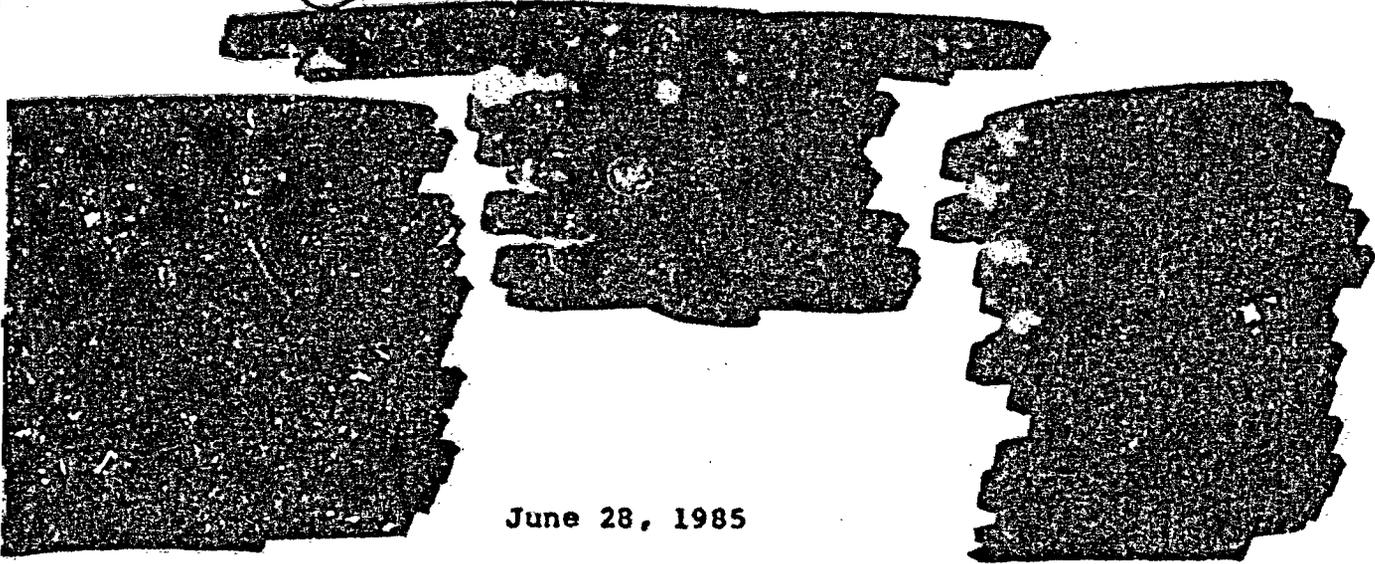


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June 28, 1985

**FEDERAL EXPRESS**

Patrick Sharpe, Esq.  
Pre-Merger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303  
6th & Pennsylvania Ave N.W.  
Washington, D.C. 20580

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the confidential information  
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which restricts the  
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PRE-MERGER  
NOTIFICATION  
OFFICE

Dear Mr. Sharpe:

As per your suggestion in our telephone conversation Monday, I am writing to request the Commission's views regarding a legal question of pre-merger notification requirements which has arisen in a transaction a client is contemplating.

We represent a foreign corporation that I will call "B" as I did in our conversation. A U.S. corporation, "A", has offered B a controlling interest in one of its subsidiaries, a foreign corporation, "Sub #1." We have no doubt that this acquisition of a foreign entity by a foreign entity is exempt under 16 C.F.R. 802.51(b) or (d). *not exempt under d*

A notification question arises because A wants to sell another subsidiary, "Sub #2", at the same time in a package together with Sub #1. Sub #2 is a U.S. corporation. B has no interest in acquiring Sub #2, but B has found a possible buyer who is interested in acquiring Sub #2. That buyer is another foreign corporation, "C".

B proposes to buy Sub #2 on behalf of C. *for \$9 mm* If B buys Sub #2, it will buy it as agent for C. B will be obligated by

A has \$100 mm sales      Sub 1 has \$53 mm assets  
B has 500 mm sales      sub 2 has in excess of \$100 mm in sales  
C has 20 mm assets

[REDACTED]

P. Sharpe, Esq.

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contract to effect transfer of all shares in Sub #2 to C as soon as possible. Beneficial ownership in Sub #2 will at all times be in either A or C and never in B.

Two scenarios are possible.

I. In its contract with A, B has the right to register the shares of Sub #2 in its own name or in the name of an assignee and B directs the issuer A to register the shares in the name of the assignee, C, immediately.

II. B receives the same contract right as in Part I, B directs the issuer to register the shares in the name of B, B then immediately sells these shares to C pursuant to its existing contract obligation.

On the foregoing facts of both scenarios I and II, we do not believe that B has a pre-merger notification obligation, since B will never "hold" Sub #2. According to the Commission's comments to 16 C.F.R. § 801.2(a):

"if agents, brokers, or other entities (whether or not controlled) are acquiring on behalf of a person, they will not hold within the meaning of § 801.1(c)(1) and need not file notification with respect to acquisitions made in that capacity. Only the beneficial owner will hold the voting securities and becomes the acquiring person."

43 Fed. Reg. 33467 (1978). We request the Commission's confirmation of our understanding of the notification requirements.

We take no position with respect to the pre-merger notification obligation of C, which may or may not be required to report depending upon the sizes of the entities concerned.

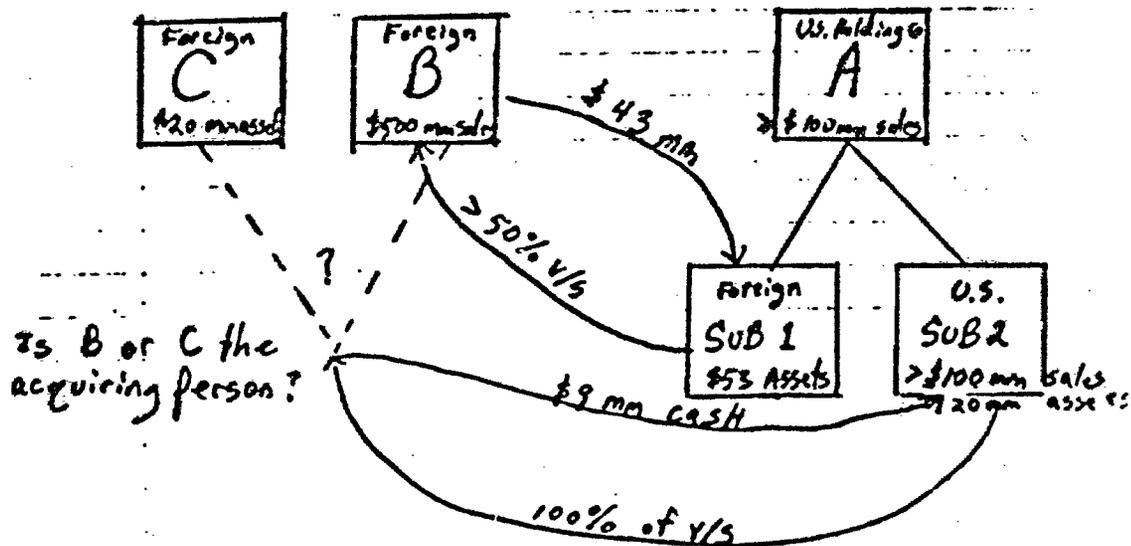
I will appreciate receiving your response at your earliest convenience. If you have any questions with regard to this matter, please call me or [REDACTED]. Thank you for your consideration.

Very truly yours,  
[REDACTED]

Doesn't B get beneficial ownership even if only for an instant in time.

[REDACTED]

what are the size of these companies? <sup>OK I plugged in</sup>  
what are the size of transactions? <sup>these figures</sup>  
Assuming the size questions indicate reportable transaction and no exemptions apply, should "B" file for the [REDACTED]?



The acquisition of SUB 1 is exempt under 802.511  
 The acquisition of SUB 2 is a reportable transaction.  
 The main question is who is the acquiring person in scenario II?

In scenario I, I believe "C" is the acquiring person.

In Scenario II, I believe "B" is the acquiring person.

see memo for details.

Suzanne, Dana and Andy concur.

Wayne feels only C should file in scenario II (Substance over Form)

John Sipple concurred with Wayne

Although most agree with me, most also don't have a strong opinion and would readily go for Wayne's position.

called [redacted] July 8 & July 10, 1985  
Received call from [redacted] July 11, 1985

I told [redacted] that our decision concerning scenario II is that "C" is the acquiring person and not "B" because B is acting as an agent for C. I emphasized that if B was not acting as an agent that B should file. Also, if someone renigs on the contract (between C and B) that B should file. If B is holding the v/s of sub #2 and the contract someone renigs on the contract, B should immediately put the v/s in escrow and file under H-S-R.