

April 10, 1985

BY FEDERAL EXPRESS

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

APR 11 10 17 AM '85
PREMERGER
NOTIFICATION
OFFICE

Attention: Mr. Patrick Sharpe, Compliance Specialist

Gentlemen:

Further to our telephone conversation on April 9, 1985, with your Mr. Patrick Sharpe, we write to request an interpretation as to whether the reporting requirements imposed by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") apply to the following transaction:

Company X intends to acquire 32% of the issued and outstanding voting securities of Company Y for \$6.5 million. Company X's purchase of such securities is contingent upon Company X's receiving (1) an option to purchase additional shares of the voting securities of Company Y which option, when exercised, would result in Company X holding a total of 51% of Company Y's issued and outstanding voting securities, and (2) prior to Company X's exercise of such option, irrevocable proxies or similar rights to vote the shares which are the subject of the option. Assume for purposes of this hypothetical that Companies X and Y satisfy the "commerce" and "size-of-the-parties" tests of Sections 7A(a)(1) and 7A(a)(2) of the Act and that Company Y has annual net sales or total assets of \$15 million or more.

*re: \$6.5 mm for
the package of
1/8 v/s plus options
& proxies to*

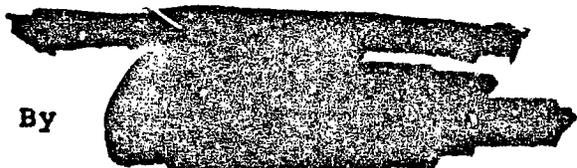
*called
he indicated
should
\$25*

Please confirm that, in accordance with Rule 802.20(b) promulgated pursuant to the Act, Companies X and Y would be exempt from the Act's reporting requirements until such time as Company X exercises its option to purchase the additional shares of Company Y which would confer ownership

of 51% of the voting securities of Company Y upon Company X. We are particularly interested in the Premerger Office staff's views regarding the fact that, at the time Company X acquires the initial 32% interest in Company Y, Company X acquires irrevocable proxies to vote the shares subject to the option.

If you have any questions regarding the foregoing hypothetical, please do not hesitate to contact us.

Very truly yours,



By

Comment:

The initial transaction is exempt (32% of V/S) under section 802.20.

The option is reported if and when it is exercised.

Although it is one part of beneficial ownership, that is the right to vote the shares, the acquisition of an option with the power to vote a majority of the shares is not reportable because X will not hold the V/S of ~~the~~ Y. This transaction is neither the acquisition of a V/S nor an asset.

called Mr.  4-12-85 and informed him that under this scenario the acquisition is exempt under § 802.20b

Concerned

disagreed

J.S.
D.A.
S.T.

A/S
V/C

a later review, our position at present is that ~~them~~ or ~~warrant~~ coupled the present right to vote ~~warrant~~ to holding a security. WCK 3/19/87