

801.10(a)(2)(i)

[REDACTED]

March 20, 1995

Richard B. Smith, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Sixth Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 70850

A/D

Dear Mr. Smith:

I am writing to seek confirmation of the preliminary advice you provided in a telephone conversation with myself and my colleague, [REDACTED], on March 17, 1995, that our client ("Company A") is exempt from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the regulations promulgated thereunder (the "Rules") in connection with its proposed acquisition of securities of Company Y described below (the "Acquisition").

Company Y is currently a wholly-owned subsidiary of Company X. Company X, Company Y and two investors, Company A and Company B, intend to enter into a Joint Venture Agreement that provides as follows. After a recapitalization, Company Y will have two classes of Common Stock. The Class A Common Stock will be the only class entitled to vote for the directors of Company Y and with respect to other matters to be voted upon by the shareholders of Company Y generally. The Class B Common Stock will carry the right to receive all dividends and distributions, but no voting rights (other than the right to vote as a separate class on certain amendments to the certificate of incorporation of Company Y, as provided under

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Delaware's General Corporation Law). Company A will acquire 20% of the Class A Common Stock for a total consideration of \$1,000 and 10% of the Class B Common Stock for a total consideration of approximately \$78 million. Company B will acquire 10% of the Class B Common Stock for a total consideration of approximately \$78 million. Upon consummation of the Acquisition and the related transactions contemplated by the Joint Venture Agreement, Company X will hold 80% of the Class A Common Stock and the Class B Common Stock. Neither the Class A nor the Class B Common Stock will be publicly traded. Pursuant to the terms of the Joint Venture Agreement, Company A may not sell its Class A and Class B Common Stock separately. The Acquisition and related transactions were structured in good faith and not for the purpose of avoiding the requirements of the Act. The sale of the Class A Common Stock and Class B Common Stock has been understood by the parties from the beginning as a single transaction. Accordingly, no consideration has been given to what the values of the two classes of Common Stock would be if they were sold separately. A/D

You advised us preliminarily that the Acquisition would appear, for the following reasons, to be exempt from the requirements of the Act pursuant to Section 802.20 of the Rules. Pursuant to Rule 801.10, because the Class A Common Stock will not be publicly traded, and because the acquisition price has been determined, the value of the Class A Common Stock to be acquired by Company A would be its acquisition price of \$1,000 and no part of the consideration to be paid for by Company A for the Class B Common Stock which it is acquiring simultaneously would be deemed additional consideration paid for the Class A Common Stock. Consequently, the value of the voting securities to be held by Company A as a result of the Acquisition would not satisfy Section 7A(a)(3)(b) because it would not be in excess of \$15 million. In addition, as a result of the Acquisition, Company A will not control Company Y. Therefore the Acquisition would satisfy the conditions of the "minimum dollar value exemption" set forth in Section 802.20 of the Rules.

You indicated that you would like to confirm your preliminary advice with some of your colleagues at the Premerger Notification Office. Please advise me at your earliest convenience whether or not you are able to confirm your preliminary advice.

[REDACTED]

Richard B. Smith, Esq.

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I would be pleased to answer any questions you might have regarding this transaction or to discuss the matter further.

Thank you in advance for your attention to this request.

Very truly yours,

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[REDACTED]

BY FAX

cc: [REDACTED]

3/31/95- Advised writer that assuming no 801.90 issue, the \$1,000 price for the ~~non~~ 20% of the voting stock (which has no economic rights and 80% of which is held by one other person) appears to be covered by 801.10 (a)(2)(i), as a non-traded voting stock. This comparable payment by another party for the non-voting stock also supports this conclusion. No filing is required.

RBSmith