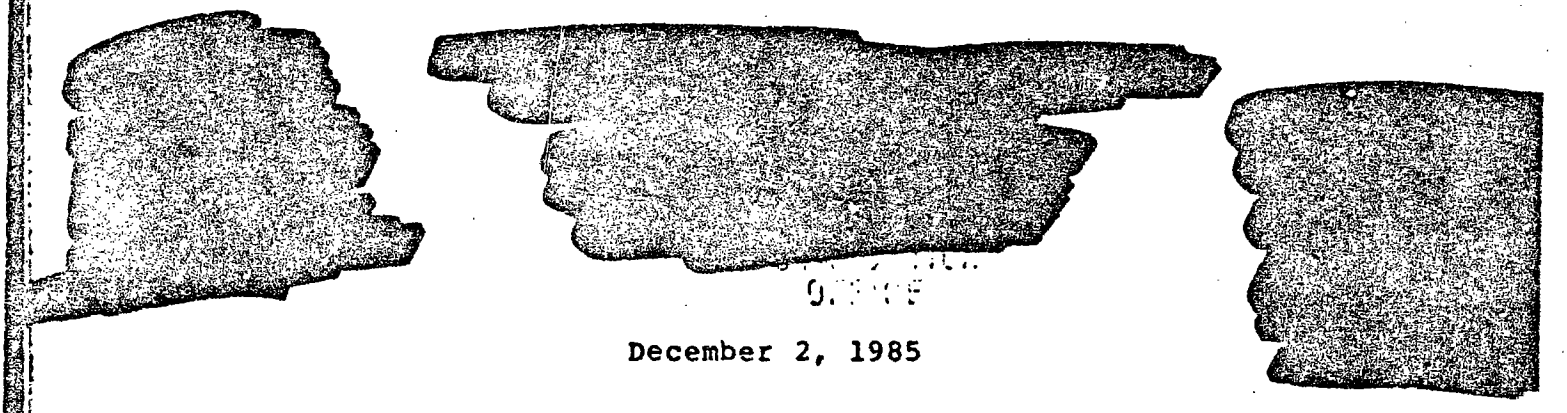

December 2, 1985

Dana Abrahamson, Esq.
Premerger Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Abrahamson:

I am writing to confirm your telephone conversation on November 22, 1985 with [redacted] during which you advised that notification under the Hart-Scott-Rodino Antitrust Improvements Act ("the Act") is not required in the situation described below.

The question discussed was whether "intercompany sales" of an issuer are required to be included in the calculation of "annual net sales" for purposes of determining whether an acquisition would be exempt from the notification requirements under the Act by virtue of the $25 million or more annual net sales threshold in §802.20(b) of the Commission's rules under the Act (the "Premerger Rules").

The situation explained to you giving rise to this question is as follows:

Company A ("Seller") proposes to enter into an agreement with Company B (the "Acquiring Company") for the sale by Seller and purchase by the Acquiring Company of all of the capital stock of Company C (the "Acquired Company"), a wholly owned subsidiary of Seller. The Acquired Company is a Delaware corporation and has no subsidiaries but has numerous unincorporated divisions with separate facilities in approximately 14 locations. The purchase price is $8.2 million cash. The Total Assets of the Acquired Company at December 29, 1984 was, and at the present time is, less than $5 million. Thus, immediately after closing of the subject acquisition, the Acquiring Company would not hold assets of the Acquired Company valued at more than $15 million but would hold 100% of the outstanding capital stock of the Acquired Company.

The Acquired Company's last fiscal year ended December 29, 1984. The Acquired Company does not publish audited financial statements but it is part of Seller's audited consolidated financial statements. The Acquired Company's profit and loss statement for the fiscal year ended December 29, 1984 ("1984 P&L") prepared for internal reporting purposes lists its sales as follows:

| | |
|---|---|
| Net Sales | [redacted] |
| Intercompany Sales | |
| Grand Total Sales | [redacted] |

In addition to internal reporting purposes, the 1984 P&L is furnished in connection with bids submitted by the Acquired Company to third parties for contracts in the ordinary course of the Acquired Company's business and lists the Acquired Company's sales in the manner as set forth above. On the other hand, the Acquired Company's state income tax returns for the tax year ended December 31, 1984 reports "Gross Receipts or Sales" of only [redacted] and does not include the intercompany sales. Furthermore, "annual net sales" reflected in Seller's consolidated financial statements for the fiscal year ending December 31, 1984 also eliminate the Acquired Company's "intercompany sales" in the amount of [redacted]

As set forth in the Acquired Company's financial statements, "intercompany sales" are sales between unincorporated divisions of the Acquired Company of a product or service furnished by one division to another division of the Acquired Company, which latter division in turn sells such product or service to an unrelated third party. Thus, because they are duplicative, "intercompany sales" are not treated by the Acquired Company as includable in the "Net Sales" line item on the 1984 P&L nor is such amount included by its parent corporation in the total net sales for consolidated reporting purposes. In this regard, the elimination of "intercompany sales" from the "annual net sales" in the 1984 P&L is analogous to calculating the Acquired Company's nonduplicative "annual net sales" pursuant to §801.11(b) of the Premerger Rules.

Based on the situation described above, you stated that it was your informal interpretation that no filing was required under the Act and Premerger Rules. In particular, you indicated that the "intercompany sales" of the Acquired Company as described above would not be included in "annual net sales" for purposes of determining whether the issuer's (i.e. the Acquired Company's)

total "annual net sales" would exceed the $25 million threshold under §802.20(b) of the Premerger Rules. On the basis of your advice, attorneys for the Acquired Company and the Seller have advised their respective clients that the Acquiring Company may purchase the stock of the Acquired Company and that such acquisition is exempt from the premerger notification requirements of the Act by virtue of §802.20(b) of the Premerger Rules.

The parties intend to close the acquisition transaction before the close of business on December 6, 1985 without filing of any premerger notification under the Act. If your office believes that, contrary to our understanding expressed in the foregoing, such filing is required, we would appreciate your notifying the undersigned immediately at [redacted] but in any event prior to December 6, 1985.

Thank you for your assistance.

Very truly yours,

[redacted]

[redacted]

[redacted]

This letter does not comport with my recollection of our conversation. My recollection is as follows:

First, the caller said that the financial he was looking at was an income statement not a P+L statement.

Second, I told the caller to look at 801.11's SBP. He had not read it. We only discussed the "intercompany sales" language and I did not opine whether that language fit his situation.

Third, I asked the caller to send us the financial statement so our accountants could look at them if, after reading the SBP, he had any further questions about the reportability of the deal. I did not

tell them that we would respond to a letter in which they partially set forth selected financial statement information