

*Merger Nomination of candidate to a board of directors
to be voted upon by third persons is not an
acquisition by itself.*

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General
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FEDERAL TRADE
COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

JUL 31 9 08 AM '95

July 31, 1995

VIA HAND DELIVERY

Victor Cohen, Esquire
Compliance Specialist
Federal Trade Commission
Bureau of Competition
Pre-Merger Notification Office
Room 301
6th and Pennsylvania Aves., N.W.
Washington, D.C. 20580

Dear Victor:

This is confirm our telephone conversation on Friday July 28, 1995 regarding the reportability of the following transaction under the Hart-Scott-Rodino Antitrust Improvements Act ("H-S-R Act") and the rules promulgated thereunder ("H-S-R Rules"):

Company A, an [REDACTED] proposes merging its newly formed wholly owned subsidiary, NEWCO, into Company B, another [REDACTED] with Company B being the surviving entity. For purposes of this analysis, please assume that the size of the parties and the size of the transaction tests will be met and that the merger will be reported under the H-S-R Act. Company B is its own ultimate parent entity. Company C, a [REDACTED] owns 48% of the voting securities of Company B. As a condition to the merger of NEWCO and Company B, the Board of Directors of Company C has agreed to recommend to the owners of Company C the election as directors of Company C's Board of Directors of certain individuals identified by Company A. Furthermore, as a condition to the consummation of the merger of NEWCO and Company B, is the election of these designees to the Board of Directors of Company C. The owners of Company C are the [REDACTED] of Company C, with each [REDACTED] having the right to vote for the members of the Board of Directors

RS agrees

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as they see fit, including the ability to write-in their own candidates to serve on the Board of Directors. Company B has no right, contractual or otherwise, to vote for the Board of Directors or appoint the members of the Board of Directors and the ability to nominate the members of the Board of Directors of Company C is by virtue of the fact that individuals previously selected by Company B now serve on the Board of Directors of Company C.

You confirmed that under the facts described above, only the merger of NEWCO and Company B would be reportable under the H-S-R Act. First, Company A is not acquiring the voting securities or assets of Company C and Company C will continued to be owned by the [REDACTED] of Company C. Furthermore, Company B has no contractual rights to appoint the members of the Board of Directors of Company C, but rather only the current ability to nominate candidates for the Board of Directors, with the [REDACTED] of Company C having the right to reject these candidates and elect whoever they chose to the Board of Directors.

Please let me know immediately if I have in any way misunderstood your views regarding the reportability of this transaction. Once again, thank you for your prompt assistance in this matter. Best regards.

Sincerely,
[REDACTED]