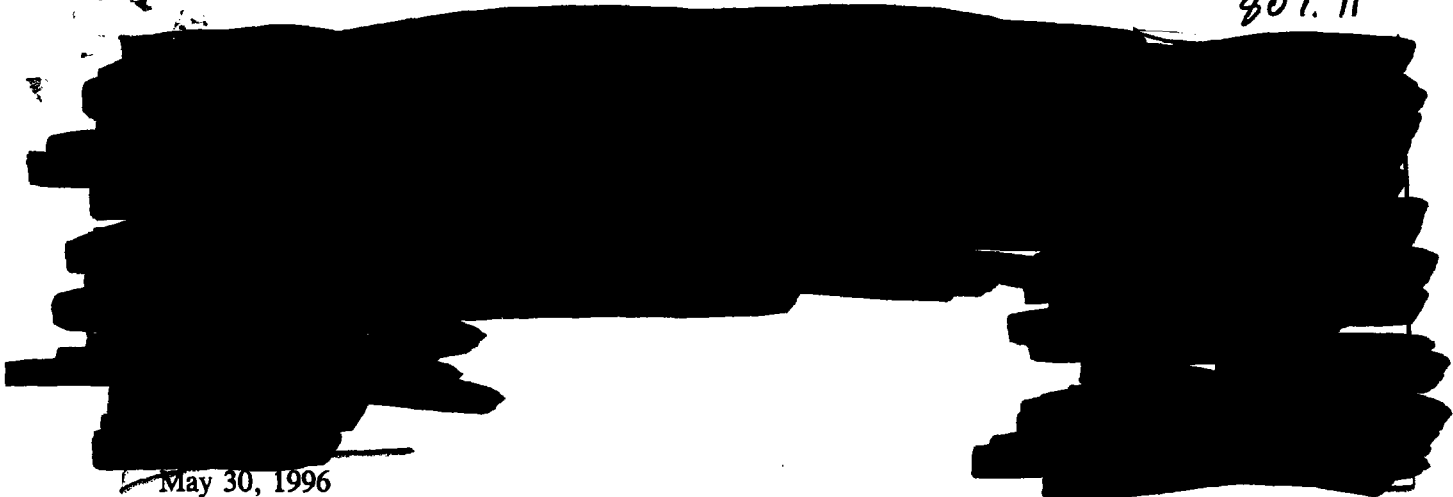


801.1(c)  
801.11



May 30, 1996

BY HAND DELIVERY

Mr. Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

MAY 30 4 25 PM '96  
FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE  
WASHINGTON, D.C.

Re: Hart-Scott-Rodino Reporting Requirements: Size-of-Person Test

Dear Mr. Sharpe:

Thank you very much for taking time on May 23, 1996, to discuss with me the interpretation of the Premerger Notification Office concerning the applicability of the Hart-Scott-Rodino reporting requirements to a particular voting stock acquisition. This letter is to confirm your oral advice that, given the particular set of circumstances I described to you in our telephone conversation, the transaction at issue is not reportable because the acquiring person does not meet the "size-of-person" test under the Hart-Scott-Rodino Act (the "Act").

During our conversation, I described a proposed transaction during which Company B, by virtue of an assignment from Company A, will acquire 100% of the voting stock of Company Y, which is a wholly-owned subsidiary of Company X. A and B are each their own ultimate parent entity ("UPE"); although A and B each have the same 25 shareholders, no one shareholder controls either of the companies. Both A and X meet the size-of-person test. B does not.

A and X have executed a Stock Purchase Agreement (the "Agreement") providing for the purchase of 100% of the voting stock of X's subsidiary, Y. The Agreement provides



Mr. Patrick Sharpe  
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that A may assign its rights under the Agreement to a third party.<sup>1/</sup> A intends to assign its rights under the Agreement to B prior to closing. The Agreement, however, does not specifically mention B as the assignee. At closing, the shares of Y will be transferred directly to B; A never actually will hold any of the shares of Y. In connection with an assignment under the Agreement, B will become the primary obligor on the promissory notes to be delivered under the Agreement. A will unconditionally guarantee payment thereof.

Based on our discussion of the facts set forth above, you concluded that (1) B is the acquiring person under the Act; and (2) the transaction is not reportable because B does not meet the size-of-person test. You explained that this situation is similar to A acting as an agent for B. Since B has all along intended to acquire and control the voting stock of Y, B is the acquiring person for purposes of the Act. Because B does not meet the size-of-person test, however, the transaction is not reportable under the Act.<sup>2/</sup>

If this letter does not summarize accurately our conversation, I ask that you contact me promptly. Thank you for your guidance and assistance in this matter.

Very truly yours,

[Redacted signature block]

called [Redacted]  
basically concurs with  
letter. (BS) 5/31/94  
(RS) concurs

re: [Redacted] [Redacted] [Redacted]

<sup>1/</sup> In particular, the Agreement provides that A may assign its rights "to any person owned, directly or indirectly, by the holders of a majority of the shares of [A's] outstanding common stock. . . ."

<sup>2/</sup> You noted that 16 C.F.R. § 801.90 (transactions or devices for avoidance) is not applicable in this case.