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Item 5(b)(ii)

May 24, 2000

VIA FAX TO #202-326-2624
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

Re: Item 5 "General Observations" on FTC Website

Ladies and Gentlemen:

I compliment you on your having undertaken yet another step to improve the Bar's understanding of the nuances of the HSR Form. It certainly is helpful and reassuring to see, in writing, your approach to some of the thorny issues regarding Item 5.

After having reviewed your "observations" and taken the test, I have a few questions regarding Item 5(b)(ii) as to which I seek your guidance:

a. In your "observations" you note that direct sales into the U.S. are not reported in Item 5, but stipulate that title and risk of loss must pass to the U.S. customer outside of the U.S. Presumably this stipulation is to distinguish that situation from one where the goods are imported into a U.S. establishment of the acquired person, with title and risk of loss passing from that establishment. But what if the goods are imported by the acquired person (directly or through an independent importer) and sent directly to the buyer without first "landing" at a U.S. establishment of the acquired person? Would the revenues from the sales of those goods be reported in Item 5? **No**

b. Would your response to the Item 5(b)(ii) part of Question #3 be different if, in fact, the only product(s) manufactured by Newco since incorporation are within the same 7-digit SIC Code as the only product(s) manufactured by Oldco since 1952 (and still manufactured by Oldco)? In other words, if ANY entity CURRENTLY within the person filing notification

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manufactured product at the 7-digit level in 1992 and every year thereafter (to the present), would you still report that 7-digit product as having been added since 1992? **NO**

c. Based upon your response to my previous question, would your response to the Item 5(b)(ii) question in Question #4 also be different? **YES**

Finally, my own observation. I never have understood the Item 5(b)(ii) instruction that requires that products be listed if deleted by virtue of the divestiture of an entity. So I am pleased with your "general observation" that no information needs to be provided as to the products of that entity. Nevertheless, inasmuch as the requirement does appear in the official instruction, and is described in the Statement of Basis and Purpose adopted by the Commission, would it not be a preferable approach to amend the instruction and amend the SBP? It seems to me that, ultimately, the instructions and the SBP are better devices (to say nothing of being more authoritative) in which to set forth the basic "technical" requirements of the HSR notification program than "style sheets" and "general observations".

I look forward to your reply to my Item 5(b)(ii) questions.

[REDACTED]

I AGREE - THE INSTRUCTIONS
TO THE FORM ARE CONTRADICTORY
} SHOULD BE CHANGED.

Michael V...
5/31/00

[REDACTED]