

504.20 (b), 17(a)(1)(B)

[REDACTED]

January 23, 1991

Mr. Dick Smith
Federal Trade Commission
Premerger Notification Office
Sixth and Pennsylvania Avenues N.W.
Washington, DC 20580

905

Re: Compliance with the Hart Scott Rodino Act (the "Act")

Dear Mr. Smith:

encl. 2

This letter will confirm our telephone conversation of January 23, 1991. As we discussed, this firm represents a company ("Acquiring Person") with assets or annual net sales exceeding One Hundred Million Dollars (\$100,000,000). The Acquiring Person has entered into an agreement to purchase one hundred percent (100%) of the voting securities of four companies (individually, each is an "Acquired Person", collectively, the "Acquired Persons") which are not engaged in manufacturing. The total purchase price of Eleven Million Three Hundred Thousand Dollars (\$11,300,000) is allocated amongst the four Acquired Persons in the following amounts: \$3,300,000 to two of the companies collectively; \$200,000 to one of the companies; and \$7,800,000 to the last of the companies. In addition to this purchase price, the selling shareholders will receive, over a period of ten years, approximately \$5,030,000 collectively in consideration of their entry into separate employment agreements which contain individual covenants not to compete. Pursuant to the Act, it would appear that the proposed transaction is not exempt from filing requirements.

However, you advised that 16CFR §802.20 (the "Regulation") overrides the Act. Subsection (b) of the Regulation sets forth the test to be applied in the proposed transaction because the Acquiring Person is acquiring one hundred percent (100%) of the voting securities of each Acquired Person. Filing is required only if any Acquired Person has either annual net sales or total

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not equal to
equal to

assets exceeding Twenty-Five Million Dollars (\$25,000,000). You advised that the test is applied to each Acquired Person individually and annual net sales or total assets are not aggregated amongst the Acquired Persons to determine whether filing is required. If any one Acquired Person's annual net sales or total assets exceed Twenty-Five Million Dollars (\$25,000,000), filing is required for that Acquired Person only.

We have determined that none of the four (4) Acquired Persons have annual net sales or total assets exceeding Twenty-Five Million Dollars (\$25,000,000); and therefore, under Subsection (b) of the Regulation, the proposed transaction is exempt from filing.

Please confirm that, based on the facts described herein, the proposed transaction is exempt from filing. We would appreciate your prompt attention to this matter as we anticipate our closing to occur February 19, 1991.

Thank you for your cooperation and assistance.

Very truly yours,

[Redacted signature block]

and [Redacted]

speculation 1/29/91 he will call back appears that one person controls all four companies and that a filing will be made because total assets of the acquired person are over 10MM and the acquiring person will pay the 20,000 filing fee.

[Redacted]

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