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July 28, 1985

Mr. Wayne Kaplan, Staff Attorney
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 301
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580


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PRE-MERGER
NOTIFICATION
OFFICE

Re: "Engaged in Manufacturing" for Purposes of the
Hart-Scott-Rodino Antitrust Improvements Act
of 1976 (the "Act")

Dear Wayne:

As we discussed this morning, our client (which had net sales in excess of \$100,000,000 in its most recent fiscal year) is negotiating to acquire a company (the "Company") which, as of the end of its last fiscal year, had net sales of approximately \$42,000,000 and total assets of less than \$10,000,000. The issue I raised with you is whether the Company is "engaged in manufacturing" as such term is defined in Section 801.1(j) of the Act's regulations. The definition provides that a person is "engaged in manufacturing" if it produces or derives annual sales or revenues in excess of \$1 million from products within industries 2000-3999 as coded in the Standard Industrial Classification ("SIC") Manual.

If the Company is engaged in manufacturing, then the Company meets the jurisdictional threshold of Section 7A(a)(2)(A) of the Act (annual net sales or total assets of \$10,000,000 or more), and the Act may apply to our client's acquisition of the Company, thus requiring a filing with your office. If the Company is not engaged in manufacturing, then the Company does not meet the jurisdictional threshold of Section 7A(a)(2)(B) the Act (total assets of \$10,000,000 or more) and our client and the Company need not file notification with respect to the acquisition.


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The Company is a wholeseller of monitors (i.e., cathode ray tubes) that are used as peripheral devices in computer systems. The Company acquires the monitors pursuant to a contractual arrangement with a company in Japan (the "Manufacturer") that manufactures the monitors according to engineering specifications provided by the Company, and the manufacturer assembles the monitors, boxes the monitors under the Company's label, and sends the monitors to the United States, where the Company sells the monitors to distributors and retailers for resale to the public. The Company does not control the Manufacturer in any manner.


Whether the Company's activities constitute "engaging in manufacturing" depends on whether such activities fall under SIC Codes 2000-3999; because the Bureau of Census (the "Bureau") routinely uses the SIC Codes, you suggested that I call the Bureau for assistance in determining what SIC Code the Company's activities fall under.

I spoke with Beverly Roberts, a survey statistician, at the Bureau of Census with respect to this issue. After I gave her the facts as set forth above, she agreed with my conclusion that the Company is not engaged in manufacturing for purposes of the SIC Codes, and therefore for purposes of Section 801.1(j) of the Act. She believes that the Company is instead involved in the wholesale industry. Her conclusion was based in part on the fact that the Company does not control the Manufacturer, but instead merely has a contractual relationship with it.

all manufacturing is outside the U.S.
Because the Company is not engaged in manufacturing, according to the Bureau, and because the Company has total assets of less than \$10,000,000, the jurisdictional threshold of Section 7A(a)-(2)(B) of the Act is not met, and no filing with your office is required if our client acquires the Company. Therefore, unless we hear otherwise from you, we will not file a Notification and Report Form for our client with respect to the described transaction.

Thank you for your assistance in this matter.

Very truly yours,



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