

OK

[REDACTED]

August 30, 1991

BY TELECOPIER: (202) 326-2050

Patrick Sharpe
Premerger Notification Office
Room H-303
Federal Trade Commission
Washington, DC 20580

CONTAINS CONFIDENTIAL
BUSINESS INFORMATION

Re: Confirmation of Informal Interpretation of
the Hart-Scott-Rodino Antitrust
Improvements Act of 1976

Dear Patrick:

This will confirm our several telephone conversations in the last two days with [REDACTED] regarding the reporting requirements when a service-providing corporation, which we will call SERVCO, forms a holding company.

DESCRIPTION OF TRANSACTION: SERVCO has been engaged in business for several years and has total assets and annual revenues greater than \$10 million but less than \$100 million. SERVCO has formed a new Delaware holding company, HOLDCO, and a wholly-owned subsidiary of HOLDCO that we will call SHELL. The incorporator of HOLDCO has caused HOLDCO and [REDACTED] to enter an agreement with SERVCO pursuant to which there will be a "reverse triangular merger" of SHELL with and into SERVCO and each SERVCO shareholder will receive one share of HOLDCO for each share presently held in SERVCO.

APPLICATION OF THE ACT: Nancy agreed that this is not a reportable transaction. Staff considers such a transaction within the Act's Exemption (c)(10). (This was discussed in Interpretation 144 of the ABA Premerger Notification Practice Manual [1985 edition] and will be dealt with more clearly in the 1991 edition.) Also, it fails the "size of person" test: the putative "acquiring person" HOLDCO has less than \$10 million in assets and liabilities, and no person controls HOLDCO. Finally, SERVCO's formation and capitalization of HOLDCO was not subject to 16 C.F.R. 801.40 because the holding company was formed "in connection with a merger."

agreed
see # 39
New
PMPM

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This treatment under the Act is consistent with economic reality. The formation of the holding company and the exchange of its shares for former holdings in the operating company SERVCO is of no competitive significance and results in the equivalent of a reincorporation in Delaware.

We appreciate the Premerger Office's help in clarifying the application of the Act to this transaction. If I have made any erroneous statements above, I would appreciate your calling me immediately either on our direct D.C. line [redacted] or at the [redacted] number above.

Sincerely yours,
[redacted]

[redacted]
called [redacted] and informed him that this is exempt under C-10.

(85)

(JS) concurs

AD
This is exempt under C-10 see # 38 ^{new} premerger practice manual.

Supervising a holding company over an operating ^{co.} with the shareholders of the operating company exchanging ^{the} shares of operating co for holding shares is exempt. This assumes the issue of no other shares by holding at that time, and that the shares are exchanged in same percentage held prior to the exchange.