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C O U N S E L O R S A T L A W

[REDACTED]

September 11, 2000

BY FAX (202-326-2624) and U.S. Mail

Mr. Patrick Sharpe  
Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W. , Room 323  
Washington, D.C. 20580

10:10 AM  
SEP 11 2000  
FEDERAL TRADE COMMISSION

Re: Shipping Act Exemption

Dear Patrick:

I am writing to follow up on the telephone conversation that I had with you on Friday, September 8, 2000

As we discussed, our client, an ocean carrier, and other ocean carriers ("the venturers") intend to form a joint venture ("JV") in the near future. The JV will be structured as a U.S. corporation. The venturers will acquire and hold voting securities of the JV. The JV will operate an electronic trading portal for the container shipping industry. Initially, the JV's services will include: scheduling requests, booking requests, booking confirmation and activity plans, equipment dispatch, shipping instructions, bill of lading verification, tracking and tracing, proactive event notification, and reports and statistics. The parties anticipate ongoing discussions among themselves regarding the services listed here and the operation of the JV.

I called to discuss whether the Hart-Scott-Rodino Antitrust Improvement Act, as amended ("the HSR Act"), applies here, because the formation of the JV will likely satisfy the jurisdictional tests of 16 C.F.R. § 801.40 and one or more of the venturers may be making a reportable acquisition of JV voting securities.

*The Shipping Act Exemption*

Activities and agreements subject to the jurisdiction of the Federal Maritime Commission ("FMC") pursuant to the Shipping Act are exempt from the federal antitrust laws. See 46

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Patrick Sharpe  
September 11, 2000  
Page 2

U.S.C. app. §§ 1706. When a law granting such an exemption applies, the HSR Act does not apply, and no Notification and Report is required. 15 U.S.C. § 18a(c)(5, 6)

Maritime counsel for our client has discussed the formation and operation of the JV with the Federal Maritime Commission ("FMC"). We understand the FMC believes the JV is subject to filing with the FMC. Although the Shipping Act on its terms does not apply to the acquisition of voting securities, 46 U.S.C. app. §§ 1703(c), we understand the FMC bases its jurisdiction on the fact that the JV will entail an ongoing cooperative arrangement by or among ocean common carriers to "engage in exclusive, preferential or cooperative working arrangements among themselves . . . ." Such an agreement is within the scope of the Shipping Act (see 46 U.S.C. app. § 1703(a)(5) and 46 C.F.R. § 535.104(i)) and must be filed with the FMC. 46 U.S.C. app. § 1704. Because agreements filed with the FMC are, as noted above, exempt from the antitrust laws, no HSR Notification and Report would be required.

Based on our telephone discussion, I understand that you concur that no filing is required for the formation of the JV. Please advise me as soon as possible if you reach a different conclusion after reviewing this letter.

Thank you for your attention and prompt response.

Sincerely,

9/21/00  
Advised [redacted] to file under H-S-R  
for this transaction. It is not exempt per  
letter to R. Smith 8/7/98 with similar  
fact pattern.

PS