

801.2(a); 801.1 (c)(1)

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February 4, 1992

Richard B. Smith, Esq.
Federal Trade Commission
Premerger Office
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20583

Dear Mr. Smith:

As you recall, I had asked for the Premerger Office's views on the HSR Act reportability of a transaction involving an agreement between two persons whereby one person would contribute the stock of its subsidiary to a partnership owned by the other person in exchange for a controlling interest in that partnership. See the attached letter to you dated January 23, 1992. The January 23 letter discusses several reasons why that transaction should be exempt from the requirements of the HSR Act.

On January 30, you informed me by telephone that the Premerger Office believes that the hypothetical transaction described in the January 23 letter -- which consists of both a stock and a partnership interests acquisition -- would not trigger any filing obligations. In essence, the stock acquisition would be exempt under Section 7A(c)(3) of the HSR Act since the same entity would be both the acquiring and acquired person. The partnership interest acquisition, of course, is non-reportable since it does not involve the purchase of either assets or voting securities.

As we discussed, the key issue in analyzing the filing obligations for the stock transaction is the determination of who is the acquiring person. That question in turn would seem to depend on whether the two parts of the

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acquisition are deemed to occur simultaneously. If the transactions are simultaneous, then the same person would control the corporation before (directly) and after the acquisition (indirectly through the partnership).

You indicated to me that under the above-described circumstances that the Premerger Office would view the transaction to have occurred simultaneously. Key factors in making this assessment were that: (1) there were only two contracting persons involved; (2) there was one acquisition agreement; (3) the two relevant interests were consideration for each other; and (4) the entire transaction would occur at one closing. Under such a "continuum analysis", if both elements were an inseparable part of one continuous transaction, the Premerger Office would look at the result of the transaction when the parties "get up from the table."

I understand that if the transaction is not structured as a simultaneous exchange or that somehow one aspect of the transaction is postponed, different HSR implications may result.

If this letter does not accurately set forward your statements or you wish to comment further, please do not hesitate to call me.

Very truly yours,


Attachment