

801.1 (a)(2); 801.2 (a) and (b); 801.40

[REDACTED]

February 18, 1993

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BY HAND

Richard Smith, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dear Dick:

I am writing to confirm your advice during our telephone conversation yesterday concerning the applicability of the Premerger Notification Rules ("the Rules") to the transaction described below.

The constitution of Country C vests ownership of all its [REDACTED] in "the Nation." By legislative act of Country C, Agency A "is a decentralized agency with its own legal personality and patrimony, . . . whose purpose is . . . to oversee and carry out the strategic management of all activities comprised by the state [REDACTED] industry." The same law creates a number of other "decentralized agencies . . . with technical, industrial and commercial character and their own legal personality and patrimony." These additional agencies "have the character of subsidiaries with respect to [Agency A]." Among other things, they have the exclusive right to [REDACTED]

[REDACTED] in Country C.

Agency A is managed by a board of directors, a majority of whom are appointed by the government of Country C, and the rest of whom are appointed by the union that represents the workers at Agency A. The government also appoints the chief executive

[REDACTED]

Richard Smith, Esquire
February 18, 1993
Page 2

officer of Agency A. The government must approve the investment plans and programs, and the annual budgets of Agency A.

Agency A is not a corporation under the corporation law of Country C, but, as noted above, it does have separate legal personality under its own organic law.

Corporation Y was organized recently under the corporation law of Country C. 99% of the voting securities of Corporation Y are owned by Corporation Z, a [REDACTED] corporation. Agency A owns all the voting securities of Corporation Z.

Corporation X, a [REDACTED] corporation, owns an [REDACTED] in the United States. Agency A and Corporation X have entered into a memorandum of understanding for the establishment of a joint venture limited partnership to own, operate and expand that [REDACTED]. Specifically, they are considering entering into an "Asset Purchase and Partnership Formation Agreement" ("the Agreement"). Pursuant to the Agreement, Corporation X and Corporation Y will create, under [REDACTED] law, a new Limited Partnership P, which will have Corporation X as its sole general partner and Corporation Y as its sole limited partner. Each of the partners will have the right to 50% of the profits of Limited Partnership P.

Also pursuant to the Agreement, Corporation Y will pay Corporation X more than \$15 million for an undivided 50% interest in the oil refinery. Corporation X and Corporation Y will then each transfer its 50% interest in the refinery to Limited Partnership P.

At the time of this transaction, Corporation Y will not have a regularly prepared balance sheet, and its only asset will be the cash it is to pay to Corporation X. Corporation Z, which owns 99% of the voting securities of Corporation Y, has total assets or annual net sales of \$10 million or more. Corporation X has total assets and annual net sales of \$100 million or more.

You agreed that under these circumstances, (1) Agency A would be considered an agency of a foreign government other than a corporation engaged in commerce; (2) Agency A therefore would not be an "entity" as defined in § 801.1(a)(2) of the Rules; (3) Corporation Z therefore would be the ultimate parent entity of Corporation Y for purposes of the Rules; (4) Corporations X and Z therefore would be obligated to file premerger notification forms (as the acquired and acquiring persons, respectively) in connection with Corporation Y's acquisition of the 50% undivided interest in the [REDACTED] and (5) no one would be obligated to file a premerger notification form in connection with the

[REDACTED]

Richard Smith, Esquire
February 18, 1993
Page 3

formation of the limited partnership or the transfer of the
[REDACTED] to it.

Thank you again for your kind attention to this inquiry.

Sincerely,
[REDACTED]