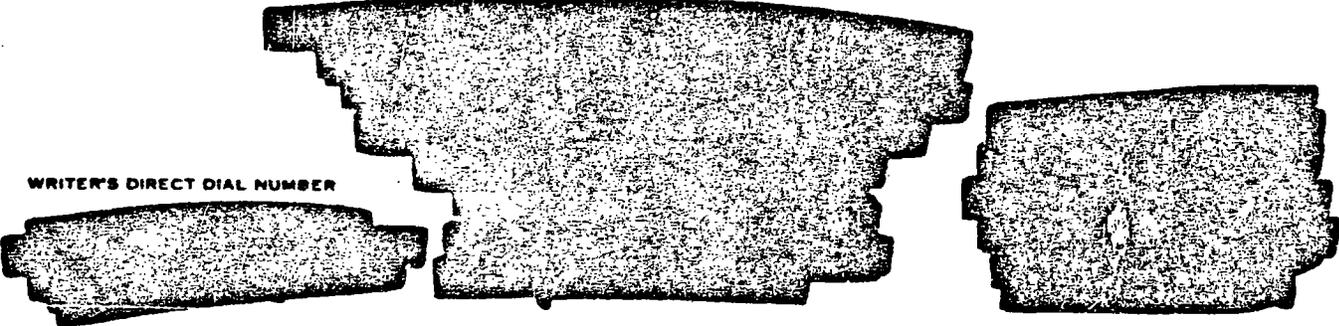


WRITER'S DIRECT DIAL NUMBER



August 14, 1986

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FEDERAL TRADE COMMISSION
NOTIFICATION OFFICE

Mr. Wayne Kaplan
Premerger Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
Washington, D.C. 20530

This material may be subject to the confidentiality provisions of Section 14 (b) of the Act which restricts disclosure to the Federal Reserve Board.

Dear Mr. Kaplan:

At your suggestion, I have put in writing the factual scenario we discussed in our August 8 telephone conversation and have outlined our analysis regarding the applicability of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "Act") and the rules and regulations thereunder. Our client, Company A, has several lines of business, including the manufacture of widgets, and has total assets in excess of \$100 million. B and C are natural persons and at least B has total assets in excess of \$10 million. Company A, B and C plan to form a new corporation, Company X, by contributing cash or other assets in exchange for shares of common stock. In forming Company X, Company A will contribute \$4.0 million of its widget assets in exchange for 47-1/2% of the common stock of Company X, B will contribute \$4.0 million cash in exchange for 47-1/2% of the common stock of Company X, and C will contribute assets from his widget distribution operations having a net value of \$500,000 (\$1.77 million of assets carrying liabilities of \$1.27 million) in exchange for 5% of the common stock of Company X. None of Company A, B or C will control Company X after its formation.

Immediately upon its formation, Company X will purchase the remainder of Company A's widget assets for \$7 million cash, a promissory note in the principal amount of \$2.4 million and the

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assumption of \$1 million of liabilities. At the same time, Company X will purchase from Company E all of the assets of its widget business for \$500,000 cash plus the assumption of \$3.5 million of liabilities. Company X will use the cash received in its formation and bank borrowings to make these acquisitions from Company A and Company E. It is not contemplated that Company A, B or C would in any way guarantee these bank loans.

Our analysis leads to the conclusion that the Act does not require the filing of a Notification and Report Form for any of these transactions. The formation of Company X is not reportable by Company A under 16 C.F.R. § 801.40 because Company X will have less than \$10 million in total assets after its formation. Similarly, Company X's acquisition of widget assets from Company A is not reportable by the parties under 16 C.F.R. § 802.20 since the purchase price is less than \$15 million. Further, Company X's acquisition of widget assets from Company E is not reportable by the parties since neither Company E nor Company X has annual net sales or total assets of \$100 million or more.

These transactions have not been structured so as to avoid the application of the Act. The series of steps necessary to complete these transactions and the number of parties involved do, however, make analysis of the applicability of the Act difficult. Clearly, if Company A acquired directly all of the widget assets of Company E, no Notification and Report Form would be required because less than \$15 million of consideration would be paid. The introduction of B and C complicates the analysis, but, in our opinion, does not change the conclusion that no filing is required.

We ask that you consider these facts and our analysis. Because the parties desire to complete these transactions in the very near future, we ask that you confirm in writing our analysis no later than Wednesday, August 20. Please telephone me at [REDACTED] to discuss the proposed transactions.

Very truly yours,
[REDACTED]

[REDACTED] no written response will be given.
A must determine in good faith fair market value of the U.S. of X if it will obtain and if believe 15.0MM in value then none of above transactions apply to be reportable. A should consider the value of all of its contributions including property "sold".
Wayne Kaplan
8/14/86