

SENT BY:

2-25-98 : 6:43PM

801.100  
802.50

ATTORNEYS AT LAW

WRITER'S DIRECT LINE

February 25, 1998

VIA FACSIMILE

Mr. Patrick Sharpe  
Compliance Specialist  
Federal Trade Commission  
Premerger Notification Office  
Room 300  
5th and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Dear Patrick:

This is to confirm our telephone conversation last week in which you concluded that based on the following facts, and the Federal Trade Commission's current interpretation of the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") and the regulations promulgated thereunder, Company A does not control Company B.

Company A, a foreign issuer, owns 40 percent of the issued and outstanding voting securities of Company B, another foreign issuer. Company A does not have control over any additional voting shares issued by Company B through any formal or informal agreements with other shareholders of Company B. The law of the jurisdiction in which Company A and Company B are incorporated states that Company A has de facto control over Company B due to the fact that the votes cast by Company A at recent Company B shareholder meetings constituted over 50 percent of the total votes cast by Company B shareholders present at the shareholder meetings. This is a consequence of the failure of many of Company B's minority shareholders to attend and vote at shareholder meetings.

will not  
change  
control  
definition

You stated that the Federal Trade Commission Compliance Office interprets 16 C.F.R. § 801.1(b) as stating that control by one entity over another entity will only be conferred in one of the following three ways: (1) direct ownership of 50 percent or more of

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the issued and outstanding voting securities of the issuer; (2) possession of the contractual power to designate 50 percent or more of the directors of a corporation, such as through holding irrevocable proxies; or (3) a combination of both direct ownership of voting securities and the contractual power to vote shares owned by third parties. You stated that the FTC does not consider de facto control as conferring control for HSR Act reporting requirements. Furthermore, you stated that Company A's ownership of 40 percent of the issued and outstanding shares of Company B voting securities, without additional contractual agreements, does not grant Company A control over Company B. Finally, you stated that since Company A does not control Company B, the sales of Company B in or into the United States are not imputed to Company A in determining Company A's total sales in or into the United States. 40%

Please call me immediately at [redacted] if I have in anyway misunderstand your interpretation of the HSR Act and the definition of control. As always, I appreciate your assistance in this matter. Best regards.

Sincerely,

[redacted signature]

[redacted]

called [redacted]  
2/27/98  
I concur