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801.1(b)
801.1(c)

[REDACTED]

[REDACTED]

September 30, 1992

Patrick Sharpe, Esquire *not an Attorney*
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 321
Washington, D.C. 20580

This material may be subject to the confidentiality provisions of Section 7A (b) of the Clayton Act which restricts release under Freedom of Information Act

Oct 2 2 00 PM '92
FEDERAL TRADE COMMISSION
COMMUNICATIONS SECTION

Re: H-S-R Informal Opinion

Dear Patrick:

The purpose of this letter is to obtain the views of your office regarding whether the contemplated acquisition described below is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, "The Act," or whether it is, as we believe, properly exempt as a realty transaction in the ordinary course of business pursuant to the Act and § 802.1 of the H-S-R Rules and Regulations. Over the last week we have had several conversations in which 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 [REDACTED] intends to acquire out of bankruptcy from [REDACTED] ^{52% of owner of} Company B [REDACTED] and 52 percent owner, approximately 19 acres of ^{what.} land with improvements in the form of a former distribution warehouse building. Both ^{see note} Company A and Company B satisfy the size of person test and the acquisition price is slightly in excess of \$15 million. Company B, the current owner of the real estate and warehouse building never has operated it in any commercial way. The last time the warehouse was operated was over two years ago prior to its owner filing for bankruptcy. At that time it was operated as a distribution warehouse by Company C, [REDACTED] ^{It does matter. It is income producing}

Companies A, B and C are/were in different lines of business. Company A will put to use the warehouse to distribute [REDACTED] but only after an investment, over and above the acquisition price, of approximately \$45 million in renovation, new construction and equipment.

[REDACTED]

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In response to the above hypothetical you initially stated that so long as W has ever produced an income stream it likely is considered productive assets and would not be exempt from the filing requirement as an acquisition of realty in the ordinary course of business under the Act and § 802.1 of the H-S-R Rules and Regulations.

We respectfully submit that given that:

- (1) What actually is being purchased is 19 acres of realty with a long dormant warehouse on part of the parcel;
- (2) the current owner never has operated the warehouse in any commercial way; and
- (3) improvements in the form of renovations, new construction and equipments equalling approximately four times the value of the acquisition will be completed by the purchaser to make the warehouse operational;

this acquisition is no different from one where a newly built warehouse is acquired from a developer and should qualify as an "ordinary course" realty transaction under § 802.1.

You agreed to circulate this letter within the Premerger Office and receive a consensus opinion as to the reportability of the described hypothetical. Please call me to discuss or if you have any questions.

Thank you very much.

Sincerely,
[REDACTED]
[REDACTED]

Note: I have talked to both parties and have found that the warehouse is owned by a revocable trust. There are at least four settlors of the trust (including B) that are also the beneficiaries. Consequently, each of the settlors are selling an undivided interest in a producing asset. Each transaction does not meet the size-of-transaction test. Thus, no filings are required.

Contacted [REDACTED] 10-4-92

(PS)