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7A(a)(2)(B)
7A(a)(2)(C)

[REDACTED]

NO

[REDACTED]

[REDACTED]

July 21, 1994

VIA FEDERAL EXPRESS

Ms. Nancy Ovuka
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, DC 20580

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-23-2001 BY 60322 UCBAW/STP
7A(1) OF THE EXECUTIVE ORDER ON PRIVACY PROTECTION
APPROVED FOR RELEASE BY THE NATIONAL ARCHIVES
RELEASE UNDER E.O. 13526

Re: Telephone Conferences on June 30, 1994

Dear Ms. Ovuka:

This letter is to confirm our discussion in the above-referenced telephone conferences and certain related issues. As we advised you, the facts of the proposed transactions are as set forth below:

A. First Transaction.

1. Company A is not engaged in manufacturing and together with its ultimate parent entity, an individual, has annual gross revenues of more than \$10 million, but its total assets are less than \$10 million (Company A's annual revenues and total assets are as shown on its last regularly prepared income statement and balance sheet, respectively). Said individual does not have any regularly prepared income statements or balance sheets.
2. Company A is planning to purchase for an amount in excess of \$15 million certain equipment from Company B (the "First Transaction") which Company A currently leases from Company B. Company B has more than \$100 million in both annual net sales and total assets. Upon the consummation of the First Transaction, Company A will have more than \$10 million in total assets due to the acquisition of the equipment in such transaction.

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B. Second Transaction.

1. Shortly after the First Transaction is consummated and prior to the date Company A's next regularly prepared balance sheet (reflecting the assets acquired in the First Transaction) will be prepared in the ordinary course, Company A will sell the equipment purchased from Company B, together with certain other similar equipment owned by Company A, to Company C for an amount in excess of \$15 million, and will lease back certain of such equipment from Company C (such sale and leaseback are referred to herein as the "Second Transaction").
2. Company C has both annual net sales and total assets of more than \$100 million.

C. General.

1. Company A, Company B and Company C are competitors or potential competitors of one another in certain markets.
2. The regularly prepared income statements and balance sheets of Company A referred to above are prepared monthly for internal use only and are unaudited.

Based on the above facts, we discussed the fact that with respect to the First Transaction the ultimate parent entity of Company A meets the size-of-person test (based on annual gross revenues) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (15 U.S.C. §18a) ("H-S-R Act") and, therefore, both the ultimate parent entity of Company A and Company B must file a Premerger Notification and Report Form ("Premerger Notification") under the H-S-R Act and the waiting period thereunder must expire or be terminated prior to consummation of the First Transaction.

However, you agreed that with respect to the Second Transaction the ultimate parent entity of Company A does not meet the size-of-person test of the H-S-R Act (based on total assets) because Company A is not engaged in manufacturing and the assets acquired by Company A from Company B in the First Transaction will be disposed of in the Second Transaction before Company A's next regularly prepared balance sheet (reflecting the assets acquired in the First Transaction) will be prepared in the ordinary course and the ultimate parent entity of Company

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A is not required, for purposes of determining whether he meets the size-of-person test, to take into account any assets which are acquired subsequent to the most recent regularly prepared balance sheet.

Therefore, the H-S-R Act is not applicable to the Second Transaction and no Premerger Notification need be filed in connection therewith as long as the Second Transaction is consummated prior to the preparation of the regularly prepared balance sheet of Company A which would reflect the assets acquired in the First Transaction.

If we do not hear from you to the contrary within seven (7) days of the date of this letter, Company A will proceed with the above-described transactions relying on the foregoing as an accurate reflection of our telephone conversation and the appropriate interpretation and application of the H-S-R Act.

Thank you very much for your assistance.

Very truly yours,
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[REDACTED]

[REDACTED]

If asset acquisition were made by Company A's UPE, the individual, the value of the assets would be included and added to Company A's regularly prepared balance sheet.

[REDACTED]