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[REDACTED]

[REDACTED]

Material may be subject to  
confidentiality provision of  
Section 7A (b) of the Clayton Act  
which restricts release under the  
Freedom of Information Act

[REDACTED]

July 19, 1991

John M. Sipple, Jr., Esq.  
Chief  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580

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FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION

Dear Mr. Sipple:

[REDACTED] and I, representing the buyer and seller, respectively, in a pending transaction, have encountered a difference in opinion on an HSR point, and we have agreed to ask you to advise us of the position of the Premerger Office. The buyer, a "foreign person" for purposes of the HSR regulations, proposes to buy certain assets located in the United States. The size-of-person test is met. Please assume for purposes of the hypothetical that, as of the date of the closing, the last regularly prepared balance sheet of the seller will show that the book value of the U.S. assets to be transferred is \$10 million. (This balance sheet will also include assets other than the U.S. assets to be transferred to the buyer, a fact I assume is not material.) Please assume further that the consideration to be given for the U.S. assets to be acquired is \$20 million, and that the fair market value of such assets is \$20 million.

As we see it, the question is whether in this hypothetical the parties are entitled to rely upon the exemption set forth in Section 802.51(c), which, as you know, exempts an assets acquisition by a "foreign person" if the "acquisition is of less than \$15 million of assets located in the United States (other than investment assets)." Section 802.51(c) does not say whether the \$15 million test refers to consideration, fair market value, or book value. Though I

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have no knowledge as to how this question would be resolved pursuant to the first principles of justice, my understanding of the position of the Premerger Office is that, for purposes of applying Section 802.51(c) one is to look to the last regularly prepared balance sheet of the seller, not to the rules of valuation of assets set forth in Section 801.10. Accordingly, as I understand it, the 802.51(c) exemption would apply to the hypothetical set forth above and no filing would be required. [REDACTED] understanding is to the contrary.

I would very much appreciate hearing from you on this matter. My telephone number is [REDACTED]. If I do not hear from you in a few days, I will follow up with a telephone call.

Thank you very much in advance for your attention to this inquiry.

Sincerely yours,

[REDACTED]

cc: [REDACTED]

Called on 7/22. Advised that <sup>under</sup> ~~applying~~ § 802.51(c) it is the transaction size, or in this case, the consideration or ~~on~~ fair market value, that governs the applicability of this exemption.