

801.40  
802.51(b)

[REDACTED]  
PROFESSIONAL CORPORATION

May 24, 2000

**FEDERAL EXPRESS**

[REDACTED]  
Patrick Sharpe, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
6<sup>th</sup> & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

*I am not an attorney.*

Dear Mr. Sharpe:

[REDACTED]  
Thank you for taking the time recently to discuss the Hart-Scott-Rodino ("HSR") analysis for a proposed transaction with me and [REDACTED]

[REDACTED] As we discussed, this letter is intended to summarize the relevant facts and to confirm that no HSR notification is required in connection with this proposed transaction.

The proposed transaction is the formation of a new Taiwanese corporation ("Newco"). The contributors to Newco will be the shareholders of an existing Taiwanese corporation ("Taiwan Co."), and the U.S. subsidiary ("U.S. Sub") of a Korean company. The substance of the transaction is that the shareholders of Taiwan Co. will contribute their shares in exchange for shares of Newco; U.S. Sub will similarly contribute one of its own U.S. subsidiaries ("Contributed Sub"), also in exchange for shares of Newco, plus a cash equalization payment of \$10 million funded by Newco's new Taiwan Co. subsidiary. (I do not believe that we discussed this cash equalization payment, but I don't believe it affects the analysis). As a result of and after the formation of Newco, no shareholder (or any HSR "person" which includes a shareholder) will have control over Newco, (as "control" is defined in the HSR regulations), and all shareholders of Newco -- or at least all shareholders that will receive Newco voting stock valued at \$15 million or more -- will be foreign persons under the HSR regulations.

As we discussed, the formation of Newco should be analyzed under Section 801.40 of the HSR regulations, governing the formation of joint ventures and other new corporations and entities. Since no shareholder will control Newco, and since Newco and all of its relevant shareholders will be foreign persons, then the acquisition of Newco shares by each of its shareholders is exempt from HSR reporting under Section 802.51(b). In addition, since the contribution of Taiwan Co. and Contributed Sub is part of the formation, no separate HSR report needs to be filed as to Newco's acquisition of Taiwan Co. or Contributed Sub.

[REDACTED]  
[REDACTED]

[REDACTED]  
PROFESSIONAL CORPORATION

Patrick Sharpe, Esq.  
May 24, 2000  
Page 2

Finally, as we discussed, while the formation is a single, integrated transaction as described above, governed by a single master agreement which makes all aspects of it legally interdependent upon all other components taking place, due to the technical requirements of Taiwanese law it will be required that the overall formation transaction actually occurs in several closely-timed steps. Under the master agreement, U.S. Sub and the shareholders of Taiwan Co. will first subscribe for Newco stock, paying cash, and shortly thereafter the same cash amount will be paid back to U.S. Sub and the shareholders of Taiwan Co. as the purchase price of Contributed Sub and Taiwan Co., respectively. Viewed separately, Newco's acquisition of Contributed Sub and Taiwan Co. would be reportable absent other exemptions. However, as we discussed, since the master agreement requires all steps to be taken as an integrated transaction, the essential substance of the transaction is the contribution of Contributed Sub and Taiwan Co. in a formation transaction, as described above. Therefore, the overall formation transaction, including the contribution of Contributed Sub and Taiwan Co., should be viewed as a single event which is exempt from HSR reporting, as discussed above.

Thank you once again for your time and consideration of this matter. Please do not hesitate to contact me as promptly as possible should you have any questions regarding this matter, or if you feel that this letter does not accurately summarize our discussion of the Hart-Scott-Rodino analysis for this transaction.

Very truly yours,

I concur.  
called [REDACTED]  
2:07 P.M. 5/25/00

cc: [REDACTED]

\* As part of the overall transaction, a Taiwan Co. shareholder, which is a foreign person, will purchase a portion of the Newco shares acquired by U.S. Sub for \$10 million in cash. We didn't discuss this step when we talked, but since Newco will still not be controlled by any entity following this additional transfer, I don't believe it affects the analysis. Because the seller, purchaser and issuer are all foreign person, this stock purchase is also exempt from reporting under the Section 802.51(b) exemption.