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WRITER'S DIRECT NUMBER:

[REDACTED]

November 2, 1994

Victor L. Cohen, Esq.  
Federal Trade Commission  
Premerger Notification Office  
600 Pennsylvania Avenue  
Washington, D.C. 20580

Re: Applicability of the Investment Exemption

Dear Mr. Cohen:

The purpose of this letter is to confirm the details of our telephone conversation of October 31, 1994 concerning the applicability of the investment exemption set forth in Section 7A(c)(9) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a(c)(9).

The circumstances I described to you were as follows: A and B are corporations that, among other things, own and operate a significant number of [REDACTED] franchises in the United States. A and B currently jointly own C, another [REDACTED]. A holds approximately 80% of the voting securities of C; B holds the remaining 20% of C. A and B are also co-venturers with a number of other entities in certain other joint ventures wholly unrelated to the activities of C. Finally, for the purposes of this inquiry, you should assume that A and B are competitors in certain circumstances.

A now wishes to purchase B's interest in C. As a result, A will hold 100% of the voting securities of C.<sup>1</sup> Instead of receiving cash, B will, in order to achieve a tax free exchange, receive voting securities of A. The voting securities to be received by B will represent approximately 1% of the total outstanding voting securities of A. The value of those voting securities will be in excess of \$15 million. B has no intention of participating in the formulation,

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<sup>1</sup> Obviously, this acquisition by A is exempt pursuant to Section 7A(c)(3) of the Hart-Scott-Rodino Act.

determination or direction of the basic business decisions of A. B has no director on A's board and does not intend to nominate any such director. B does not intend to solicit proxies from A's stockholders or to propose any corporate action requiring the approval of A's shareholders. In short, B intends to hold the voting securities of A as a passive investor.

I inquired of you whether B's acquisition of the voting securities of A is exempt pursuant to Section 7A(c)(9) of the Hart-Scott-Rodino Act -- the so-called investment exemption. In particular, to the extent that A and B can be said to be competitors, I asked whether this fact would mean that the investment exemption would automatically be unavailable to B.

You informed me that a person acquiring voting securities does not lose its entitlement to rely on the investment exemption solely on the ground that the acquiring person is a competitor of the acquired person. Provided the circumstances surrounding B's acquisition of the voting securities of A indicate that B intends to be a passive investor, B should be able to rely on the 7A(c)(9) exemption. In this regard, you noted that the percentage of A's voting securities to be acquired by B is minimal.

On the basis of our discussion, we intend to advise our client accordingly. If this letter does not accurately reflect your advice to me, I would be grateful if you would contact me. Thank you for your assistance.

Sincerely,

A large black rectangular redaction covers the signature and name of the sender.