

[REDACTED]
[REDACTED]
[REDACTED]
July 25, 1984

Re: Premerger Notification Requirements
Under the Hart-Scott-Rodino Antitrust
Improvements Act of 1976

Wayne E. Kaplan, Esq.
Premerger Notification Office
Room 301
Bureau of Competition
Federal Trade Commission
Seventh and Pennsylvania Avenues, N.W.
Washington, DC 20580

Dear Mr. Kaplan:

We represent [REDACTED] in connection with [REDACTED]'s proposed reorganization of certain wholly-owned subsidiary corporations. The purposes of this letter are to describe the factual background of the proposed reorganization and to confirm the inapplicability of the premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act").

INTRODUCTION

[REDACTED] company which controls, through ownership of stock, certain companies holding operating authority issued by [REDACTED] and which are subject to the jurisdiction of, the [REDACTED]. As set forth in more detail herein, as well as in the [REDACTED] on July 6, 1984, [REDACTED] proposes through a series of transactions to eliminate two holding companies and to merge certain other subsidiaries. The companies to be eliminated are [REDACTED] a [REDACTED] corporation, and [REDACTED] and [REDACTED]. The effect of these transactions will be that [REDACTED] will control all of its [REDACTED] subsidiaries directly by means of ownership of all of the issued and outstanding stock of the respective companies, rather than indirectly through the ownership of the stock of [REDACTED].

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There is attached hereto as Appendix A a diagram showing the current corporate structure of [REDACTED] and its various subsidiaries. There is attached hereto as Appendix B a diagram indicating the proposed corporate structure after the completion of the contemplated transactions.

The result of the proposed transactions will be to substantially simplify the corporate structure of [REDACTED] and its subsidiaries by giving the parent holding COMPANY direct ownership and control of all of the [REDACTED] subsidiaries and by reducing the total number of corporate entities. Significantly, the proposed transactions will not result in the acquisition of any additional securities or assets by [REDACTED]

It should also be noted that the proposed transaction is subject to the jurisdiction of [REDACTED] [REDACTED] requesting that the proposed transaction be exempted from the requirements of prior approval and authorization by the [REDACTED] A copy of the Petition for Exemption is enclosed for your review.

FACTUAL BACKGROUND

[REDACTED]

[REDACTED]

[REDACTED]

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On October 5, 1983, [redacted] purchased all of the issued and outstanding stock of [redacted] wholly-owned subsidiary of [redacted] which is a [redacted] from the [redacted] in turn owns all of the issued and outstanding stock of [redacted]

By decision served on September 26, 1983 in the [redacted] [redacted] is exempted from the requirements of prior review and approval of the acquisition by [redacted] of control of [redacted]

In connection with the acquisition of control of [redacted] and its subsidiaries by [redacted] informational materials were submitted to the Premerger Notification Office of the Federal Trade Commission ("FTC") as well as to the Antitrust Division of the Department of Justice. Based on this information and the exemption of the transaction by the ICC, your office confirmed that the transaction was exempt under Section 7A(c)(5) of the Clayton Act, 15 U.S.C. §18a(c)(5). See your letter dated October 14, 1983 regarding [redacted]

On January 26, 1984, [redacted] purchased all of the issued and outstanding stock of [redacted]. The latter company controls, through ownership of [redacted] of the issued and outstanding stock of [redacted]

[redacted] decision served on January 25, 1984, in [redacted] [redacted] is exempted from the requirements of prior review and approval of the acquisition by [redacted]

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Informational materials in connection with this transaction were also submitted to the Premerger Notification Office of the FTC and the Antitrust Division of the Department of Justice. Once again, your office confirmed that the transaction was exempt under Section 7A(c)(5) of the Clayton Act, 15 U.S.C. §18a(c)(5), from the premerger notification and waiting period requirements of the Act. See your letter dated March 20, 1984 regarding [REDACTED]

THE PROPOSED TRANSACTIONS

The purpose of the transactions proposed by the parties is to eliminate two holding companies and to merge certain subsidiary corporations, thereby simplifying the corporate structure by which [REDACTED] controls the [REDACTED] and other affiliated companies.

The proposed transactions do not contemplate the injection of any new [REDACTED] or any meaningful modification in the control of the existing companies. Essentially, all that is involved in the elimination of two holding companies and the merger of certain existing companies so that [REDACTED] will directly control all of [REDACTED] subsidiaries.

With respect to [REDACTED] and its subsidiaries, the parties propose to merge [REDACTED] pursuant to a so-called "short-form merger" under California Corporation Code Section 1110. [REDACTED] will be the surviving corporation in the merger. Simultaneously with the merger, the name of [REDACTED] would be changed to [REDACTED], which is presently a subsidiary of [REDACTED] would continue as a subsidiary of the surviving corporation in the merger. In connection with the [REDACTED] of the transaction, there are attached to the Petition for Exemption as Appendix H proposed copies of the required merger documents.

With respect to the [REDACTED] phase of the transaction, it is proposed that [REDACTED] will declare a dividend of all of the issued and outstanding stock of [REDACTED]

Simultaneously [REDACTED]

[REDACTED] will also be [REDACTED]

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[REDACTED] will become direct subsidiaries of [REDACTED]. In addition, the separate corporate existence of [REDACTED] will be eliminated as a result of the mergers. There are attached to the Petition for Exemption as Appendix I copies of the essential and relevant documents in connection with the [REDACTED] phase of the transaction.

DISCUSSION

The parties to the proposed transaction have filed with the ICC a Petition for Exemption pursuant to 49 U.S.C. §11343(e). The Petition contains all of the information required by the regulations enacted by the ICC pursuant to the aforesaid provision, and requests that the ICC find that the proposed transaction is exempt from the merger, consolidation and acquisition of control provisions for the reason that the requirements of 49 U.S.C. §11343(e)(1)(A) and (B) are satisfied. This would require the finding by the ICC that the application of 49 U.S.C. §§11343 and 11344 is not necessary to carry out the National Transportation Policy (49 U.S.C. §10101), and either that the transaction is of limited scope, or that the application of such provisions is not needed to protect shippers from the abuse of market power.

It is anticipated that the Petition will be granted and that the ICC will determine that the proposed transaction is exempt from the approval requirements of 49 U.S.C. §11343 and §11344. If the Petition is granted and the ICC determines that the transaction is exempt, the exemption from the antitrust clause contained in 49 U.S.C. §11341(a) would be applicable because the transaction would have been "exempted" by the ICC.

Alternatively, if the Petition for Exemption were to be denied, the parties would proceed to seek the approval of the proposed transaction by the ICC pursuant to 49 U.S.C. §11343 and §11344 prior to proceeding with the transaction. In the event that such approval is obtained, the antitrust exemption of 49 U.S.C. §11341(a) would still be applicable, but in this case the exemption would be based upon the fact that the transaction had been "approved" by the ICC.

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Since the proposed transaction involves merely a simplification of the corporate structure of [REDACTED] and its existing subsidiaries, and does not involve the acquisition of either the stock or the assets of any new or additional entities, it is our position that the provisions of the Act, specifically Section 7A(a) of the Clayton Act, 15 U.S.C. §18a(a), are not applicable because there is no acquisition of either stock or assets of any new or additional entities involved.

Even if the transaction would be subject to the provisions of the Act, the exemptions under Section 7A(c) (5) or (6) would be applicable. If, as is anticipated, the ICC determines that the transaction is exempt from the requirements of ICC approval pursuant to 49 U.S.C. §11343(e) the transaction would also be exempt from the notification and waiting period requirements pursuant to Section 7A(c) (5) of the Act. If, on the other hand, the ICC determines that the transaction is not exempt, and it becomes necessary to obtain approval of the transaction by the ICC, the applicable exemption from the Act would be under Section 7A(c) (6).

CONCLUSION

Based upon the foregoing, it is our understanding that the provisions of the Act are not applicable in this transaction for the following reasons:

1. The transaction is merely a simplification of the corporate structure of [REDACTED] and its existing subsidiaries, and does not involve the acquisition of the stock or assets of any new or additional entities.
2. Even if the provisions of the Act are applicable, if the ICC issues an order exempting the transaction from ICC approval, the antitrust exemption under 49 U.S.C. §11341(a) would become operative without the ICC having "approved" the transaction. Accordingly, the exemption from the Act under Section 7A(c) (5) would be applicable, and no documents would be required to be filed with the FTC or with the Attorney General.
3. In the event that the Petition for Exemption is denied, so that applicability of the antitrust exemption would be dependent upon approval of the transaction by the ICC, upon filing of such application for approval with the

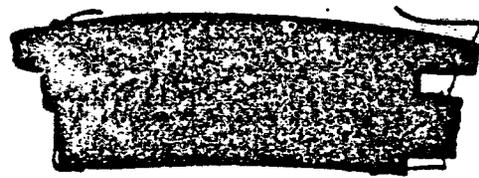
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ICC, it would be necessary to contemporaneously file the application for approval and related materials with the FTC and Attorney General. Assuming that the ICC then approves the transaction, the antitrust exemption set forth in 49 U.S.C. §11341(a) will be applicable and the exemption from the notification and waiting period requirements of the Act would not be applicable because of the exemption under Section 7A(c) (6) of the Clayton Act.

If the discussion of the law or the conclusions set forth herein are inaccurate in any respect, we assume that you will contact us promptly. If we do not hear from you, we shall advise our client to proceed to act on the basis of the conclusions stated herein.

Your cooperation and prompt attention to this matter will be greatly appreciated.

Sincerely yours,

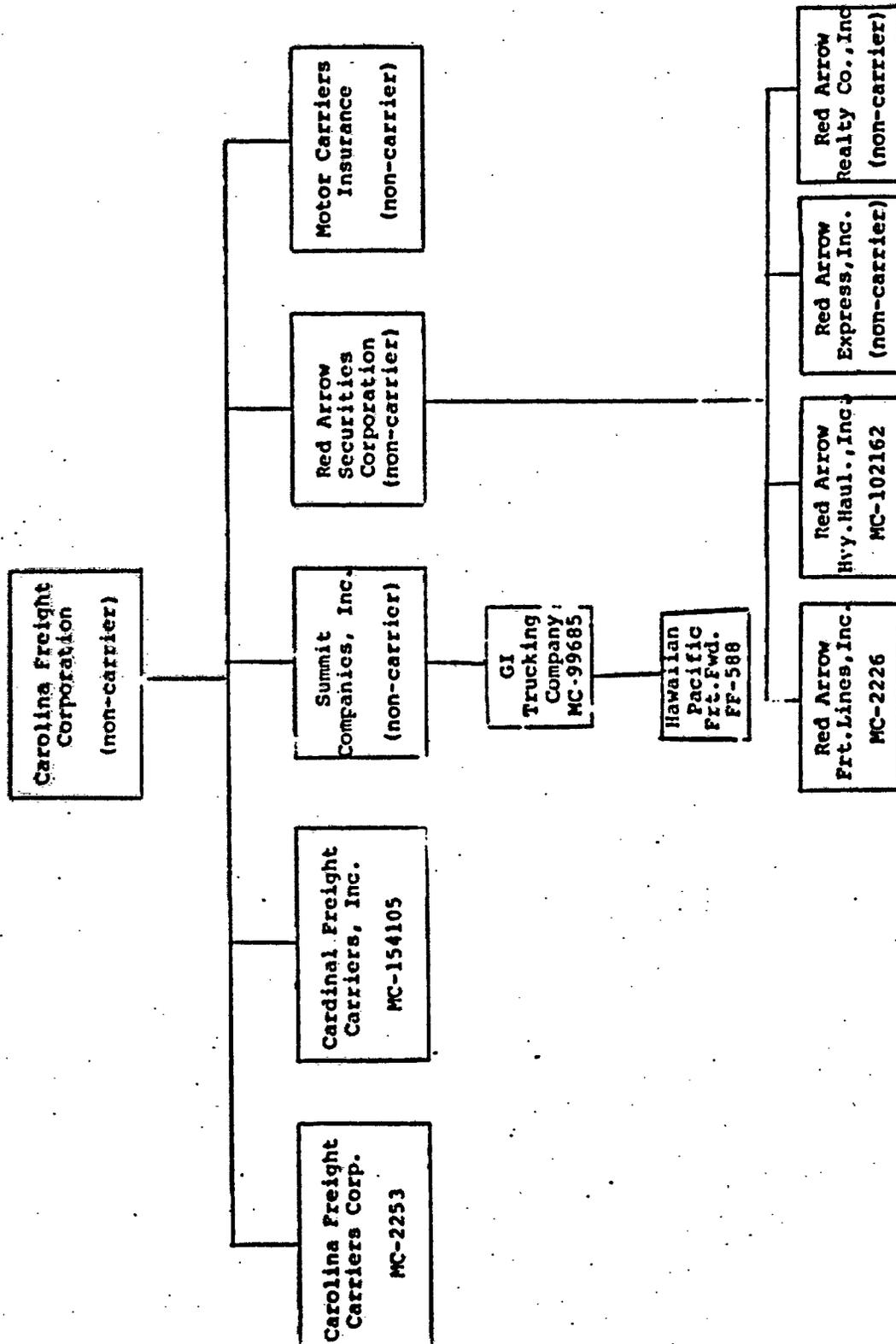


Enclosures



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APPENDIX F
CURRENT CORPORATE STRUCTURE



APPENDIX G

PROPOSED CORPORATE STRUCTURE

