[redacted]

802.50 (b)
802.51 (b)

[redacted]

October 4, 1999

VIA FACSIMILE AND U.S. MAIL
Michael Verne, Esq.
Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Sixth Street and Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Hart-Scott-Rodino Analysis of Foreign Corporate Joint Venture

Dear Mr. Verne:

This will confirm our discussions with [redacted] September 30, 1999. We discussed the following hypothetical situation:

Company A (a United States person) and Company B (a foreign person) intend to create a joint venture (JV) incorporated under foreign law. Companies A and B each will hold fifty percent of JV's voting securities. As consideration for these voting securities, Companies A and B will contribute to the joint venture cash and assets in the form of technology. No "entity" (as defined by 16 C.F.R. § 801 (a)(2)), will be contributed to the joint venture.

The aggregate book value of the assets to-be-contributed to the JV are less than $15 million, based on the last regularly prepared balance sheets of Companies A and B. Revenues attributable to those assets during the most recent year exceeded $25 million.

We discussed whether, under these circumstances, the creation of the joint venture by Companies A and B would be exempt from reporting under Rule 802.50 (with respect to Company A) and Rule 802.51 (with respect to Company B). With respect to Company B, we concluded that the acquisition would be exempt because Company B would not control a foreign issuer which would hold assets in the United States having an aggregate book value of $15 million or more. See Rule 802.51(b)(1).

[redacted]

With respect to Company A, we concluded that the transaction would be exempt under Rule 802.50(b) because Company A would not control a foreign issuer which would hold assets in the United States having an aggregate book value of $15 million or more, or made aggregate sales in or into the United States of $25 million or more in its most recent fiscal year. In this regard, we concluded that the provisions of subparagraph (2) of Rule 802.50(b) do not come in play because the joint venture does not yet exist and no entity is being contributed to the joint venture. Thus, the JV cannot be said to have had any revenues in its most recent fiscal year.[1]

Please let me know if your analysis differs from the above in any material respect.

[redacted] yours,

[redacted]

Enclosures

AGREE - NO FILING IS REQUIRED.
N. OVUKA CONCURS.
[redacted]
10/5/99

[1] In this regard the FTC staff construes Rule 802.50 (b)(2) in a manner parallel to Rule 802.20(b). Specifically, the staff has taken the position that with respect to joint venture corporations that are not yet in existence and as to which no entities are being contributed, the parties may disregard for purposes of Rule 802.20(b) sales attributable to assets that will be contributed to the joint venture. See Interpretation No. 198, Premerger Notification Practice Manual (1991 ed.).

[redacted]