

July 19, 1991

Mr. Patrick Sharpe  
 Premerger Notification Office  
 Federal Trade Commission  
 Room 303  
 6th Street and Pennsylvania Ave., N.W.  
 Washington, D.C. 20580

Dear Mr. Sharpe:

This letter serves to confirm our telephone conversation of Wednesday, July 3, 1991. Pursuant to that conversation, you, [REDACTED] and I discussed the circumstances under which a new premerger notification and report form would not be required to be filed on behalf of the acquiring person for a transaction which meets the requirements of Section 7A of the Clayton Act and the rules and regulations promulgated thereunder. The facts we discussed are as follows:

A, a partnership, has contracted to make an asset acquisition (the "Acquisition"). A has two partners, B (also a partnership) and X. By the terms of the A partnership agreement, B (and not X) controls A, within the meaning of "control" set forth in Section 801.1(b) of the Hart-Scott-Rodino Antitrust Improvements Act (16 C.F.R. §801.1(b)).

B presently has two partners, C (also a partnership) and D. By the terms of the B partnership agreement, C (and not D) controls B. C has one partner, E which controls C. E is a corporation which is its own ultimate control person.

As a result of the above, A, the entity making the acquisition, is controlled by B, which is controlled by C, which is controlled by E. B, C, and E do not currently have, nor will they have at the time of the closing of the Acquisition, any assets other than those held or derived by A.

Although E (through C), presently controls B (which controls A), it is possible that at the time of closing of the Acquisition, B will not be controlled by C nor by any other person, but rather will be its own ultimate control person which controls A.

Due to the fact that the acquiring and acquired persons must file premerger notification and report forms for the Acquisition and wait until

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Mr. Patrick Sharpe  
July 10, 1991  
Page 2

expiration of the waiting period before they may close on the Acquisition and due to the fact that it is unknown whether, at the time of closing of the Acquisition, B (which controls A) will be controlled by E (through C) or will be its own ultimate control person, E proposes to file a premerger notification and report form as the present ultimate control person of B and A.

Since the only asset held now and at the time of closing of the Acquisition by E, is, and will be, its partnership interest in C, whose only asset now and at the time of closing of the Acquisition is, and will be, its partnership interest in B, a premerger notification and report form filed by E or B, as the ultimate control person of A in connection with the Acquisition, would contain the same information (other than the identity of and, in the case of E, the shareholders of, the ultimate control person).

Based on the facts set forth above, it is my understanding that the Federal Trade Commission's Premerger Notification Office would not require B to file a premerger notification and report form for this Acquisition as the ultimate control person of A if, at the time of closing of the Acquisition B, and not E (through C), is the ultimate control person of A, if (i) E had already filed a premerger notification and report form for this Acquisition as the ultimate control person of A and (ii) E indicated in such form that at the time of closing of the Acquisition B could potentially not be controlled by E (through C) but could be its own ultimate control person which controls A.

If this letter does not correctly reflect our conversation or the views of the Premerger Notification Office please contact me as soon as possible. Unless I hear from you to the contrary I will continue to advise my client in accordance with the analysis set forth above.

Very truly yours,

[REDACTED]

[REDACTED]

This appears to be OK. It is merely a name change - the form (SIC info) remains the same for the anti-trust analysis.

called [REDACTED]  
7-12-91 and left  
message

(PS) RS concurs