801.40; 801.2(d)

[redacted]

October 10, 1995

BY TELECOPY

Richard B. Smith, Esq.
Senior Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Room 303
Washington, D.C. 20580

Dear Dick:

This letter is to confirm our conversation on Friday regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to the transaction described below.

The parties, Companies A and B, will be jointly forming a new corporation, "NewCo." NewCo will consist of Company A and a subsidiary of Company B. The former shareholders of Company A will own approximately 50.1% of NewCo and Company B will own approximately 49.9%. We have attached "Before" and "After" diagrams to illustrate the effect of this transaction.

For reasons having nothing to do with the treatment of the transaction under the Act, the transaction is being carried out as follows. All of these steps will be carried out more or less simultaneously.

Initially, NewCo will be formed by Companies A and B. Company A will own 501 shares of NewCo and Company B will own 499 shares. NewCo will form a wholly owned subsidiary, "NewSub."

Company A will merge into NewSub with Company A as the surviving corporation. NewSub common stock

[redacted]

currently held by NewCo will be converted into New Company A common stock. Existing shares of Company A's common stock currently held by public shareholders will be converted into shares of New NewCo common stock equal to approximately 51.1% of the outstanding shares. Simultaneously, Company B will exchange shares of a wholly owned subsidiary, "BSub," for shares of New NewCo common stock equal to approximately 49.9% of the outstanding shares. The shares of NewCo stock previously issued to Companies A and B will be cancelled.

Our analysis, with which you concurred, is that the most appropriate manner in which to characterize the transaction is as the formation of a joint venture, NewCo, under 16 C.F.R. § 801.40. Under such a characterization, Company B and each of the shareholders of Company A would be acquiring persons in the formation. Company B certainly would have to make an HSR filing as an acquiring person. We are not certain, but do not believe, that there are any shareholders in Company A that would also need to file, either because they fail to meet the size-of-parties test, 15 U.S.C. § 18a(a)(2); the size-of-transaction test, 15 U.S.C. § 18a(a)(3); or because they are entitled to one of the Act's exemptions, 15 U.S.C. § 18a(c). Treatment of the transaction as a merger or consolidation under 16 C.F.R. § 801.2(d) is inappropriate since Company B will continue its independent existence.

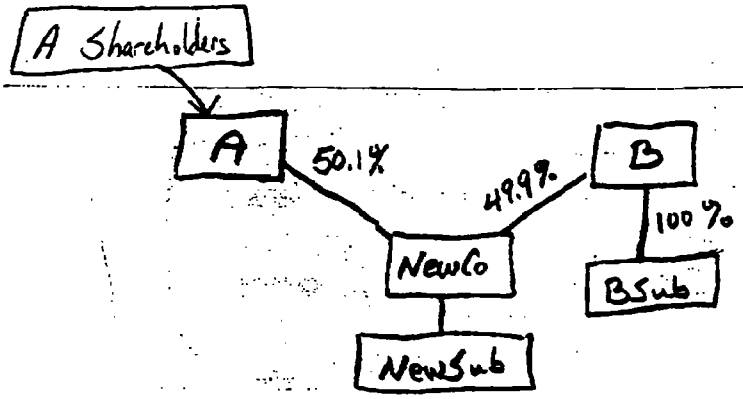
We hope this letter accurately summarizes our conversation and that you will let us know at your earliest convenience whether you agree with these conclusions.

Thank you for your assistance.

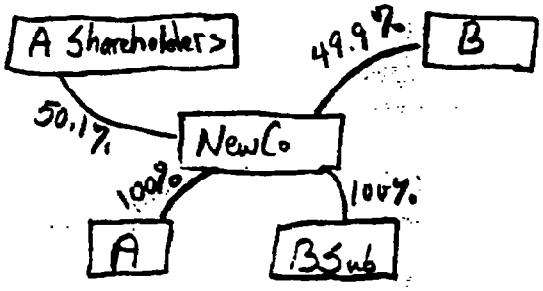
Very [redacted]

10/11/95 Advised writer that filing as an 801.40 formation was inappropriate in this fact setting. While Company A is being merged into a sub of Newco Company B remains in existance as a contributor to Newco. RBSmith

Attachment



BEFORE



AFTER