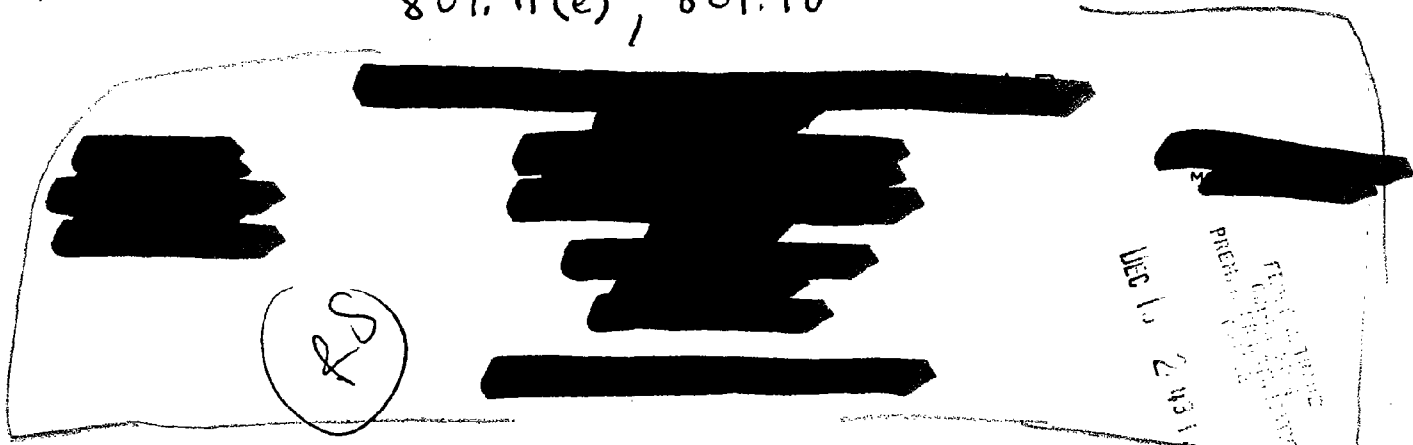


801.11(e); 801.40



December 15, 1994

**BY HAND DELIVERY**

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

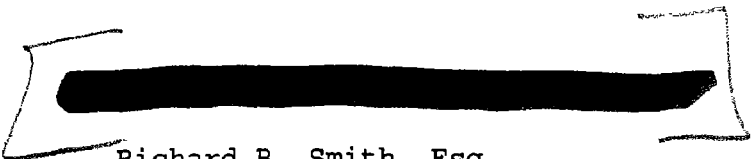
Dear Dick:

I am writing as a follow-up to my December 2, 1994 letter (Attachment A hereto) and our subsequent telephone calls. You have confirmed, based on discussions within the Premerger Notification Office, that the transactions described in the letter would be nonreportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the implementing regulations.

As I have explained to you, however, the structure of the contemplated transactions has been slightly revised from what was described in my December 2 letter. This letter memorializes the advice you provided over the telephone on December 13 that under the revised structure, the transactions would remain nonreportable.

The revised structure involves the same persons (the partnership, A, B, and C), person sizes, and amounts of acquisition consideration, as described in my December 2 letter. The partnership, as ultimate parent, would still first acquire assets from A, and thereafter acquire voting securities from B and C. The acquiring entity structure, however, would be slightly different.

Under the original structure, the partnership would initially create a single wholly-owned subsidiary, Newco, that would, in turn, create Sub1, Sub2, and Sub3, as wholly-owned acquiring entities. Under the revised structure, the Partnership would create two wholly-owned subsidiaries, Newco1 and Newco2, as the acquiring entities.

  
Richard B. Smith, Esq.  
December 15, 1994  
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Under the revised structure, the acquisitions would then take place in two steps:

Step 1. Through Newco1, the Partnership (as UPE) would first acquire assets from A for cash.

Step 2. Thereafter, through Newco2, the Partnership (as UPE) would acquire simultaneously 100% of the voting securities of subsidiaries of B and C, and 100% of the voting securities of Newco1. As consideration, B would receive cash and voting and nonvoting securities of Newco2; C would receive voting securities of Newco2; and the Partnership would also receive voting securities of Newco2 (in addition to the voting securities of Newco2 it already held). As before, after the transaction the Partnership would remain the UPE controlling Newco2 and the three subsidiaries of Newco2.

You advised that the creation of the Partnership would remain an exempt partnership formation transaction, that the Partnership would be its own UPE, and that the Partnership's creation of Newco1 and Newco2 would be exempt under § 802.30.

You advised further that the Partnership's acquisition of assets from A in Step 1 would remain nonreportable because the Partnership's size-of-person under § 801.11(e) would be less than \$10 million. You also advised that the subsequent transactions in Step 2 would be nonreportable, regardless of whether these transactions are analyzed under § 801.40 or simply as acquisitions by the Partnership, because none of the persons involved -- the Partnership, B, and C -- would meet the \$100 million size-of-person test.

If this letter does not accurately reflect the advice you provided concerning the nonreportability of the transactions described above, please call me as soon as possible.

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

Very truly yours,

  
Enclosure

*12/20/94 - advised writer that this change in form from his earlier 12/2 letter (attached) did not result in any reportable transactions. The asset purchase still goes first (and involves a 100MM person but no 10MM person) and the later transactions have no 100MM person.*  
*RBS*