

801-1 (c)(1)

March 23, 1993

BY FACSIMILE

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

Dear Mr. Smith:

This letter is in furtherance of our telephone conversation in early January of this year. In our call I explained to you that in April, 1989 our client had filed a Notification and Report Form for a transaction involving the acquisition (pursuant to a series of agreements) of working control of the assets and business of the acquired entity (consisting of a single manufacturing plant and associated assets). Also included were an agreed upon stream of income for managing the assets; the right to appoint three of five members of a committee with oversight responsibilities for the business; a commitment to provide [redacted] million in working capital; an agreement to cause the maintenance of scheduled principal and interest payments on the business' secured indebtedness; and the right exercisable until 1999 to acquire all remaining interests in the business.

The 1989 filing was made because it was our view (which I recall you concurred in at the that time) that sufficient indicia of beneficial ownership were being acquired to fall within the definition of an acquisition under the Hart-Scott-Rodino Act and the Commission's regulations.

[redacted]

March 23, 1993

Following the 1989 filing we received the standard form of letter from the Premerger Office. The prescribed waiting period ran its course, and the agreements described above were put into effect thereafter.

The company (*i.e.*, the acquired entity above) was placed into bankruptcy in 1992. A newly formed partnership, of which our client will have a 75% interest, is proposing to purchase all of its assets held by the bankruptcy trustee for a price exceeding \$15 million. Only recently, the Bankruptcy Court in Dallas, Texas has approved for circulation to interested parties a Disclosure Statement setting forth, *inter alia*, the proposed transaction.

It is our view that in light of the prior Hart-Scott-Rodino filing and observance of the waiting period in regard to the entity in question, no additional filing would be required of our client. I have confirmed since our conversation that the assets that the company possessed at the time of its bankruptcy and which will be acquired from the trustee are essentially the same as those it held at the time of the 1989 filing. Since you indicated agreement with our view provided that the assets were the same at both points in time, we intend to proceed on the basis that no second Hart-Scott-Rodino filing and second waiting period is required.

Sincerely,

3/24/93. called [redacted] advised that PMN office treated the 1989 filing as, constituting the taking of beneficial ownership of the assets of the acquired person once the waiting period was observed and the agreements were implemented. Since these events have now taken place (the original filings were based on the fact that the acquiring person was taking all interests in the acquired assets except for "naked title"), the acquiring person is deemed to hold such assets and need not file again.

PR Smith