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File



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March 5, 1987

Mr. Andrew M. Scanlon
Compliance Specialist
Premerger Notification Office
Federal Trade Commission
Room 303
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Applicability of Hart-Scott-Rodino Report to Federally Recognized American Indian Tribes

Dear Mr. Scanlon:

In our telephone conversation of Tuesday, March 3, 1987, we discussed the issue of whether an acquisition of assets by a federally recognized tribe of American Indians would be a transaction for which a Notification and Report ("Report") must be filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Act").

Section 801.1(a)(2) of the rules promulgated pursuant to the Act specifies that the term "entity" does not include any foreign state, government, or agency. Section 801.1(a)(2) further excludes from the term "entity" the United States, the individual states, and any political subdivision or agency of either. The result is that Section 7A of the Act does not apply to any acquisition by or from one of those bodies excluded from the term "entity". Excluding governments and their agencies from the definition of "entity" means that they cannot be "persons" or included within "persons". Since Section 7A only covers transactions by "persons", the Act simply does not apply to those excluded from the definition.

We would like to have an opinion from your office on whether a federally recognized tribe of American Indians is excluded from the term "entity" and therefore, exempt from filing a Report, even if a transaction to which the tribe is a party would otherwise meet the "size of the parties" and the "size of the transaction" tests. In this regard, a federally recognized

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tribe of American Indians is a sovereign entity under Federal law and is analogous in many respects to a foreign government or state, or to a state or political subdivision of the United States.

It would be greatly appreciated if you would supply us with such an opinion as soon as possible inasmuch as it will impact upon a transaction which we would like to consummate in the very near future.

Sincerely,

[REDACTED]

[REDACTED]

2/9/87

T/C

*I advised [REDACTED] that
action by the tribe itself
would be spent but action
by a corporation owned by
the tribe would not*

[Signature]