

[Redacted] (5)

[Redacted]

Premerger Notification Office  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580  
U S A

[Redacted] Date  
[Redacted] 15.3.85

This material may be subject to  
the confidentiality provision of  
Section 7A (b) of the Clayton Act  
which restricts release under the  
Freedom of Information Act

Re: Request for Interpretation under 16 CFR para. 803.30:  
Premerger Notification Requirements under the  
Hart-Scott-Rodino Antitrust Improvements Act of 1976  
16 CFR para. 800.1

Dear Sirs and Madams,

We request confirmation that premerger notification is not required by any party in a proposed joint venture between [Redacted] wholly owned by the [Redacted] and [Redacted], a United States corporation [Redacted]. We request that the factual information set forth below be accorded the same confidentiality as the data supplied in a premerger notification.

[Redacted] with annual sales on the order of [Redacted]. The company manufactures, among other things, [Redacted]. It is the [Redacted] that are the subject of the proposed joint venture.

The purpose of the joint venture is to operate a company that can efficiently serve the worldwide [Redacted] market. [Redacted] are prime movers with very high research and development costs. [Redacted] has successfully developed two small [Redacted], its models [Redacted] and [Redacted] and is in the process of developing a third more advanced [Redacted] for which it has expended large sums of money and faces further large expenditures before the product is suitable for the market place. The joint venture with [Redacted] is intended to share the risk of bringing this product to market by 1988.

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the confidentiality provision of  
Section 7A (b) of the Clayton Act

[REDACTED] has been advised that [REDACTED] has not attempted since the 1950's to develop [REDACTED] on its own.

[REDACTED] was acquired by license the rights to build [REDACTED] machine. [REDACTED] does manufacture [REDACTED] series) which, when combined with an [REDACTED] packages suitable for [REDACTED] use.

[REDACTED] or contemplate that the joint venture company would be able to offer the following size [REDACTED] to serve the world market:

[REDACTED]

[REDACTED]

The joint venture is to be based primarily on [REDACTED] current [REDACTED] products, the [REDACTED] (under development), in order to effectively serve the world wide [REDACTED] market. [REDACTED] will retain ownership of its [REDACTED] products and will sell them to the joint venture for worldwide [REDACTED]. Any future [REDACTED] models and [REDACTED] modules will also be available to the joint venture for [REDACTED] markets.

It is presently contemplated that [REDACTED] wholly owned United States subsidiary, [REDACTED] will be used as the joint venture company with both [REDACTED] owning 50%,

[REDACTED] contemplate that [REDACTED] will incorporate in [REDACTED] a wholly-owned subsidiary to which will be transferred [REDACTED] current [REDACTED] products [REDACTED] and proprietary rights to those products. The stock of this subsidiary will be contributed by [REDACTED] as part of its share of the assets of the U.S. - based joint venture company, namely, the reorganized [REDACTED]

[REDACTED] will also transfer to [REDACTED] one hundred percent of the stock of two foreign sales subsidiaries, a [REDACTED] transaction which are each now wholly-owned by [REDACTED]. The [REDACTED] corporations when contributed to [REDACTED] will operate principally as international marketing offices for joint venture products and will have assets of a combined value less than [REDACTED]

The following provisions of the regulations require consideration:

Para. 801.1 (e) (2) (i) Foreign person. The term "foreign person" means a person the ultimate parent entity of which -

(A) Is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States.

Para. 801.40 Formation of joint venture or other corporations.

(a) In the formation of a joint venture or other corporation (other than in connection with a merger or consolidation), even though the persons contributing to the formation of a joint venture or other corporation and the joint venture or other corporation itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of Para. 801.2, the contributors shall be deemed acquiring persons only, and the joint venture or other corporation shall be deemed the acquired person only.

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of section 7A (a) (1) and (3) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1) (i) The acquiring person has annual net sales or total assets of USD 100 million or more;

(ii) The joint venture or other corporation will have total assets of USD 10 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of USD 10 million or more; or

(2) (i) The acquiring person has annual net sales or total assets of USD 10 million or more;

(ii) The joint venture or other corporation will have total assets of USD 100 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of USD 10 million or more.

(c) For purpose of paragraph (b) of this section and determining whether any exemptions provided by the act and these rules apply to its formation, the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(d) The commerce criterion of section 7A(a) (1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

Para. 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) Assets. In a transaction in which assets located outside the United States are being acquired by a U.S. person:

(1) The acquisition of assets located outside the United States, to which no sales in or into the United States are attributable, shall be exempt from the requirements of the act; and

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating USD 25 million or more during the acquired person's most recent fiscal year were attributable.

(b) Voting securities. An acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either:

(1) Holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to Para.801.40 (c) (2) ) having an aggregate book value of USD 15 Million or more; or

(2) Made aggregate sales in or into the United States of USD 25 Mill or more in its most recent fiscal year.

Para. 802.51 Acquisitions by foreign persons.

An acquisition by a foreign person shall be exempt from the requirements of the act if:

(a) The acquisition is of assets located outside the United States;

(b) The acquisition is of voting securities of a foreign issuer, and will not confer control of:

(1) An issuer which holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to Para. 801.40 (c) (2) having an aggregate book value of USD 15 Million or more; or

(2) A U.S. issuer with annual net sales or total assets of USD 25 Million or more;

(c) The acquisition is of less than USD 15 Million of assets located in the United States (other than investment assets); or

(d) The acquired person is also a foreign person, the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than USD 110 Million, and the aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to Para. 801.40 (c) (2) are less than USD 100 Million.

Para. 802.52 Acquisitions by or from foreign governmental corporations

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

(b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.

The following facts are pertinent to interpreting the requirements for filings:

[REDACTED] is a foreign person within Para.801.1 (e) (2) (1). Since it is owned 100% by the [REDACTED] it is also a foreign governmental corporation within the meaning of Para.802.52.

[REDACTED] wholly-owned subsidiary of [REDACTED] though incorporated in the United States, is likewise a foreign person and a foreign governmental corporation as above.

[REDACTED] by itself and through [REDACTED] sold less than [REDACTED] worth of the joint venture products in the United States during the last fiscal year. [REDACTED] subsidiary has made no sales of joint venture products in the United States.

[REDACTED] will purchase its interest in the joint venture by acquiring 50% of the shares of the reorganized [REDACTED] at 50% of net book value (deemed corresponding with fair market value). The total price that [REDACTED] will pay for the shares will be less than \$15 million, payable \$10 million in cash and the balance in a loan.

Through its acquisition of a 50% interest in the joint venture (i.e., 50% of the shares of [REDACTED] will indirectly acquire an interest in assets located outside the United States to which sales in or into the United States are attributable within the meaning of Para.802.50(a)(2). These assets are proprietary rights to [REDACTED] current [REDACTED] products [REDACTED] (in development). Sales during the most recent fiscal year in the [REDACTED] [REDACTED] products aggregated less than [REDACTED] as above and within the meaning of Para.802.50(a)(2) (actually less than USD 13 Million).

The proprietary rights in the [REDACTED] current [REDACTED] products are to be placed in a [REDACTED], wholly owned by [REDACTED] the stock of which it is presently contemplated will be contributed to the joint venture. This stock, together with the stock of K [REDACTED] present [REDACTED] international marketing subsidiaries, will be assets of the joint venture. [REDACTED] 50% interest in the joint venture gives it an interest in foreign assets to which sales in or into the United States during the last fiscal year were less than USD [REDACTED] which [REDACTED] share may be considered to be less than [REDACTED] within the meaning of Para.802.50(a)(2).

[REDACTED] have executed a Letter of Intent contemplating the formation of the joint venture referred to above. Both [REDACTED] and [REDACTED] have annual net sales or total assets of USD 100 Million or more. It is the hope and intention of the parties to begin the joint venture April 1, 1985 at which time the joint venture is projected to have total assets of USD 62 Million and net book value of less than USD 30 Million at, or shortly after, the closing.

[redacted] to enable the joint venture company to offer a broad range of [redacted] will sell its [redacted] products to the joint venture for the worldwide [redacted] market. [redacted] will retain ownership in its designs. [redacted] sales of [redacted] products for [redacted] in the United States during the last fiscal year were less than [redacted]

It is respectfully submitted that the application of relevant regulations to the foregoing facts provides at least two exemptions from the premerger notification requirements of the Hart-Scott-Rodino, Antitrust Improvements Act of 1976.

First, this joint venture should be exempt under Para.802.52. The [redacted] of [redacted] the ultimate parent entity of [redacted] and the present joint venture arrangement centers upon the acquisition of assets which are located in [redacted] and of assets located in the United States ultimately owned by the sovereign government of Norway.

Second, this joint venture should be exempt under Para.802.50 and Para 802.51. The foreign assets which will be acquired by [redacted] (an acquiring entity under Para.801.40) generated much less than [redacted] of sales in or into the United States in the preceding fiscal year. [redacted] assets which will be acquired by [redacted] although held in the name of [redacted] are, as noted before, owned ultimately by the [redacted]. The total U.S. sales generated by all assets, foreign and U.S., that will be acquired by [redacted] was last year less than [redacted], far less than the [redacted] billion threshold specified in Para.802.50.

Additionally, [redacted] (arguably an acquiring party within the joint venture context of Para.801.40) should be considered exempt from any premerger notification obligation pursuant to Para.802.51(d). The joint venture vehicle [redacted] which is an acquired party also within the context of Para.801.40, is in fact a foreign person pursuant to Para.801.1(e)(2)(i). Thus, because the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than [redacted], and the aggregate total assets of the acquiring and acquired persons located in the United States are less than [redacted], the entire transaction is not within the purview of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

MSJ

It would appear therefore that [redacted] (the joint venture vehicle) are not required to file premerger notification. Your early confirmation would be appreciated so that the joint venture can begin April 1, 1985 as scheduled.

If you have any questions or need further information, please contact the following on behalf [redacted]

[REDACTED]

Sincerely yours,

[REDACTED]

Another original of this letter has been sent to:

Director of Operations  
Antitrust Division  
Room 5214  
Department of Justice  
Washington, D.C. 20530  
U.S.A.

Copy to:

[REDACTED]  
Washington, D.C. 20530

The Honorable Edwin Meese  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

The Honorable J. Paul McGrath  
Assistant Attorney General in charge of the  
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The Honorable George Shultz  
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