of Justice announced proposed changes to the rules under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and invited comment by March 19, 2001. The proposed rule changes include modifications to exemptions for certain acquisitions of foreign assets or voting securities of foreign issuers by United States persons and by foreign persons, 16 C.F.R. §§ 802.50, 802.51 (2000).

Under proposed Rule 802.50(a), the acquisition of foreign assets would be exempt from the Hart-Scott-Rodino filing requirements if sales in or into the United States attributable to such assets did not exceed $50 million during the acquired person's most recent fiscal year combined with such sales to date since the end of that fiscal year. Similar provisions appear in proposed Rules 802.50(b)(3) and 802.51. By including sales since the end of the acquired person's fiscal year, the proposed rules mark a change from the approach taken by the existing rules. According to the Statement of Basis and Purpose for the proposed rules, this change is intended to address situations where the acquired person's sales in or into the United States have trended sharply upward prior to the acquisition.

The provisions of Rules 802.50 and 802.51 governing the calculation of sales in or into the United States should not be adopted in their present form because they will result in uneven application of the rules based on the time of year an acquisition is completed. For example, if a transaction closes one day after the end of the acquired person' s fiscal year, relevant sales for purposes of these exemptions would be the acquired person's sales for up to the past 366 days (the acquired person's fiscal year plus one day). If, however, the transaction were to close one day before the end of the acquired person's fiscal year, relevant sales would cover up to 729 days (the acquired person's fiscal year plus 364 days).

The applicability of these exemptions should not depend on the time of year at which the transaction is closed. A more equitable way of determining relevant sales for purposes of these exemptions and capturing any recent increase in such sales would be to determine such sales in the 12 months prior to filing or to closing the transaction. As in the proposed rule, this calculation would be made within 60 calendar days prior to filing notification or, if no filing is required, within 60 calendar days prior to the consummation of the acquisition.

Sincerely,

Daniel L. Wellington