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# MEMORANDUM

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**ATTORNEY WORK PRODUCT**

**TO:** **B. Michael Verne**
**Federal Trade Commission**
**Premerger Notification Office**
**Bureau of Competition, Room 303**
**6th and Pennsylvania Avenue**
**Washington, D.C. 20580**

**FROM:** [redacted]

**DATE:** **July 17, 2000**

**SUBJECT:** **Proposed Transaction**

The purposes of this memorandum are to confirm our recent telephone conversations regarding the position of your office with respect to a "rollup" transaction and to provide you with a description of the transaction contemplated by our client, as well as our conclusions that no HSR filing is required. The Transaction Description is attached.

I will call you to discuss our conclusions. Should you have any questions concerning this matter or desire any additional information, my direct telephone number is [redacted]

Thank you for your assistance.

[redacted]

## TRANSACTION DESCRIPTION

Corporation X was formed for the purpose of acquiring businesses engaged in the fabricated structural steel business (SIC Code 3441). Corporation X does not have and will not have active business operations until the acquisitions referenced below are made, and Corporation X does not have annual net sales or total assets of $10 million or more. Individual X is currently the ultimate parent entity of Corporation X, and Individual X does not have annual net sales or total assets of $100 million or more.

It is proposed that Corporation X acquire ten businesses that are owned by ten different ultimate parent entities. Some of the businesses are conducted in multiple entities. The consideration for each acquisition will consist of cash and stock in Corporation X. It is proposed that all acquisitions occur simultaneously.

Only three of the ten businesses to be acquired by Corporation X have annual net sales of $25 million or more, and the annual net sales of each business is in excess of total assets of that business. Corporation X proposes to sequence the acquisitions based on the purchase price to be paid by Corporation X, with the first acquisition to be the business with the largest purchase price (Business A), the second acquisition to be the business with the next largest purchase price (Business B), and so on. The purchase prices of the businesses are based on their respective earning power, which is in turn based on prior years' earnings. The transaction will not close unless the businesses with the two largest purchase prices are acquired (Business A and Business B).

Using the sequencing referenced above, the first three acquisitions would be as follows: Business A, whose ultimate parent entity is Individual Y, having aggregate annual net sales of approximately $50 million; Business B having a different ultimate parent entity and having annual net sales of approximately $22 million; Business C having a different ultimate parent entity and having annual net sales of approximately $55 million.

Following the acquisition of Business A, Individual Y will be the ultimate parent

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entity of Corporation X, but Individual Y does not have annual net sales or total assets of $100 million or more. Following the acquisition of Business B, Corporation X will be a its own ultimate parent entity and will remain so through the completion of the remaining acquisitions.

Following the acquisition of Business C, Corporation X will then be deemed to purchase the remaining seven businesses, each of which has annual net sales and total assets of less then $25 million. The purchase price for each of the seven businesses will be less than $15 million.

**QUESTION**

Is any filing required under the Hart Scott Rodino Antitrust Improvements Act (as amended, the "Act") in connection the transactions described above?

**OUR UNDERSTANDING**

It is out understanding that the acquisitions described above will be treated for purposes of the Act as a sequence of transactions between Corporation X and each respective ultimate parent entity of each acquired business, rather the a single transaction. It is also the understanding that Corporation X can determine the sequence of the acquisitions if there is a reason for the sequence other than the avoidance of filing under the Act.

In this instance, the transactions will not occur unless Business A and Business B are purchased. The reason is that those two businesses represent the businesses with the two largest earnings, and without those businesses Corporation X will not have sufficient earnings to accomplish its business and financial objectives. In that event, it is our understanding that Corporation X will be permitted to sequence the acquisitions as follows: Business A, Business B and Business C.

Until the third acquisition (Business C), there would be no $100 million person within the meaning of the Act, and as a consequence it is our understanding that no filing would be required for those three acquisitions by Corporation X or the acquisition of the

stock of Corporation X by the owners of those businesses.

Following the third acquisition (Business C), Corporation X will be a $100 million person for purposes of the Act. However, each of the remaining seven businesses will be acquired for less than $15 million, and each has annual net sales and total assets of less than $25 million. As a consequence, it is our understanding each acquisition would qualify for the exemption of 16 C.F.R. 802.20 and that no filing would be required for those acquisitions.

AGREE - NO FILING IS REQUIRED. THE ACQUISITIONS ARE SEQUENCED IN THIS MANNER FOR LEGITIMATE BUSINESS REASONS, THEREFORE THERE IS NO AVOIDANCE ISSUE.

B Mitchell Vee
7/18/00

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