

801.20(c)

[REDACTED]

[REDACTED]

[REDACTED]

May 7, 1993

VIA FIRST CLASS MAIL

Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

MAY 13 1993
COMMUNICATIONS SECTION

Dear Ms. Ovuka:

I am writing to confirm our conversation on April 26, 1993 regarding the applicability of the reporting requirements and waiting period under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") to the hypothetical situation described below.

Assume that individuals X and Y own 70% and 30%, respectively, of Corporation A, a trading company. Because of the nature of the industry in which Corporation A conducts its business, its annual net sales are necessarily in excess of \$100,000,000, although both its total assets and revenues (after deduction for cost of sales) are far below \$100,000,000. Corporation B has assets and annual net sales in excess of \$10,000,000. X, Y, Corporation A and Corporation B propose to enter into an agreement pursuant to which the following transactions will occur in the order indicated:

1. Corporation B will purchase from X and Y, proportionately, five percent (5%) in the aggregate of the common stock of Corporation A; and
2. Corporation A will redeem the remaining ninety-five percent (95%) of its common stock from X and Y.

You have advised me that so long as Corporation A's last regularly prepared annual statement of income and expense, prepared in accordance with generally accepted accounting principles, reflects annual net sales in excess of \$100,000,000, Corporation A will be deemed to have satisfied the "size of the parties"

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test, and no variance to account for cost of sales will be permitted in making this determination.

In addition, you have advised me that, while normally, neither the acquisition of 5% of an issuer's voting securities, nor the redemption of shares by an issuer, alone would be sufficient to trigger the reporting requirements of the Act, the ~~Federal Trade Commission~~ is of the opinion that where, as here, the combined effect of the stock acquisition and the redemption will be to convey control of an issuer to an acquiring person and the acquiring person is instrumental in the issuer's decision to redeem its stock, the combined transaction will be subject to the reporting requirements and waiting period set forth in the Act.

PMN.
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Finally, you have advised me that in completing the appropriate notification and report form, Corporation B will be considered the acquiring person, Corporation A will be considered the issuer and X will be considered the acquired person.

If the foregoing does not accurately reflect your understanding of our conversation, please contact me at your earliest opportunity. Your cooperation in this matter is greatly appreciated.

Very truly yours,

[REDACTED]

[REDACTED]

cc:

[REDACTED]

acquiring person will purchase 5%, then Corporation A will redeem all of its outstanding stock - leaving B in control. If B is instrumental and A redeeming all of its stock, transaction is reportable. See ABA #185 at p. 154.