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September 27, 1995

VIA FACSIMILE

Ms. Nancy Ovuka, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

RE: Hart-Scott-Rodino Size-of-Person Test

Dear Ms. Ovuka:

This letter summarizes our telephone conversation this morning, during which I sought your opinion regarding the applicability of the Hart-Scott-Rodino premerger notification rules to the transaction described below. As I explained, *pro forma* balance sheets currently are being prepared by an accounting firm for purposes of determining the size of the acquired person. Both the ultimate parent entity and the other person within it are newly-formed corporations and thus do not have regularly prepared balance sheets.

Corporation A, the ultimate parent entity of the acquired person, has cash assets of $6000. It is the sole shareholder of Corporation B, a Delaware corporation that currently has cash assets of $5000. There are no other persons within A.

Corporation B will acquire approximately 7.6 percent of the voting securities of an unaffiliated company Y for a purchase price of approximately $5.7 million. (This transaction is not reportable because it does not meet the size-of-the-transaction test.) The *pro forma* balance sheet for B will value these shares at their purchase price, such that B's balance sheet will reflect assets totaling approximately $5.706 million. The *pro forma* balance sheet for A also will value these shares at their purchase price, such that A's balance sheet will reflect assets totaling approximately $5.711 million.

[redacted]

[redacted]

Shortly after B has acquired the shares of Y, and the *pro forma* balance sheets have been prepared, X, the ultimate parent entity of the acquiring person, will acquire all of the shares of B from A for approximately $17.7 million.

X is a $100 million person, and the size of the transaction exceeds $15 million. We believe that no HSR filing is required for the sale by A of B's shares to X because A does not meet the $10 million size-of-the-person jurisdictional test. The total assets of A, based upon the *pro forma* balance sheet, are less than $10 million. This is true even though there is a difference between the acquisition price of the shares of Y and the selling price of the shares of B. The size-of-the-person analysis is strictly a balance sheet issue. If the *pro forma* balance sheet of A, the ultimate parent entity, reflects assets of less than $10 million, A is entitled to rely upon that balance sheet for its determination that it does not meet the size-of-the-person test.

Please confirm that, under the circumstances described above, an HSR filing would not be required. If you have any questions regarding this matter, please do not hesitate to contact me at [redacted]

Thank you for your time and your assistance in resolving this matter.

Sincerely,

[redacted]

cc: [redacted]

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Confirmed advice, but pointed out that X+X may have a reportable transaction (secondary)

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