[redacted]

ATTORNEYS AT [redacted]

[redacted]

November 14, 2001

Ms. Alice Villavicencio
Premerger Notification Office
Bureau of Competition - Federal Trade Commission
Washington D.C. 20580

Re: Formation of Joint Venture
Acquisition of Voting Securities of a Foreign Issuer

Dear Mr. Villavicencio:

I am writing to discuss the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the Rules and Regulations promulgated thereunder, (the "HSR Act"), to certain hypothetical facts. A client ("Client"), a United States corporation, wishes to invest cash with another investor, a foreign corporation ("Investor"), to form two joint venture corporations overseas. Each corporation will be foreign corporation and will not initially have any assets (other than investment assets) or sales within the United States. After formation, these joint venture corporations may, in the future, acquire assets and have revenues in the United States. I would like to confirm whether a Notification and Report Form is required in connection with these transactions, as described below. The transaction involves the following facts:

1. Client is a United States person, its own ultimate parent entity, and has total assets and net sales in the United States in excess of $100 million.

2. Investor is a foreign person holding assets located in the United States having an aggregate book value of more than $100 million but annual net sales in the United States of less than $10 million.

3. Client and Investor will invest cash to form a holding company ("Holding") and an operating company ("Operating") that will be foreign corporations.

4. Upon its formation, Holding will have more than $200 million in assets but will have no assets located in the United States (other than cash or other investment assets). Having just been formed, Holding will not have had any prior sales in the U.S.

5. Upon its formation, Operating will have more than $200 million in assets but will have no assets located in the United States (other than cash or other investment assets). Having just been formed, Operating will not have had any prior sales in the U.S.

[redacted]

6. Holding will issue Class A Shares to Investor and Class B Shares to Client in equal numbers. While not strictly relevant to the exemptions discussed herein, Class A Shares held by Investor will have the right to elect 10 of Holding's eleven directors (90.9%). Class B Shares held by Client will have the right to elect one of Holding's eleven directors (9.1%). For the purpose of calculating votes exercised at a meeting of the Holding's Board of Directors, 100 nominal votes shall be allocated to the Directors in the aggregate, with nine nominal votes to be exercised by the director elected by the Class B Shares and 91 nominal votes to be exercised by those directors elected by the Class A Shares. Accordingly, Investor will control Holding.

7. Operating will issue Class A Shares to Investor and Class B. Shares to Client in equal number, and Operating will also issue Class AA Shares to Holding. While not strictly relevant to the exemptions discussed herein, Class A Shares held by Investor will have the right to elect 10 of Operating's eleven directors and will otherwise exercise 90% of the shareholder vote. Class B Shares held by Client will have the right to elect one of Operating's eleven directors and will otherwise exercise 9.9% of the vote. The other 0.1% of the voting power of the shareholders will be exercised by the Class AA shares. For purpose of calculating votes exercised at a meeting of the Operating's Board of Directors, 100 nominal votes shall be allocated to the Directors in the aggregate, with nine nominal votes to be exercised by the director elected by the Class B Shares and 91 nominal votes to be exercised by those directors elected by the Class A Shares. Accordingly, Investor will control Operating. With respect to economic interests, 99 8% of any dividends or distributions will be distributed to the Class AA Shares and 0.2% to the other classes of stock.

Based on the foregoing facts, we request that you comment on the following conclusions:

1. Absent an applicable exemption, Client would be an acquiring person subject to the requirements of the HSR Act pursuant to Section 801.40(c)(2) because (i) Client will have total assets of more than $10 million, (ii) Holding and Operating will each have total assets of more than $100 million, and (iii) Investor will have annual net sales of more than $10 million.

2. Absent an applicable exemption, Investor would be an acquiring person subject to the requirements of the HSR Act pursuant to Section 801.40(c)(2) because (i) Investor will have total assets of more than $10 million, (ii) Holding and Operating will each have total assets of more than $100 million, and (iii) Client will have annual net sales of more than $10 million.

3. The acquisition of the voting securities of Holding and of Operating by Client will each be exempt from the requirements of the HSR Act pursuant to Section 802.50(b) because neither Holding nor Operating will be an issuer (i) that, at the time of formation, will have any assets located in the United States (other than cash or other "investment assets"), or (ii) that will have any sales in the United States because these entities have not yet commenced operation.

4. The acquisition of the voting securities of Holding and of Operating by Investor, a foreign person, will each be exempt from the requirements of the HSR Act pursuant to Section

[redacted]

802.51(b) because such acquisition will not confer control: (i) of an issuer which, at the time of formation, will hold any assets located in the United States (other than cash or other "investment assets"), or (ii) of any U. S. issuer.

In the Federal Trade Commission letter to Ms [redacted] dated August 13, 1981 and reprinted as Interpretive Release No. 265 in the Premerger Notification Practice Manual of the Section of Antitrust Law of the American Bar Association, 1991 edition, the FTC staff agreed with the proposition that the formation of a joint venture corporation would be exempt under Section 802.50(b) where each of the venturers would be purchasing shares of a foreign corporation holding no assets located in the United States. Based on the above analysis, we believe that the formation of these joint ventures are exempt from the requirements of the HSR Act pursuant to Sections 802.50(b) and 802.51(b). Accordingly, we believe that no Notification and Report Form must be filed in connection with this transaction and that it may close without complying with any waiting period under the HSR Act. Please confirm our understanding and please confirm that the investments by Client and Investor in the joint ventures Holding and Operating will not be subject to the requirements of the HSR Act.

Enclosed with this letter is a photocopy of a request pursuant the Freedom of Information Act. Although we will be proceeding based on your oral confirmation, we look forward to receiving your reply with your comments and would appreciate a written response in this matter if possible. Should you have any questions or require additional information, please call me at [redacted] Thank you for your assistance in this matter.

With best wishes,

[redacted]

[redacted]

Agree. Called Weiss AV
on 11/14/2001 the transaction are
exempt.
The acquisition by U.S. corp
and Foreign Corp. are
exempt under 802.50(b),
and 802.51(b) respectively.
ME Comments.

[redacted]