

§ SEC 1.21(h)

§ SEC 1.13

§ SEC 1.14

§ SEC 2.20

[REDACTED]

October 25, 1994

Via Facsimile (202) 326-2624

Ms. Melea Epps, Esq.
Federal Trade Commission
Pre-Merger Notification Office
6th Street & Pennsylvania Avenue, Room 303
Washington, D.C. 20580

Dear Ms. Epps:

Thank you for taking the time to assist me in connection with the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the FTC Rules. Per our telephone conversations on Thursday, October, 20, 1994, this letter will serve to confirm the facts I presented to you and the conclusions you and I reached during our telephone conversations.

The facts I presented were as follows: Seller (a corporation) has a certain management [REDACTED] (the [REDACTED] and 48% of the outstanding [REDACTED]. Pursuant to the [REDACTED], Seller provides [REDACTED] to [REDACTED] and to third parties. Purchaser desires to acquire the [REDACTED] from Seller and all of the voting [REDACTED], which [REDACTED] is owned 48% by Seller and 52% by approximately 200 other persons.

Purchaser and Seller have agreed to enter into a comprehensive purchase agreement (the "Purchase Agreement") which will provide as follows:

- (a) Purchaser agrees to purchase from Seller the [REDACTED] for \$13.5 Million and Seller's 48% of the [REDACTED] for \$2 Million,

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subject to the prior satisfaction of the condition described in paragraph (b) below.

potentially reportable under § 802.20

(b) Upon signing the Purchase Agreement, Purchaser will commence a tender offer for the 52% of the [redacted] held by persons other than Seller for a total consideration of approximately \$2 Million (the same per share price to be paid to Seller for its [redacted] of [redacted]). If Purchaser obtains commitments from such other [redacted] for not less than 32% of the outstanding [redacted] of [redacted] (giving Purchaser a minimum of 80% of the [redacted] when combined with Seller's 48%), then Purchaser will concurrently close on (i) the acquisition of the [redacted] and the [redacted] from Seller and (ii) the acquisition of the [redacted] from persons other than Seller pursuant to tender offer.

(c) If Purchaser obtains at least 80%, but less than 100%, of the [redacted] of [redacted] through the purchase from Seller and the tender offer described above, then subsequent to closing on the acquisition from Seller and pursuant to the tender offer, Seller will enter into a reorganization transaction pursuant to which it will acquire the balance of the [redacted] of [redacted].

Assuming all parties meet the requisite size-of-the-person test, the issues we discussed centered around whether or not the acquisition of the [redacted] [redacted] from Seller by Purchaser, under the above facts, would be aggregated under the Act and FTC Rules for purposes of the \$15 million threshold of the size-of-the-transaction test. Applying the provisions of the Act and the FTC Rules to the facts presented, we agreed with the following analysis:

- (a) [redacted] is its own "ultimate parent entity" because no single person owns or holds more than 50% of the voting [redacted] of [redacted], and as such, [redacted] is the "acquired person" pursuant to FTC Rules §§801.1(a) and 801.2(b) with respect to an acquisition of the [redacted];
- (b) The only asset being acquired by Purchaser from Seller, for purposes of applying the \$15 Million threshold under the Act and FTC Rules, is the [redacted]. Pursuant to FTC Rules §801.21(b), the [redacted] of [redacted] is *not* considered an asset of the Seller for purposes of determining the assets (and value thereof) of Seller being acquired by Purchaser as a result of the proposed acquisition; and

[redacted]

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(c) Applying the foregoing and FTC Rules §§801.13, 801.14 and 801.15 to the facts presented, the value of all assets being acquired from Seller is \$13.5 Million (the purchase price of the [redacted]. The value of the voting [redacted] being acquired is \$4 Million (\$2 Million to Seller and \$2 Million to the other shareholders). Under the facts presented, the acquisition of the [redacted] and the acquisition of the [redacted] are separate transactions, and each transaction fails to meet the \$15 Million reporting threshold under Section 7A(a)(3) of the Act and the FTC Rules.

2d transaction may fall under §802.20 if Target has sales of \$25 m
Based on the foregoing, you and I concluded that neither Purchaser, Seller nor [redacted] is required to comply with the Act and FTC Rules under the facts presented, and, accordingly, neither party is required to file a Notice and Report Form in connection with (i) the acquisition of the [redacted] or (ii) the acquisition of the [redacted] under the facts presented above.

Please confirm that this letter accurately reflects our discussion and the conclusions we reached based on the facts presented.

Again, thank you for your time and the courtesy you extended to me in assisting me to determine the applicability of the Act and the FTC Rules. If you have any questions or additional comments, please do not hesitate to call me.

Very truly yours,

[Redacted signature block]

JAG:lr 10/27 - I called [redacted] and discussed with him the correction's

cc: [redacted] above. He said that the facts had changed somewhat, he will send follow-up letter

[Redacted footer line]