

802.51(b)

September 17, 1996

BY HAND DELIVERY

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580


Re: Applicability of the Exemption for Acquisitions by Foreign Persons in
16 C.F.R. § 802.51(b)

Dear Mr. Smith:

Thank you very much for your time on September 13, 1996, to discuss with me the interpretation of the Premerger Notification Office concerning the applicability of the exemption for certain acquisitions by foreign persons set forth in the Hart-Scott-Rodino ("HSR") reporting requirements at 16 C.F.R. § 802.51(b). This letter will confirm the substance of our telephone conversation.

As we discussed, § 802.51(b) exempts from HSR reporting acquisitions by foreign persons of voting securities of a foreign issuer, so long as the acquisition does not confer control either of: (1) an issuer that holds assets located in the United States (excluding certain investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) having an aggregate book value of \$15 million or more; or (2) a U.S. issuer with annual net sales or total assets of \$25 million or more. You confirmed that if a foreign person's acquisition of voting securities of a foreign issuer that holds a minority interest in a U.S. issuer is exempt under § 802.51(b), this exemption also applies to the indirect acquisition by the foreign person of the minority interest in the U.S. issuer owned by the foreign issuer.

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During our conversation, I described a proposed transaction in which a foreign person (the "Foreign Person") is to acquire a controlling interest in the voting securities of a foreign issuer (the "Foreign Issuer"). The Foreign Issuer has negligible sales and has negligible assets located in the United States other than approximately 10% of the outstanding voting securities of a U.S. issuer (the "U.S. Issuer"). The U.S. Issuer has negligible annual net sales, but does have approximately \$27 million in total assets. The Foreign Person, and all entities included within it, currently does not hold any voting securities of the U.S. Issuer.

Based on our discussion of the facts set forth above, you concluded that the Foreign Person's acquisition of the Foreign Issuer is exempt from the HSR reporting requirements under § 802.51(b) because the acquisition will confer control only of the Foreign Issuer, which does not hold assets located in the United States having an aggregate book value of \$15 million or more. The voting stock of the U.S. Issuer that the Foreign Issuer owns is not considered an asset for purposes of § 802.51(b)(1) because this subsection explicitly excludes from consideration as assets "voting or nonvoting securities of another person." You also confirmed that the Foreign Person's indirect acquisition of approximately 10% of the voting stock of the U.S. Issuer, by virtue of the Foreign Person obtaining control of the Foreign Issuer, is not considered a secondary acquisition separately subject to the HSR reporting requirements, but rather is also exempt under § 802.51(b).

You acknowledged that this application of § 802.51(b) would allow a foreign person to acquire indirectly an interest in a U.S. issuer that might otherwise be reportable if the foreign person were to acquire directly that interest in the U.S. issuer. You noted that this position is due to the attenuated nexus with U.S. commerce that results from the acquisition of the minority position in the U.S. issuer through the acquisition of control over the foreign issuer.

If this letter does not accurately summarize the advice that you gave me, I ask that you contact me promptly. Many thanks for your guidance and assistance in this matter.

Very truly yours,



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