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January 14, 1994

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__By Fax No. (202) 326-2050__

Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue N.W.
Washington, D.C. 20580

Attention: Nancy Ovuka, ~~Esq.~~

Re: Hart Scott Rodino Filing Requirements

Dear Ms. Ovuka:

We would like your opinion on whether it is necessary to file premerger notification forms in the following situation:

Corporation A, which is engaged in [redacted] and has annual sales in excess of $100 million intends to acquire all of the voting securities of Corporation B in exchange for preferred stock of Corporation A with a value of $5,908,000. Corporation B is engaged in [redacted] and owns and operates 13 [redacted] Before Corporation A acquires the voting securities of Corporation B, B will sell or spin off 8 of the 13 [redacted] The total assets of Corporation B as shown on its last regularly prepared consolidated balance sheet are $9.7 million. Total sales of Corporation B are in excess of $25 million as shown on its last regularly prepared consolidated income statement.

In addition to preparing a balance sheet and income statement for its consolidated operations, Corporation B regularly prepares separate balance sheets and income statements for each of the 13 [redacted] and other constituent operations. Total assets of the 5 [redacted] which will be acquired in this [redacted] [redacted]

[redacted]

transaction are $7.6 million when combined with the other assets of B that A will acquire as part of this transaction as shown on the last regularly prepared separate balance sheets maintained by B for its constituent operations. Each of those 5 [redacted] has annual sales of less than $25 million as shown on the last regularly prepared balance sheet for those [redacted]

Individual C owns 50% of the voting securities of Corporation B. C's last regularly prepared financial statements were prepared as of October 31, 1990. On that financial statement, C showed investment assets excluding all assets of Corporation B and excluding the fair market value of his ownership interest in Corporation B, of approximately $1.4 million.

Today, if individual C were to prepare a financial statement, his investment assets excluding all assets of Corporation B and showing no fair market value for his ownership interest in B would be $2 million. If C were to prepare a financial statement showing all of his investment assets plus the value of the assets A will acquire, C's total assets would be $9.6 million.

Under these facts, are filings required of the parties.

It is our understanding that under informal FTC opinions, if B were its own ultimate parent entity and if on B's last regularly prepared balance sheet it had anticipated the sale and spin off, such as by a footnote, no filing would be necessary. B would be entitled to rely upon that balance sheet for the conclusion that its assets at the time of the acquisition by A were less than $10 million. We believe that the present situation in which B has a regularly prepared balance sheet for each of its constituent operations should be treated in a like manner.

C will be required to prepare a new financial statement since his last regularly prepared statement was over 15 months ago and it was not prepared according to Hart Scott Rodino concepts. We believe that since C must prepare a new balance sheet in any event, he should be able to do so taking account of the sale and spin off, which will be part of this transaction but which will occur prior to the acquisition by A. Such a new financial statement could appropriately take account of what C's assets will be after the sale and spin off. Since C's assets will be less than $10 million, no filing should be required since C will not meet the size of the person test.

The parties hope to close this transaction by January 31, 1994. We would appreciate your cooperation in providing this matter prompt attention.

[redacted] [redacted]

[redacted]

Thank you in advance for your attention to this matter.

Very truly yours,

[redacted]

[redacted]

cc: Patrick Sharp, Esq. – not an attorney

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If, prior to the acquisition by A, monthly, regularly-prepared, balance sheets are drafted for individual [redacted] after divestiture of any [redacted] then C can consolidate all existing individual, monthly balance sheets. However, C cannot recreate a balance sheet to reflect his intent to spin-off [redacted] at consummation. C must use B's existing balance sheet(s), plus any investment income to determine size

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