

801.2; Sec. 7A (a)

April 3, 1992

Mr. Richard B. Smith
Federal Trade Commission
Pre-Merger Notification Office
Bureau of Competition
Room 303, Federal Trade Commission
Washington D.C. 20580

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FEDERAL TRADE
COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

Mr. Richard B. Smith
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Bureau of Competition
Room 303, Federal Trade Commission
Washington D.C. 20580

Re: Informal Opinion:
Reportability Under Hart-Scott-Rodino Act

Dear Mr. Smith:

This letter is to confirm our telephone conversation of April 1, 1992, in which you participated with myself and [redacted] of this office and [redacted]. We related the following facts to you:

Processor and a company are entering into a supply agreement for a term of six years, with renewal periods of five years each, whereby company will purchase from processor finished products produced by processor in the ordinary course of business. The portion of finished products represents approximately 90% of processor's current production levels. Company purchases these products in the ordinary course of business, and, in fact, currently purchases a small amount of the finished products from processor. Either party may terminate the contract; however, there is a penalty payment for termination. The parties will form joint committees to oversee production under the agreement. A purchase option will be granted to the company which is allowed to be exercised after the third year of the supply agreement. The option price will be competitive. The company will also possess a right of first refusal for any purchase of the processor's assets.

We understand that your conclusion is that the supply agreement is not reportable, but that the option, if exercised, may be reportable. You expressly made no opinion regarding any other antitrust implications of the proposed agreement.

Mr. Richard B. Smith
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Page 2

If any of the above does not comport with your understanding of the informal opinion expressed in our telephone call, please contact us immediately.

Very truly yours,

[Redacted signature block]

[Redacted]

cc:

[Redacted]

4/6/92 called [Redacted].

She said that the joint committee to be formed to oversee production under the agreement would not convey any beneficial interest in processor's assets to the company. The joint committee will merely advise on the quantities of products needed the type of packaging that is necessary, etc. I advised that on the basis of the facts in this letter, no HSR filing would be needed except possibly before the option to purchase processor's assets is exercised or before exercise of right of first refusal.

[Redacted]