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801.1(b)

May 15, 1995

FEDERAL EXPRESS

Ms. Nancy Ovuka
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, 303
6th Street & Pennsylvania Avenue, N.W.
Washington, D. C. 20580

Dear Ms. Ovuka:

The purpose this letter is to confirm our telephone conversations on May 8, 1995 and May 11, 1995, in which you concurred that the following transaction was exempt from the notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The relevant facts, as we discussed them, are as follows:

> Our client ("Acquiror") is a business corporation which proposes to enter into an asset acquisition with another business corporation ("Transferor"). Transferor proposes to transfer to Acquiror four of its operating divisions. Acquiror is a $10 million person and the ultimate parent entity of Transferor is a $100 million person.
>
> No shareholder of Acquiror owns 50% or more of the voting securities of Acquiror or has the contractual power presently to designate 50% or more of the directors of Acquiror. A and B hold 26% and 30%, respectively, of the outstanding voting securities of Acquiror. Of the remaining 44% of Acquiror's outstanding voting securities, 26% are held by investors located by A (the "A Group") and 18% are held by investors located by B (the "B Group"). The shareholders have entered into a voting agreement which provides that Acquiror's board of directors will be comprised of seven members, that each of the A Group and B Group has the right to nominate up to three members of the board of directors and that the prior owner of certain assets previously

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acquired by Acquiror has the right to nominate one member of the board of directors (until a specified government contract has been completed, at which time the prior owner will no longer have the right to nominate a person for election to the board of directors and the number of director positions will be reduced to six). The shareholders agree to vote all of their respective shares in favor of the election of all of the persons so nominated.

One of the divisions being sold by Transferor, X, is complimentary to Acquiror's existing business. For business operation purposes, the parties propose to structure the transaction so that Acquiror will directly acquire the assets of X. The proposed purchase price for the assets of X is approximately $9 million in cash (the proposed purchase price is equal to the fair market value of the assets being acquired). The assets of the other three divisions will be acquired by a newly-formed corporation owned by the shareholders of Acquiror ("Newco").

The shareholders' ownership interests in Newco will be in proportion to their share ownership in Acquiror. No shareholder will own more than 50% of the voting securities of Newco or have the contractual power presently to designate 50% or more of the directors of Newco. There will no voting agreement with respect to the shares of Newco. Acquiror will loan its shareholders approximately $9 million, all of which loan proceeds will be contributed by the shareholders to Newco in exchange for Newco shares. The loan from Acquiror to its shareholders will be secured by a pledge of the Newco stock. Newco's total capital at its formation will be approximately $9 million (i.e., the amount of the loan proceeds), the entire amount of which will be used to acquired the assets of the remaining three divisions. The proposed purchase price for these assets in the aggregate is approximately $9 million consisting of cash and redeemable preferred stock (valued at approximately 10% of the purchase price or approximately $900,000) (the proposed purchase price is equal to the fair market value of the assets being acquired).

You concurred with our conclusion that, under the circumstances described above, (a) the voting agreement does not result in any person "controlling" Acquiror within the meaning of §801.1(b) of the rules promulgated under the Act (the "Rules"); (b) Acquiror is its own ultimate parent entity; (c) the formation of Newco is exempt from the notification requirements of the Act since Newco would not satisfy the size-of-person test of §801.40(b) of the Rules; (d) Newco is a newly-formed person within the meaning of §801.11(e) of the Rules; (e) the acquisition of the assets of X by Acquiror is exempt from the notification

requirements of the Act since the size-of-transaction test of Section 7A(a)(3) of the Act is not met; (f) the acquisition of the assets of the three other divisions by Newco is exempt from the notification requirements of the Act since the size-of-person test of Section 7A(a)(2) of the Act is not met and the size-of-transaction test of Section 7A(a)(3) of the Act is not met; and (g) Transferor's acquisition of the redeemable preferred stock is exempt from the notification requirements of the Act since the size-of-transaction test of Section 7A(a)(3) of the Act is not met.

Please call me [redacted] should the position of the Federal Trade Commission staff with regard to this matter be different from that set forth above. In addition, please retain this letter in your files. I appreciate very much your assistance and helpful advice in this matter.

Very truly yours,

[redacted]

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AD