July 1, 1985

remerger Notification Office
ureau of Competition
oom 303
ederal Trade Commission
ixth Street & Pennsylvania Avenue, N.W.
ashington, DC 20580

ttention: Mr. Patrick Sharpe
Compliance Specialist

RE: Our File No. [redacted]

ear Mr. Sharpe:

This will confirm our telephone conversation on Friday, une 28, 1985, when we called to obtain an informal interpreation from your office, on an anonymous basis, regarding whether proposed transaction was reportable under the premerger notification and waiting period requirements of the Hart-Scott-Rodino ntitrust Improvements Act of 1976 and the implementing regulations.

The following is a summary of the relevant facts that we urnished to you during our conversation:

1. Our client, "Company A," is a foreign (that is, alien) orporation that would be an acquiring person. Company A has oth net sales and assets within a range of about $50 million to 60 million. However, Company A is a part of a conglomerate, he "ultimate parent entity" [16 C.F.R. §801.1(a)] of which has et sales and assets in excess of $100 million.

2. "Company B," a domestic corporation "engaged in manuacturing" [16 C.F.R. §801.1(j)] is, and has been since 1982, n a Chapter XI reorganization proceeding. Company B, at its ast regularly prepared annual statement of income and expense, ad net sales of approximately $14 million, and as of the last egularly prepared balance sheet, had assets with a net book alue of approximately $6 million.

3. "Company C" is a new domestic corporation to be formed. Company A will acquire 40% of the outstanding common stock in the new corporation, another 50% of the outstanding stock will be issued to natural persons formerly affiliated as owners or officers of Company B, and the 10% balance will be issued to a natural person whose loyalties may fairly be said to reside with Company A. The new shareholders who are natural persons formerly affiliated with Company B will together contribute capital in the amount of approximately $30,000, together with their technical knowledge and certain proprietary materials relating to the business involved; the 10% shareholder who is a natural person will contribute capital of $100,000 in cash or its equivalent; and Company A, the 40% shareholder, will contribute approximately $70,000 in cash or its equivalent, together with all of its interest in a note representing a loan by Company A to Company B in the amount of approximately $500,000, for use as working capital to enable Company B to continue its operations pending consummation of the transaction to be hereinafter described.

4. The proposed transaction, subsequent to the incorporation and capitalization of Company C, is for Company C to acquire substantially all of the assets of Company B for an acquisition price of approximately $3.5 million. The bank loans required to fund that acquisition will be guaranteed by Company A. Thus the value of the assets of the acquired person(s) will not exceed approximately $4.2 million, no matter whether some elements of that value need not be counted for these purposes.

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Our analysis, based upon the foregoing facts, was that the proposed transaction would satisfy all three of the statutory jurisdictional tests, as follows:

1. At least Company B, an acquired person, would be engaged in commerce or in an activity affecting commerce [15 U.S.C.A. §18a(a)(1)(Supp. 1985)], so that the transaction would meet the "Commerce Test."

2. A "person" with annual net sales or total assets of $100 million or more is proposing to acquire voting securities or assets of a person engaged in manufacturing with annual net sales or total assets of $10 million or more [15 U.S.C.A. §18a(a)(2)(A)], so that the proposed transaction meets the "Size-of-the-Parties Test."

wrong, C is the acquiring person and does not have $10 mn in sales or assets

3. As a result of the proposed acquisition an acquiring person will hold 15% or more of the voting securities or assets of an acquired person [15 U.S.C.A. §18a(a)(3)(A)], so that the proposed transaction meets the "Size-of-the- Transaction Test."

Notwithstanding our conclusion that the proposed acquisition meets all three of the statutory jurisdictional tests, we believe that the transaction(s) is exempt from the requirements of the statute on at least one and perhaps more bases, as follows:

1. The proposed acquisition, which otherwise would be subject to the requirements of the act, satisfies Section 7A(a)(3)(A) [15 U.S.C.A. §18a(a)(3)(A)], but does not satisfy Section 7A(a)(3)(B) [15 U.S.C.A. §18a(a)(3)(B)], so that the acquisition is exempt pursuant to 16 C.F.R. §802.20 (1985) because, as a result of the proposed acquisition, the acquiring person would not hold: (a) assets of an acquired person valued at more than $15 million; or (b) voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of $25 million or more. You advised that you concurred in our analysis and conclusion that the transaction is exempt from the notification requirements of the statute on the basis of the regulation at 16 C.F.R. §802.20 (1985).

need not go as far as exemption

2. We suggested that the proposed transaction might also fall within the exemption relating to acquisitions by "foreign persons," set forth in 16 C.F.R. §802.51(c) (1985), as follows: "An acquisition by a foreign person shall be exempt from the requirements of the act if: ...(c) the acquisition is of less than $15 million of assets located in the United States (other than investment assets) ...." Although we did not discuss that suggested exemption at length, you advised that the proposed transaction would probably fall within that exemption as well.

3. You advised that the proposed transaction, as I had described it, might also be analyzed by reference to 16 C.F.R. §801.40, which relates to the formation of joint ventures or other corporations on a joint basis. I believe that your observation was that the proposed transaction would not be subject to the reporting requirements of the act because the value thresholds set forth in §801.40(b), even after consideration of the provisions of §801.40(c), would not be reached.

Correct

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We understand that the policy of your Office is that you will not convey or confirm the above informal interpretations in writing, but that, upon receipt of this letter setting forth the relevant facts related to you and our understanding of the advice received, you will respond orally to this letter to confirm the interpretations or to clarify any points of misunderstanding. We shall appreciate receiving the permitted oral response at your early convenience, by calling the undersigned collect at the number appearing in the above letterhead.

Thank you for your courtesy and cooperation when we spoke on June 28 and for your early response.

Sincerely yours,

[redacted]

I called [redacted] 7-9-85 and informed that based on the facts given no filing gation is required. Company C does not meet size of person for the formation and subsequent quisition.

Wayne, Andy, Dana, Suzanne concur