

[REDACTED]

[REDACTED]

[REDACTED]

September 26, 1983

BY MESSENGER

Director of Operations
Antitrust Division, Room 3218
Department of Justice
10th and Constitution Avenues, N.W.
Washington, D. C. 20530

Premerger Notification Office
Bureau of Competition, Room 301
Federal Trade Commission
6th and Pennsylvania Avenues, N.W.
Washington, D.C. 20580

Re: [REDACTED]

Gentlemen:

Pursuant to Section 803.30 of the Premerger Notification Rules (the "Rules") issued by the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"), a request is hereby made for a formal interpretation of the requirements of the Act and the Rules.

I. FACTS

[REDACTED] a Michigan corporation [REDACTED] has presently issued and outstanding, 5,000 shares of Common Stock of which 3,970.5 shares (approximately 79%) are held by [REDACTED] a Michigan corporation [REDACTED] and 360 shares (approximately 7%) are held directly by [REDACTED] an individual. [REDACTED] has 1,000 shares issued and outstanding, all of which are held by [REDACTED]. Of the remaining Irvine shares, 693.5 shares (approximately 14%) are held by other shareholders of the Company. Thus, [REDACTED] either directly or through his wholly-owned corporation, holds approximately 86% of the issued and outstanding shares of [REDACTED]

Department of Justice
Federal Trade Commission
September 26, 1983
Page Two

The Board of Directors of [redacted] is currently considering a Plan of Merger providing for a merger (the "Merger") whereby [redacted] will be merged with and into [redacted] (which would immediately change its name to [redacted] and the presently outstanding stock of [redacted] (other than shares held by [redacted]) would be converted into the right to receive either Common Stock of [redacted] or cash.

The exchange ratio in the Merger is two shares of [redacted] Common Stock for each outstanding share of [redacted] Common Stock, with each outstanding share of [redacted] being converted into 2.7 shares. If all of [redacted] shareholders, other than [redacted] elect to receive [redacted] Common Stock, their 14% ownership of the Company would convert into a 28.8% ownership of [redacted] and the ownership of [redacted] would be reduced from 86% to 71.2%.

If any shareholder elects to receive cash in the Merger, the price will be \$208,400 per share. The right given to each shareholder of the Company to elect cash for [redacted] stock will be given without any restrictions or other limitations. The shareholder electing cash must do so as to all of his or her shares and if no election is made, a shareholder will receive [redacted] stock.

On April 15, 1983, [redacted] purchased 51.8% of the outstanding capital stock of [redacted] for \$518,100,000. This transaction was reported on a Notification and Report Form pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the waiting period was observed. [redacted] was formed to effectuate this acquisition and borrowed significant funds for this purpose. [redacted] only asset is its holdings of [redacted] stock. [redacted] total debt at the anticipated closing of the proposed Merger (early November 1983) is anticipated to be approximately \$560,000,000.

A premerger and postmerger condensed pro-forma balance sheet of [redacted] dated as of June 30, 1983, is attached as Exhibit A to this letter. The pro-forma balance sheet indicates that the exchange ratio in the Merger was

[REDACTED]

Department of Justice
Federal Trade Commission
September 26, 1983
Page Three

determined by a formula designed to insure that shareholders, other than [REDACTED] will have equity in [REDACTED] that will at least equal their present equity in [REDACTED]. The exchange ratio takes into account the fact that after the Merger, the value of the combined company reflects both the value of [REDACTED] and the assumption of the acquisition debt incurred by [REDACTED].

II. QUESTION PRESENTED

On behalf of [REDACTED] we respectfully request that you resolve the following question:

Whether the transaction described in this letter is exempt as an intra-person transaction pursuant to Section 802.30 of the Rules.

III. DISCUSSION

1. Rule 802.30 provides that "in an acquisition . . . in which, by reason of holdings of voting securities, the acquiring and acquired persons are . . . the same person, shall be exempt from the requirements of the Act." It is submitted that in the instant case the acquisition of voting securities of [REDACTED] through the Merger is a nonreportable transaction within the meaning of Rule 802.30 as far as [REDACTED] is concerned because [REDACTED] is the ultimate parent entity of [REDACTED] by virtue of his holdings of voting securities. The acquisition of shares for cash in the Merger should likewise be exempt under Rule 802.30 as far as [REDACTED] and such former shareholders are concerned. See Example 4 to Section 802.30.

2. Similarly, it is submitted that in the event shareholders in [REDACTED] do not elect cash, their acquisition of voting securities of [REDACTED] in the Merger should be exempt because such shareholders will be both acquiring and acquired persons. See Section 801.2(d)(1). Section 802.30 should

[REDACTED]

Department of Justice
Federal Trade Commission
September 26, 1983
Page Four

apply to the acquisition of [REDACTED] stock in the Merger by
shareholders other than [REDACTED]

We respectfully note that we see absolutely no substantive antitrust implications involved in the described corporation reorganization. Irrespective of the Merger, control over [REDACTED] will be unchanged from the control currently exercised by [REDACTED] by virtue of his pre- and post-merger holdings of voting securities. In this context, we believe that it is unreasonable to require shareholders who do not elect cash in the Merger to file a Notification and Report Form which would report only nonrelevant financial information, it is unreasonable to require [REDACTED] to submit the same information he already submitted in a previous filing, and it is unreasonable to make the parties to the Merger observe the required waiting period.

Your earliest possible response to the foregoing request for formal interpretation would be very much appreciated. If you have any questions regarding the foregoing or require additional information, please do not hesitate to contact the undersigned at [REDACTED]

Respectfully submitted
[REDACTED]

EXHIBIT A

Comparative Condensed Balance Sheet
(In Thousands)

June 30, 1983

	<u>Pre-Merger</u>	<u>Post-Merger</u>
Total Assets	\$771,200	\$1,481,000
Total Liabilities	560,500	\$1,004,000
Shareholders' Equity	210,600	\$ 477,000