

August 25, 1986

VIA MESSENGER

Mr. Patrick Sharpe
Premerger Notification Office
Room 303
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Premerger Notification Statute

Dear Mr. Sharpe:

On behalf of our client, we hereby request an informal interpretation from your office, pursuant to 16 C.F.R. §803.30(a), as to the applicability of, and availability of exemptions under, 11 U.S.C. §18a (and the regulations promulgated thereunder) in connection with a proposed acquisition of voting securities.

Set forth below is a description of the material facts as represented to us, the reasons the Act may be applicable and the questions to be resolved.

Company A, each of its seven wholly owned subsidiaries and one "joint venture" operation comprise "Person A". Person A is not engaged in manufacturing, but rather performs services. No single individual or other entity owns 50% or more of the voting securities of Company A or has the contractual power to designate a majority of the Board of Directors of Company A. Two individuals, each of whom owns less than 50% of the outstanding voting securities of Company A, together own in excess of 50% of such securities. The two individuals do not have the contractual power to designate a majority of Company A's directors and are not related. In addition, no other corporations, companies, partnerships, joint ventures, entities or trusts are included in Person A.

Person A had gross revenues of [redacted] on its last regularly prepared annual statement of income and expense. That financial statement (i) consolidates the financial information for Company A and each of the subsidiaries that it controls and (ii) is not more than fifteen (15) months old.

This material may be subject to the provisions of the Clayton Act which may require release under the Freedom of Information Act

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The joint venture has no assets and has had no revenues to date. The assets of Person A, as reflected on that fiscal year end balance sheet, are valued at [REDACTED]. The most recent regularly prepared consolidated balance sheet for Person A reflects total assets valued at less than \$10,000,000.

"Person B" is a large group of entities, some of which may be "engaged in manufacturing." 16 C.F.R. §801.1(j). Person B has annual net sales in excess of \$100,000,000 and total assets in excess of \$100,000,000. One of the entities ("Target Subsidiary") included in Person B is a wholly owned subsidiary of a wholly owned subsidiary of Company B, the ultimate parent entity of Person B. Target Subsidiary itself controls only two wholly owned subsidiaries. As a group, Target Subsidiary and the subsidiaries it controls (hereinafter "Target Person") have total revenues, as reflected on the last regularly prepared annual consolidated statement of income and expense, of approximately \$16,600,000. The assets of Target Person, as reflected on their last regularly prepared balance sheet, are valued at less than \$10,000,000. Target Person is not engaged in manufacturing.

Company A proposes to acquire all of the issued and outstanding shares of Target Subsidiary. Target Subsidiary's parent will receive in consideration for this transfer \$100,000 in cash and a percentage of the voting securities of Company A, which percentage, while it has yet to be determined, will be in excess of 15% of the then issued and outstanding shares of Company A. In addition, Target Subsidiary's parent may obtain certain voting rights. Such rights would not permit Target Subsidiary's parent to designate a majority of the board of directors of Company A, but would permit it to control certain actions of Company A's board of directors.

Thus, as a result of the proposed acquisition, Company A will own 100% of the voting securities of Target Subsidiary and will effectively control Target Person. The immediate parent of Target Subsidiary will own, and thus Person B will indirectly control, 15% or more (but less than 50%) of the outstanding voting securities of Person A and will have contractual control over actions of the board of directors (but not over the designation of a majority of the board of directors of Company A).

Certain provisions of Subsection (a) of the Hart-Scott Rodino Antitrust Improvements Act of 1976 [premerger notification statute] (the "Act"), as codified at 11 U.S.C. §18a, may be satisfied by the proposed acquisition. In

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particular, Persons A and B are both engaged in commerce or activities affecting commerce. 11 U.S.C. §18a(a)(1).

The proposed acquisition may meet the requirements of 11 U.S.C. §18a(a)(2)(C) because Person A, with gross revenues in excess of \$10,000,000, is acquiring all of the voting securities of Target Subsidiary, which is controlled by Person B, a person with net sales or total assets in excess of \$100,000,000. Target Subsidiary and Target Person, however, do not have voting securities or assets in excess of \$100,000,000. Person A does not appear to be an acquired person meeting the requirements of this subsection, because Person A does not have assets or annual net sales of \$100,000,000 or more.

net sales

look to UPE not sub for size of person test
Does report meet

The requirements of 11 U.S.C. §18a(a)(2)(B) do not appear to be satisfied, even though Person B has total assets or annual net sales in excess of \$100,000,000, because Person A, as "acquired person," does not have total assets in excess of \$10,000,000. Person A does not appear to be an acquiring person meeting the requirements of this subsection, because it does not have assets or annual net sales of \$100,000,000 or more.

size of person for both transactions

The requirements of 11 U.S.C. §18a(a)(2)(A) also do not appear to be satisfied, even though Person B may be engaged in manufacturing, because Person A, which is not engaged in manufacturing, as "acquiring person," does not have assets or annual net revenues in excess of \$100,000,000. Person A, as acquired person, does not appear to satisfy this subsection because it is not engaged in manufacturing.

As a result of the acquisition, Person A, an acquiring person, will hold all of the voting securities of Target Subsidiary, but none of the voting securities or assets of Person B. Person A has never before acquired any voting securities or assets of Person B or Target Person. It is not clear that this proposed acquisition by Person A of Target Person would satisfy the requirements of 11 U.S.C. §18a(a)(3)(A). See 16 C.F.R. §801.12. But see 16 C.F.R. §801.2(b).

Does meet size of transaction both ways

An exemption from the premerger notification requirements is permitted if the acquiring person does not meet 11 U.S.C. §18a(a)(3)(B). 16 C.F.R. §802.20. Although Person A will acquire all of the voting securities of Target Subsidiary, which is an entity controlled by Person B, the provisions of 11 U.S.C. §18a(a)(3)(B) do not appear to be met by this proposed

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acquisition. When valuing securities to be held as a result of an acquisition, it is the securities of the issuer that must be valued. 16 C.F.R. §801.13(a). The securities of Target Subsidiary or Target Person are not traded on a national securities exchange or authorized to be quoted in a inter-dealer quotation system. Accordingly, the value of these securities is either the acquisition price or the fair market value. Under either of these methods, the value of the securities does not exceed \$15,000,000. No securities of any other issuers included in Person B, other than those of Target Subsidiary or Target Person, are being acquired by Person A.

It does meet size of transact

Accordingly, if Person A does not meet the provisions of subsection (a)(3)(B) of the Act, the exemption set forth at 16 C.F.R. §802.20 would be available, provided that Person A meets the additional standards set out therein.

As a result of the proposed acquisition, Person A will not hold voting securities which confer control of any issuer other than Target Person. Target Person does not have annual net sales or total assets of \$25,000,000 or more. Together, Target Person and Person A do, however, have annual gross revenues in excess of \$25,000,000 as reflected on their most recent regularly prepared annual statements of income and expense. However, if one were to annualize their combined revenues earned to date in the current fiscal year, such gross revenues would not exceed \$25,000,000. Further, a portion of Target Subsidiary's revenues for previous fiscal years were generated by the operation of leased equipment. That equipment will not be leased or available to Person A, or the entities that comprise Person A, after the acquisition. Consequently, the future combined revenues of Person A and Target Person will probably fall below \$25,000,000 for this reason as well. If this proposed acquisition were an asset acquisition, Person A would not hold, as a result of the acquisition, assets of Target Person valued at more than \$15,000,000. As a result of the proposed acquisition, Person A would neither hold nor control any assets or voting securities of Person B.

income tax analysis

The questions we would like to have resolved on an informal basis are as follows:

1. Does Person A meet the provisions of 11 U.S.C. §18a(a)(3)(A), since it is acquiring all of the voting securities of Target Subsidiary and control of Target Person, but no securities of, and no control over, Person B?

yes

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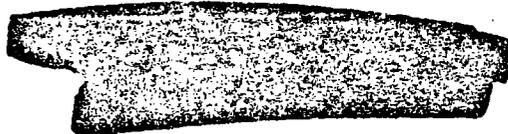
*It meets
§18a(a)3A*

2. Does Person A meet the provisions of 11 U.S.C. §18a(a)(3)(B)? The term "person", means the ultimate parent entity and all entities which it controls. Person A is not acquiring any securities of Person B but it is acquiring all of the securities of Target Subsidiary and control over Target Person. In any event, the voting securities of Target Subsidiary or Target Person do not exceed \$15,000,000 in value. All voting securities of Person B probably do exceed \$15,000,000 in value, but none will be acquired as a result of this acquisition.

3. If Person A does not meet the provisions of 11 U.S.C. §18a(a)(3)(B), is the exemption contained in 16 C.F.R. §802.20 available to Person A? *YES*

Please call the undersigned at the above referenced telephone number if any additional information is required to resolve these questions on an informal basis.

Very truly yours,



*This transaction (or transactions)
exempt under 802.20*

*called 
8-26-86*

