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August 1, 1988

By Hand

Wayne Kaplan, Esquire
Federal Trade Commission
Premerger Notification Office
6th & Pennsylvania Ave., N.W.
Room 301
Washington, D.C. 20580

Dear Mr. Kaplan:

This will confirm our telephone conversation earlier this week in which we discussed certain general principles regarding the application of §802.50(a) of the Premerger Notification Rules. As you suggested, this letter sets forth relevant facts that I have been able to develop concerning a proposed acquisition of foreign assets that one of my clients is now considering.

The foreign assets are all located in Hong Kong. Last year, these assets generated approximately $40 million in sales to customers headquartered in various countries throughout the world, primarily Australia, Canada, England and the U.S.

The Hong Kong company regularly uses a commission agent located in New York to call on prospective customers, both U.S. and foreign. Buyers and/or representatives of the customers then travel to Hong Kong to meet with representatives of the Hong Kong company. During such visits, the Hong Kong company presents its line of products to the buyers and negotiations are typically held regarding specific prices and quantities for customer orders. Thereafter, confirming purchase orders and letters of credit are received by the company in Hong Kong.[1]

The Hong Kong company then arranges for manufacture of the products, either in Hong Kong, Bangkok or Taiwan. The finished products are delivered to a place in one of these

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1 Approximately 25% of these confirming purchase orders are placed directly by the local Hong Kong office of one of the customers.

three locations designated by the customer, at which time all title and risk of loss passes to the customer.[2] The Hong Kong company exercises no further dominion or control over the products after such delivery. Rather, the customer assumes all responsibility for transporting the goods to their final destination and clearing customs. Thus, while some $32-34 million of the Hong Kong company's sales are to customers identified with the U.S., the company cannot control where the products, which are delivered to the customer in either Hong Kong, Bangkok or Taiwan, ultimately will be resold.

Based on our earlier telephone conversation and the facts set forth above, I understand that acquisition of the Hong Kong assets would be exempt under §802.50(a) from the Hart-Scott-Rodino premerger reporting requirements. As you suggested, unless I hear from you to the contrary within ten days, my client will rely on this understanding that the exemption is applicable and that no report forms need be filed prior to consummating the proposed foreign asset acquisition.

Sincerely yours,

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upon later review this letter appears to be correct 3/9/87
W.E.K.

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2 In approximately 25% of the sales, the products are delivered to the warehouse of a freight consolidator, who issues a receipt necessary for the Hong Kong company to receive payment under the letter of credit. In other cases, the products are delivered to a ship designated by the customer and the letter of credit is paid against the ship's bill of lading.