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Rule 802.50

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May 3, 1991

VIA FAX
202/326-2050

Federal Trade Commission
Bureau of Competition
Premerger Office
Washington, D.C. 20580

Attention: Jeff Dahnke, Attorney

Dear Mr. Dahnke:

The purpose of this letter is to confirm our telephone conversation regarding the application of Section 7A of the Clayton Act and the Premerger Notification Rules to the following facts:

Company A is a U. S. corporation and an ultimate parent entity. Company B is a U. S. corporation, whose ultimate parent entity is a foreign person. Company C is a foreign corporation, the securities of which are wholly owned by Company B. Company C does not control any other entity.

Company A proposes to acquire greater than 15% of the assets of Company B and 15% or greater of either the assets or securities of Company C. Companies A, B and C are all engaged in manufacturing. Company A has annual net sales or total assets of $100,000,000 or more. Companies B and C have annual net sales or total assets of $10,000,000 or more, on a consolidated basis. The acquisition price would be approximately $20,000,000.

We would like to confirm the application to the above facts of Rule 801.15 and corresponding rules regarding whether

the assets or securities of Company C are to be deemed held as a result of the acquisition for purposes of Section 7A(a)3 of the Act and Premerger Notification Rule 802.20.

If Company A acquires the assets of Company C, Rule 801.15(b) provides that the assets of Company C located outside of the U. S. will not be deemed held as a result of the acquisition if the requirements of Rule 802.50(a)(2) are met with respect to those assets. Rule 802.50(a)2 provides that the acquisition of assets located outside of the U. S. are exempt from the requirements of Section 7A of the Clayton Act unless, as a result of the acquisition, the acquiring person would hold assets to which sales in or into the U. S. aggregating $25,000,000 or more during the acquired person's most recent fiscal year were attributable. The Commission staff's interpretation of this rule with respect to the above facts is that sales attributable to assets of Company B must be included with sales attributable to assets of Company C in determining whether there are sales of $25,000,000 in or into the U. S. Accordingly, if the annual net sales of Company B and C in or into the U. S. in the most recent fiscal year are less than $25,000,000, Rule 801.15(b) would provide, through Rule 802.50(a)2, that the assets of Company C located outside of the U. S. would not be deemed held as a result of their acquisition in connection with the acquisition of assets of Company B.

If Company A acquires the securities of Company C, Rule 801.15(b) would apply if the requirements of Rule 802.50(b) are met. Rule 802.50(b) provides that the acquisition of voting securities of a foreign issuer is exempt unless the issuer (including all entities it controls) either holds assets in the U. S. of $15,000,000 or more or made sales in or into the U. S. during its most recent fiscal year of $25,000,000 or more. In applying this rule to the facts outlined above, it is our understanding that the Commission staff would aggregate the assets and sales of Company C with those of Company B in determining whether Company C holds assets of $15,000,000 or more in the U. S. or made sales of $25,000,000 or more in or into the U. S. in its most recent fiscal year. Accordingly, if Company B and Company C together do not hold assets in the U. S. of $15,000,000 or more and have not made sales in or into the U. S. in their most recent fiscal years of $25,000,000 or more, Rule 801.15(b) would provide, through Rule 802.50(b), that the voting securities of Company C would not be deemed held as a result of the acquistion of assets of Company B.

Assuming, based on the interpretations above, that the assets or securities of Company C are not deemed held as a result

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of the acquisition, Section 7A(a)3 of the Act and Rule 802.20 would provide that Company A's acquisition of assets of Company B would not require the filing of a premerger notification form unless the value of the acquired assets of Company B and any acquired assets of Company C held in the U. S. exceeds $15,000,000.

We understand that you will review this letter and confirm that our interpretation is correct.

Thank you for your cooperation.

Sincerely,

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called [redacted] - letter correct, current position of PMN office is to aggregate us + foreign components.