

[REDACTED]

January 31, 1994

FEB 3 9 51 AM '94  
FEDERAL TRADE COMMISSION  
PRE-MERGER NOTIFICATION OFFICE

Richard Smith, Staff Attorney  
Federal Trade Commission  
Pre-Merger Notification Office, Room 303  
Washington, D.C. 20580

Dear Mr. Smith:

This letter sets forth the relevant facts of a contemplated merger by and among three corporations, as well as the basis upon which the relevant parties are exempt from the pre-filing notification requirements set forth in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). The purpose of this letter is to obtain the Commission's response to the conclusions regarding (i) the parties who have a reporting requirement; and (ii) the existence of an exemption to the reporting requirement for those parties. Statutory citations made herein are to HSR and the regulations promulgated thereunder.

FACTS

Corporations X and Y are to be merged into corporation Z. Corporation X is owned as follows: corporation A owns 82.5% of X's issued and outstanding stock and corporation B owns the remaining 17.5%. Corporation Y is owned entirely by corporation A. The surviving corporation Z is owned as follows: corporation A owns 65% of Z's issued and outstanding stock and corporation B owns the remaining 35%. The following tables summarize the relevant stockholdings of corporations A and B before and after the proposed merger.

PRE-MERGER

	<u>A</u>	<u>B</u>
Corporation X	82.5%	17.5%
Corporation Y	100%	0
Corporation Z	65%	35%

[REDACTED]

Richard Smith  
Federal Trade Commission  
January 31, 1994  
Page 2

POST-MERGER

	<u>A</u>	<u>B</u>
Corporation Z	approx. 75%	approx. 25%

As a result of the merger, the number of issued and outstanding shares in corporation Z owned by each of corporation A and B will increase, with corporation A owning approximately 75% of corporation Z, and corporation B's ownership interest falling to approximately 25%. For purposes of this analysis, assume that the transaction meets the requirements set forth in the (a) commerce test; (b) size of parties test; and (c) size of transaction test. 15 U.S.C.A. §18a(a).

APPLICATION

Since corporation A owns a controlling interest in corporation Z, the surviving corporation to the merger, corporation A is an acquiring person with filing responsibilities. However, an exemption from filing exists where an acquiring person owned at least 50% of the voting securities prior to the merger. 15 U.S.C.A. §18a(c)(3). Corporation A presently owns 65% of corporation Z's stock.

A second exemption is also available to corporation A, given its controlling interest in not only corporation Z, but corporations X and Y, as well. A party that is both an acquiring and acquired person in a merger shall be exempt from the notification requirements of HSR. 16 CFR §802.30.

Arguably, corporation B is also an acquiring corporation with reporting responsibilities, given that it will hold voting securities it did not hold prior to the merger. 16 CFR §801.2(d)(2)(i). However, an exemption from filing exists where the acquiring person's share of the voting securities acquired does not increase the acquired person's percentage interest in the outstanding voting securities of the issuer. 15 U.S.C.A. §18a(c)(10). The contemplated merger would reduce corporation B's interest in corporation Z from its present 35% to approximately 25%.

CONCLUSION

Corporations A and B are the two corporations which potentially have reporting obligations. Exemptions from the

[REDACTED]

Richard Smith  
Federal Trade Commission  
January 31, 1994  
Page 3

prefiling notification requirements exist for each of corporation A and B. Therefore, the contemplated merger of corporations X and Y with and into corporation Z is exempt from any prefiling notification requirements.

Pursuant to a previous telephone conversation with [REDACTED] of our office, I understand that your office will issue only an informal ruling (i.e., an oral response) to written inquiries. You may contact me at the telephone number set forth above with your conclusions. In the meantime, should you require any additional information, please do not hesitate to call. Your attention to this matter is greatly appreciated.

Sincerely,  
[REDACTED]

[REDACTED]

[REDACTED]