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May 21, 1999

By Hand

Richard B. Smith
Deputy Assistant Director
Premerger Notification Office
Federal Trade Commission
Room H-323
6th and Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Mr. Smith:

This is to confirm our conversation on May 19, 1999 in which you advised me that the transaction described below is not reportable.

Company A is buying the stock of Company B which is in the business of "leasing" employees to various companies. Company B hires the employees, pays them a salary, pays payroll taxes and prepares W-2s for them. The employees work on the premises of third-party companies which pay Company B an amount that exceeds the salary of the employees. The difference between the revenue from the third parties and the salaries of the employees is the gross profit of Company B.

Company A, the acquiring company, has sales or assets which exceed $100 million. Company B, the acquired company, is not engaged in manufacturing. The assets reported on Company B's last regularly-prepared balance sheet are $9.88 million. Its most recent fiscal year income statement shows revenues exceeding $200 million. The next line on the income statement shows "direct costs" consisting of salaries and wages of worksite employees and benefits and payroll taxes. When those direct costs are deducted from the revenue, the resulting gross profit is about $7.5 million.

You concluded that the size-of person test is not met. Since the acquired company is a non-manufacturing company, its assets must equal or exceed $10 million or its sales must equal or exceed $100 million before a filing is necessary. 15 U.S.C. §18a (a)(2) Here, the asset test is not met because the assets as shown on the last regularly-prepared balance sheet are less than $10 million. You advised me that the revenue to be used in determining the amount of "sales" is not the $200 million shown as the revenue

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on the income statement. You reasoned that Company B is a conduit for the third-parties' payment of employees' salaries. Thus, the relevant revenue for HSR purposes is the difference between the revenue shown on the income statement and the employees' salaries. That amount is about $7.5 million, which is considerably less than $100 million. Consequently, the size-of-person test is not met, and no filing is needed.

Please advise me within three days of your receipt of this letter if you disagree with the above.

Thank you very much.

Sincerely,

[redacted]

[redacted]

cc: [redacted]

[redacted]

5/24/99 Advised writer that we agreed with deduction of amounts paid to Company B, which are passed on to worksite employees (with benefits and payroll taxes), thus making B of non-reportable size. (H. Verne agrees)

R.B.Smith

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