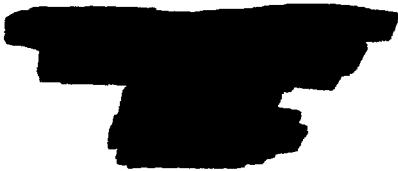


802.20; 802.50; 801.90



September 28, 1992

VIA FACSIMILE

Richard B. Smith  
Premerger Notification Office  
Bureau of Competition  
Room 301  
Federal Trade Commission  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Dick:

I am writing to set forth my understanding of the informal advice you gave me during our conversations on Wednesday.

The first hypothetical I gave you was one in which Party A, a U.S. person, was acquiring from Party B, for less than \$10 million, 100% of the voting securities of subsidiary X, a U.S. subsidiary with neither sales nor assets of \$25 million or more, and foreign assets of subsidiary Y, to which less than \$25 million in U.S. sales were attributable.

You advised me that there is no requirement to aggregate the assets and voting securities under either §802.20(b) or §802.50(a)(2). They need be aggregated only for purposes of determining whether the value of the transaction is over \$15 million, which in the hypothetical it is not. Each aspect of the transaction would be viewed separately. Because subsidiary X, the issuer from which Party A was acquiring 100% of the voting securities, had sales and assets of under \$25 million, it was not reportable under §802.20(b). Likewise, under §802.50(a)(2), the acquisition of the foreign assets was not reportable because less than \$25 million in U.S. sales were attributable to those assets. Therefore, the first hypothetical acquisition would not be reportable.

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In a second conversation, I provided you with a hypothetical in which subsidiaries X and Y were initially in a vertical relationship: subsidiary X wholly-owned subsidiary Y. Party A wanted to purchase 100% of the voting securities of subsidiary X, but only certain assets of subsidiary Y. Again, the transaction would be valued at under \$10 million. In such a case, I asked you whether it was necessary to include the total sales and assets of subsidiary Y for purposes of determining whether the sales or assets of subsidiary X (which controls subsidiary Y) equalled or exceeded \$25 million under §802.20(b). Although I made clear that not all of subsidiary Y was being sold, you stated that an aggregation of the sales and assets of subsidiary Y was required by §802.20(b). You stated that the assets and sales were measured by the last regularly prepared balance sheet and annual statement of expense and income, respectively, under §801.11(c). If they showed \$25 million or more in assets or sales, the requirements of §802.20(b) were met.

Prior to the sale, subsidiary Y would be spun off to another entity of the same acquired person. The sale would then involve the purchase of 100% of the voting securities of subsidiary X and certain assets of subsidiary Y, which would no longer be held by subsidiary X. Closing would not occur until after the fiscal year for subsidiary X had ended. A new regularly prepared balance sheet and annual statement of income and expense for subsidiary X would be prepared in the ordinary course of business showing that it had neither sales nor assets of \$25 million. You stated that if the new statements reflected the spin-off (therefore putting both sales and assets under \$25 million) and were prepared in the ordinary course of business, no filing obligation would exist for the acquisition.

I questioned whether such a spin-off and preparation of new financial statements in the ordinary course could be construed as an avoidance device under §801.90. You stated that even if there were an intent to avoid, the second prong of the §801.90 test would not be met because the substance of the transaction was the sale of 100% of the voting securities of an issuer, subsidiary X, with less than \$25 million in sales or assets, a transaction which was not reportable.

[REDACTED]  
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Thank you again for all your assistance. Please let me know if this does not accurately reflect the informal advice you provided me.

Sincerely,  
[REDACTED]

10/6/92 I agreed with conclusion in letter. In hypothetical on page 2, the "business justification" for the spin-off is that A only wants to purchase certain assets of subsidiary Y. The "substance" of the transaction after the spin-off is clearly non-reportable.

R.B. Smith