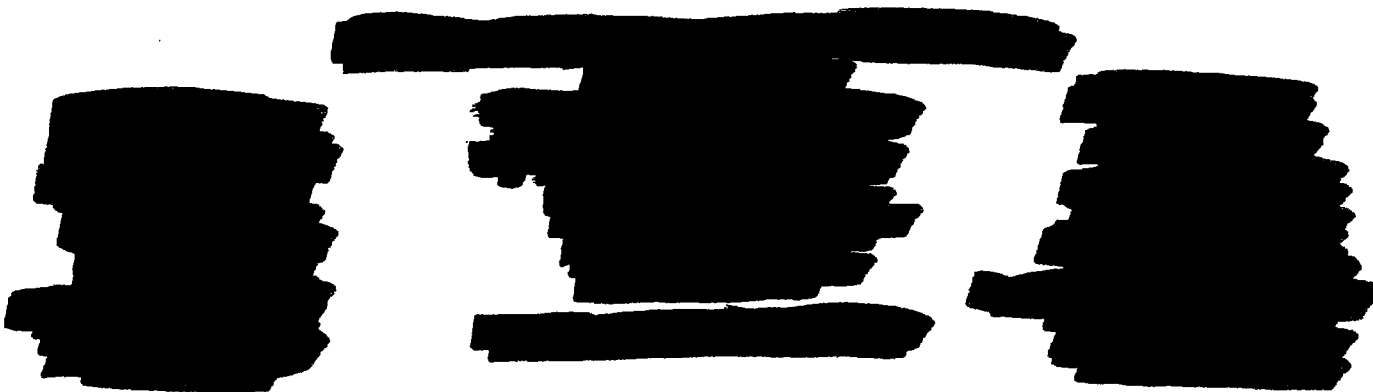


801.11(c)(2)



May 17, 1994

BY HAND

Richard B. Smith, Esquire
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

This letter is subject to the
confidentiality provisions of Section
7 of the Clayton Act which restricts
release under the Freedom of Information Act.

MAY 17 4 33 PM '94
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Dear Dick:

This letter memorializes the advice you provided yesterday over the telephone concerning the appropriate analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act"), and the implementing regulations, of the following issue:

A, a publicly traded corporation and its own ultimate parent entity, has a fiscal year ending on May 31. Its most recent regularly prepared annual statement of income and expense, prepared in July of 1993, shows annual net sales of less than \$10 million.

In its fiscal year ending May 31, 1994, A's annual net sales will exceed \$10 million. A's audited, final statement of income and expense for this fiscal year is not anticipated to be completed until July. However, each month A prepares an internal financial report showing sales and expenses for the previous month and the year-to-date. The monthly report for May 1994, which will be circulated on or about June 10, will show sales and expenses for a year-to-date consisting of the full 12 months of A's fiscal year. The sales and expense data in this report, however, will be preliminary and unaudited, and will be subject to adjustment and modification by both the company and its accounting firm before the numbers are considered final.

I asked you whether the monthly financial report for May 1994, which will contain preliminary, unaudited 1994 income and expense data, subject to adjustment and modification, constitutes a "regularly prepared annual statement of income and expense"

[REDACTED]

Richard B. Smith, Esquire
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within the meaning of 16 C.F.R. § 801.11(c)(2). Consistent with advice the Premerger Office has provided in the past, in particular in December 1992, you advised that the May 1994 report would not constitute a regularly prepared statement of annual income and expense. Therefore, you advised that A could continue to rely upon its most recent such regularly prepared statement, prepared in July of 1993, until its next such regularly prepared statement is completed in July of 1994.

If this letter does not accurately reflect the view of the FTC Premerger Notification Office regarding the question posed above, please give me a call.

As always, I thank you for your time and assistance.

Very truly yours,

[REDACTED]

5/18/94-

[REDACTED] Advised writer that PMN Office agreed with his conclusion. (Discussed with John Syple who concurred in conclusion.)

R.B. Smith