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June 14, 1985

BY FEDERAL EXPRESS

Mr. Andrew Scanlon
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Scanlon,

This letter summarizes our discussion of this afternoon concerning a proposed transaction and the implications thereof under Section 7A of the Clayton Act, 15 U.S.C. §18a (the "Act") and the rules promulgated thereunder (the "Rules").

As I indicated in our conversation, the facts are as follows:

<u>Facts</u>

"A" is a newly organized corporation (with nominal assets) formed for the purpose of making the acquisitions described below. A is owned by five separate and distinct, irrevocable, non-reversionary trusts, the beneficiaries of which are related members of the [redacted] (the "Trusts"). The Trusts were created years ago under a single trust inst[redacted] have common trustees, (typical of family trusts of this nature) and are separately taxable entities. Three of the trusts each own 25% of the voting securities of A and the other two Trusts each own 12 1/2% of the voting securities of A. The Trusts also collectively own 48% of the voting securities of "B", a corporation with total assets or annual net sales in excess of $100,000,000. The majority of the voting securities of B, (i.e. 52%) are owned by an elder member of th[redacted] The proposed transaction involves two acquisitions by A which are proposed to be consummated as described below.

The first transaction involves the acquisition of over 15% or $15,000,000 of the assets of S, an unrelated person, for a purchase price of approximately $32,000,000. S is expected to have net annual sales slightly in excess of $100,000,000. (The exact amount of S's last fiscal year's net annual sales has not been finally determined but is projected to be just over $100,000,000).

This [illegible] may be subject to
the [illegible] of
[illegible] Act
[illegible] the
Freedom of Information Act

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The acquisition of the assets of S will be financed by a loan from a subsidiary of B to A (or a subsidiary thereof) in the amount of approximately $32,000,000, representing the purchase price for the assets. Prior to the acquisition of the assets of S and exclusive of the funds to be utilized for the purchase price or to pay any expenses relating thereto, A will have only nominal assets and, in any case, substantially less than $10,000,000 in total assets.

The second transaction involves the acquisition of 100% of the voting securities of a subsidiary of B ("C") for a purchase price of $10,000. This acquisition is expected to occur shortly after the first acquisition but may be deferred for several months. C has total assets of less than $10,000,000 but net annual sales of approximately $18,000,000. (C has a negative net worth and has been generating substantial operating losses.)

<u>Discussion and Analysis</u>

<u>Acquisition of Assets of S.</u> A will be deemed its own ultimate parent entity under the Act and Rules since no Trust will hold 50% or more of the voting securities thereof and, given the nature of the Trusts, their respective holdings will not be aggregated under Section 801.1(c) of the Rules. The acquisition of the assets of S by A will fail to satisfy the size-of-person test since A will not have, prior to such acquisition, $10,000,000 in total assets (exclusive of the funds which are to be borrowed and then paid to S as the purchase price for the acquisition). Accordingly, the acquisition would fail to satisfy the initial threshold standards of the Act and would, therefore, not be reportable.

<u>Acquisition of Voting Securities of C.</u> The acquisition by A of the voting securities of C will satisfy the size-of-person and size-of-transaction standards of the Act but will be exempt under Section 802.20 of the Rules (the minimum dollar value exemption) since C has less than $25,000,000 of net annual sales.

As I indicated to you in our initial conversation, the structure of these transactions was dictated in part by a desire (for estate planning reasons) to vest the equity ownership of A in the Trusts (representing the interests of the younger and future members of the [redacted]. Of course, the fact that this structure appeared to be exempt from the Act and Rules was also considered advantageous. However, I am assured that the true beneficial ownership of the voting securities of A is intended to remain in the Trusts.

You indicated in our conversation that you agreed with my analysis and conclusions. We intend to rely on your advice unless we hear from you otherwise by Wednesday, June 19.

I thank you in advance for your cooperation.

Very truly yours,

[redacted]

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