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February 4, 1983

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PREMERGER
NOTIFICATION
OFFICE

BY HAND

Sandra Vidas, Esquire
Premerger Notification Office
Federal Trade Commission
7th and Pennsylvania Ave., N.W.
Room 301
Washington, DC 20580

Dear Mrs. Vidas:

This letter will summarize the telephone conversations we had on February 2, 1983, concerning whether a certain individual meets the size of person test for the premerger notification filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The following hypothetical was posed to you in considering whether, for filing purposes, the individual met the size-of-person test: Mr. Smith is the ultimate parent entity of ABC Co., a company involved in the acquisition of another company which holds over \$100 million in total assets. Mr. Smith also controls Corporation A. Corporation A is the only General Partner in Partnership A. Partnership A has approximately a 70% controlling interest in Corporation B. Corporation A also has a direct interest in Corporation B of 5.6%. The issue raised concerns which assets would be attributed to Mr. Smith personally.

You responded that the assets of Corporation A would be attributable to Mr. Smith because he controls the company. However, with respect to Partnership A, you stated that

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Partnership A is its own ultimate parent entity and therefore, neither its assets nor the assets of any entity which it controls (i.e. Corporation B) can be directly attributable to Mr. Smith.

Rather, you explained the investment value in Partnership A to be attributed to Mr. Smith would equal the amount carried on Corporation A's regularly prepared Balance Sheet as the Investment Asset value for that entity. You further stated that assets of Corporation B attributed to Partnership A (because of the partnership's controlling interest in Corporation B) would not be attributable through Partnership A to Corporation A or Mr. Smith.

With respect to Mr. Smith's personal investment assets, voting securities, and income-producing property, you were informed that he does not regularly prepare personal financial statements. We then asked you the question whether he would have to value his personal assets, for purposes of determining whether he met the size-of-person test, at cost or fair market value. You stated that because Mr. Smith does not regularly prepare personal financial statements, we would need to look at the regularly prepared financial statements of the companies he controls to determine the proper method of evaluation for his personal assets. Looking to the regularly prepared financial statements of Corporation A, the investment assets appear at cost and since Mr. Smith controls Corporation A, you informed us that this would be deemed to be a proper method of valuation. Therefore, for purposes of determining the value of his investment holdings, Mr. Smith could use a cost basis.

Finally, we addressed the formation of ABC Co. which is to be funded with \$1 million in capital and \$34 million in debt. You responded that although the newly-formed corporation will have \$35 million in cash at the time the acquisition takes place, \$34 million will be in loans secured by another company's assets. Therefore, this company will be seen as only having \$1 million in assets by the Federal Trade Commission.

When we applied, with you, the responses recited above to Mr. Smith's assets, we concluded that he does not meet

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the size of person test set forth in §7A of the Clayton Act
and therefore no premerger notification statement need be
filed by him or by ABC Co.

[REDACTED]

2-8

Investors

125.31 MM
Corp.

[REDACTED]

borrow
£ 150 MM

cash vs
£ 150 MM

1. Formation of corp. is not reportable (SEP & SEP)
2. Will get in capital contributions & loans that while it needs to make the acquisition
... direct SEP



2-8

A
100

B
10-15 sales
2.8 M assets

Assets
900,000
845

1000 assets