05/22/98 15:29 [redacted] 001

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FACSIMILE TRANSMITTAL

TO: Patrick Sharpe

FROM: [redacted]

COMPANY: Federal Trade Commission
Premerger Notification Office

DATE: May 22, 1998

FAX NO.: 202 326-2624

TIME:

MAIN NO.: 202 326-2648

NO. OF PAGES: 4 (including this page)

If you do not receive all the pages, please telephone [redacted] *immediately.*

MESSAGE:

[redacted]

[redacted]

[redacted] 802.21

[redacted]

May 22, 1995

VIA FACSIMILE

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

Re: Nonreportability of
Transaction under HSR Act

Dear Patrick:

This letter will confirm our telephone conversation last week in which you indicated that the following transaction would not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act"), as codified at 15 U.S.C.§ 18a, and the rules promulgated thereunder:

> Company A, which is its own ultimate parent entity for HSR Act purposes, is merging with Company B, which is also its own parent entity.[1] Company C, which is its own ultimate parent entity, currently owns approximately 46.5% of the common voting securities of Company A. As a result of the

[1] A HSR filing will be made by Company A and Company B with respect to the merger. OK

merger, Company C's holdings of the voting securities of Company A would be approximately 24.6%. At the same closing as the merger (but, for a variety of business reasons, immediately following the merger), Company C will purchase from Company D, which is its own ultimate parent entity, approximately 18% of the voting securities of Company A. The occurrence of the merger and stock purchase are conditioned upon each other occurring. After the transactions contemplated by the Merger Agreement, Company C will hold 34.2% of the voting securities of Company A.

Company A and Company C filed HSR notifications in October 1994 for meeting or exceeding the 25% threshold, in contemplation of Company C, through open market stock purchases, increasing its holdings of Company A common voting securities from 46.5% to up to, but not meeting or exceeding 50%.[1] Company C did not make these purchases, however.

As we discussed, even though Company C did not acquire any additional voting securities in connection with the October 1994 HSR notification following the termination of the pertinent HSR waiting period, given Company A's ownership of 46.5% of Company A's voting securities at such time, Company C automatically satisfied 16 C.F.R § 802.21 for purchases of up to, but not meeting or exceeding, 50% of Company's A voting securities. Under 16 C.F.R. § 802.21 Company C has 5 years to complete the acquisition of voting securities up to, but not meeting or exceeding, the 50% threshold from the date upon which the HSR waiting period expired or terminated in connection with the October 1994 HSR notification. Accordingly, so long as Company C acquires the voting securities described above from Company D, within such 5-year time period, no HSR filing would be required for the transaction.

agreed

agree

[1] Company C had been Company A's ultimate parent entity from its inception until the early 1990s, when Company C arranged for an initial public offering ("IPO") of Company A, which IPO decreased Company's C's holdings by Company A voting securities to the 46.5% level.

called [redacted] 5/22/98. I concur.

Please let me know immediately if I have misunderstood your analysis or your conclusions regarding the above described transaction. As always, I appreciate your very valuable assistance in these matters.

Best regards,

[redacted]