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[REDACTED]

September 9, 1992

Patrick Sharpe, Esquire - *not an attorney*
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W., Room 321
Washington, D.C. 20580

SEP 9 4 12 PM '92
FEDERAL TRADE COMMISSION
PRELIMINARY REGISTRATION

Re: H-S-R Informal Opinion

Dear Patrick:

The purpose of this letter is to confirm the discussion we had yesterday regarding whether the contemplated acquisition described below is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, "The Act." During that conversation, I provided you with the following hypothetical and asked for your opinion regarding whether the acquisition would be a reportable transaction under the Act.

Company A (the ultimate parent entity included within person "A"), the acquiring person, satisfies the \$10 million prong of the size of person test but does not satisfy the \$100 million prong of the size of person test for either sales or assets.

Company B (the ultimate parent entity included within person "B"), the acquired company, is [REDACTED] that is in Chapter 11. Prior to filing for Chapter 11 protection in 1990, Company B had sales well in excess of \$100 million. Since 1991, however, Company B has operated in bankruptcy pursuant to a processing agreement with Company C.

Go by last annual income statement & last report prepared by preparer balance sheet

Company C has no ownership interest in Company B and Company C retains title to the [REDACTED] produced pursuant to the processing agreement. In addition, Company C will not be a party to the acquisition of Company B by Company A, however, it is contemplated that a processing agreement similar to the existing processing agreement with Company C will be maintained by Company A after the acquisition of Company B by Company A.

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[Redacted]

should be total

In the most recent fiscal year, Company B's annual net assets as stated on its last regularly prepared balance sheet was significantly less than \$100 million. In addition, Company B's net revenues derived from the processing agreement (Company B's only revenues) as stated on its last regularly prepared annual statement of income and expense were significantly less than \$100 million; even though the value of the [Redacted] produced for the benefit of Company C likely significantly exceeded \$100 million in the most recent fiscal year.

The above processing arrangement between Companies B and C was entered into for legitimate business reasons and predated any acquisition discussions between Companies A and B. In addition Companies A and B are not competitors. There is no suggestion that 16 C.F.R. § 801.90 of the FTC Rules and Regulations is implicated.

Total
not net

Based on the above factual scenario you confirmed that despite Company B's historical sales, the appropriate measure of net assets and net revenues for purposes of the size of person test is the net assets and sales as reflected on the most recently prepared balance sheet and annual income statement pursuant to 16 C.F.R. § 801.11(c). As such, because Company B's net asset and sales on its most recently prepared balance sheet and annual income statement are below \$100 million, coupled with the fact that Company A does not meet the \$100 million size of person threshold, the above described hypothetical would not be reportable under the Act.

If I have correctly stated the substance of our discussion and you concur in the conclusion reached therein please acknowledge your concurrence by calling me at the above telephone number.

Thank you very much.

Sincerely,
[Redacted Signature]

confirmed that total assets are less than \$100.m.m.

This does not meet the size-of-person test

called [Redacted]
9-10-92
(BS)