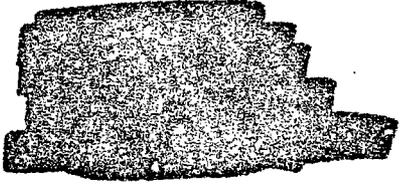
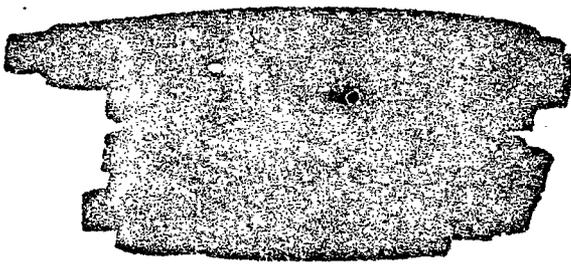
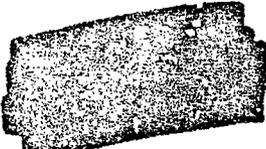


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March 12, 1986

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

MAR 12 2 51 PM '86

By Hand

Dana Abrahamsen, Esq.  
Premerger Notification Office  
Bureau of Competition  
Room 301  
7th & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

Dear Mr. Abrahamsen:

This will confirm the discussion that you and I had by phone on February 27. Based on that discussion, our client does not intend to make a premerger filing under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a (1982), for the acquisition described below.

Facts. Our client proposes to purchase, for considerably less than \$15 million, all but one division of another company. The company has one subsidiary ("Sub"). The company and Sub as a whole, according to their latest financials, may have net sales above \$25 million but total assets below \$25 million.

The transaction is to be carried out in the following manner: The parent company will create a new subsidiary ("Newco"), which will contain all of the assets of the parent that our client wishes to acquire, i.e., everything but the one division. The parent company will own 100% of the stock of Newco, and the parent — not Newco — will still own 100% of the stock of Sub. All of the stock of Sub and of Newco will be sold to our client. The transaction was structured in this manner for business reasons and not for the purpose of avoiding Hart-Scott-Rodino.

Neither Newco nor Sub, standing alone, has net sales of \$25 million or more.

Analysis. I understood you to agree with the following analysis:

The acquisitions of Newco and Sub do not meet the "size-of-transaction test" for reporting under Hart-Scott-Rodino. Although the Act itself would require reporting of any transaction in which more than 15% of the voting securities of an issuer are acquired, 15 U.S.C. § 18a(a)(3)(A) (1982), the Commission has modified that requirement with the following regulation:

Dana Abrahamson, Esq.  
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An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A) [15%], but which does not satisfy section 7A(a)(3)(B) [\$15 million], shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the 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.

16 C.F.R. § 802.20 (1985) (emphasis added).

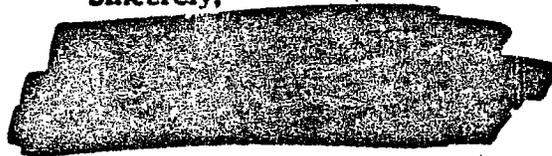
Unlike most of the Hart-Scott-Rodino regulations, section 802.20 speaks in terms of the "issuer" rather than the "person." Newco and Sub are part of the same "person," see 16 C.F.R. § 801.1(a)(1) (1985), but as outlined above they will be separate "issuers," each with stock 100% owned by the parent company. Even though the "acquired person" may have net sales of \$25 million or more, the plain terms of section 802.20 exempt this transaction, in which neither issuer has net sales or total assets of \$25 million or more.

The only caveat to this analysis is that a transaction structured to avoid Hart-Scott-Rodino may be reached under 16 C.F.R. § 801.90 (1985), even though it is not otherwise reportable. I have represented to you that the structure of this transaction was motivated by considerations other than Hart-Scott-Rodino. In addition, you noted that the Premerger Office frequently gets questions about similarly structured transactions in which assets are spun off into a subsidiary before sale, and it does not presume that such transactions are devices for avoidance.

As I noted above, our client intends to proceed with this transaction in the near future, without first filing a notification and report form and observing a waiting period. Therefore, I would ask that you let me know as soon as possible if the Premerger Office disagrees with any of the analysis set out above.

Thank you for your assistance.

Sincerely,



O.K.