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June 12, 1998

BY FACSIMILE & CERTIFIED MAIL

Patrick Sharpe, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I am not an attorney PS

Dear Mr. Sharpe:

Thank you for taking the time to discuss Hart-Scott-Rodino ("HSR") interpretation issues on Monday, June 8, 1998. As we discussed, I would like to take this opportunity to memorialize and confirm our conversation regarding the following set of facts:

Background Facts Discussed

but not \$100 MM

"A" is a large, public company that satisfies the \$100 million size-of-person threshold. "B" is a small, privately-held company which may or may not meet the \$10 million size-of-person threshold -- assume that B does not have \$10 million in total assets, but does have in excess of \$10 million in total revenue; therefore, the issue of whether B is "engaged in manufacturing" under the HSR Act is determinative. Both A and B are their own ultimate parent entities ("UPE"). A proposes to acquire certain assets of B, and it is assumed that such acquisition would satisfy the \$15 million size-of-transaction threshold.

B's operations consist entirely of the provision of engineering and related services; the revenue that B derives would be classified entirely within SIC code families 871 (engineering, architectural and surveying services) and/or 873 (research, development and testing services). In connection with the provision of such services to A, B may produce one or more prototype modules or components that would be provided to A in connection with a separate, development agreement between A and B (distinct from the asset purchase itself). No separate consideration is to be paid for such prototype(s), although A will bear all legitimate costs of B in B's development efforts, including the cost of such prototype(s).

Has not yet done so? when the transaction takes place, the parties will be looking back at the most recent financial statements.

[REDACTED]

more than

Issues Confirmed

or less

as reflected on B's last regular prepared financial statement

1. Assuming the value of the prototype(s) is less than \$1 million, then B will not be defined as engaged in manufacturing under the HSR Act regardless of A's subsequent use of the prototype(s), since one must derive \$1 million or more from the sale of manufactured products to qualify under the HSR definition.

2. Even if the value of the prototype(s) exceeds \$1 million, the production of such prototypes by B will not result in B being defined as engaged in manufacturing if A (including its agents) utilizes such prototypes for further research and development, since the production of such prototype(s) or other tangible plans and models is consistent with and included within the engineering service SIC codes discussed above.

check with the Bureau of Census to determine whether an activity is manufacturing or not.

3. If the value of the prototype(s) exceeds \$1 million and A eventually incorporates such prototypes into A's manufactured products for interim resale for revenue to third-party customers (as Alpha or Beta units later replaceable with production units of A), you indicated that the Premerger Office would likely conclude that B was engaged in manufacturing -- or at least that we should revisit the issue in greater detail prior to assuming otherwise.

4. If B produces more than one prototype, one or more of which is used by A for the research and development purposes described in Item 2 above, and one or more of which is used by A to incorporate into its products for resale as described in Item 3 above, only the value of the prototype(s) used by A for the purposes described in Item 3 would be counted towards the \$1 million amount for purposes of determining whether B is engaged in manufacturing. (We may not have expressly discussed this point, but it should follow logically.)

What does Census say about this matter?

5. In all cases above, the value of the prototype(s) will be determined based on their direct cost -- that is, the parts and labor actually used for the specific prototype(s), plus reasonable overhead -- or some other good faith valuation method consistent with accounting principles.

If you feel that anything in this letter does not accurately summarize our conversation, or is inaccurate in any other respect, please do not hesitate to contact me as soon as possible. Thank you once again for your consideration of this matter. I look forward to speaking with you again in the future.

Very truly yours,

[Redacted signature]

Called [Redacted] 6/17/98 and informed him of our comments noted on this letter. (PS) (AS) concurs

[Redacted]