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FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

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May 27, 1987

Victor Cohen, Esq.  
Premerger Notification Office  
Bureau of Competition - Room 303  
6th Street and Pennsylvania Avenue, N.W.  
Federal Trade Commission  
Washington, D.C. 20580

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

Dear Mr. Cohen:

This letter constitutes our request (as discussed with you in a recent telephone conversation) for an informal response from the Commission staff pursuant to Section 803.30 of the rules under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") confirming our conclusions that no filing under the Act is required for consummation of the transaction or for the related formation of a joint venture corporation, each as described below.

Facts Concerning Proposed Transaction

The acquiring person (within the meaning of the Act) in the proposed transaction will be a joint venture corporation newly-formed solely for that purpose and no person (within the meaning of the Act) will hold more than thirty-seven and one-half percent (37.5%) of its voting securities. The acquiring person will not have had any sales nor will it have a regularly prepared balance sheet either at or prior to consummation of the proposed transaction.

The proposed transaction consists of the simultaneous acquisition by the acquiring person from the acquired person of all of the voting securities of several non-public corporations, each of which is engaged in interstate commerce in the same general type of business. In every instance, approximately ninety-eight percent (98%) of the outstanding voting securities of each of such corporations is owned by a single individual. Accordingly, this individual is the sole acquired person (within the meaning of the Act) in the proposed transaction.

May 29, 1987 - Told [REDACTED] that  
no filing is required as fol. ll - not need  
or if permitted

Subject to verification, it is believed that the aggregate annual net sales and the total assets, respectively, which are attributable to the acquired person will exceed ten million dollars (\$10,000,000) but will not exceed one hundred million dollars (\$100,000,000).

The total purchase price in the proposed transaction is approximately thirty six million dollars (\$36,000,000), payable as follows: (i) the sum of six million dollars (\$6,000,000) by means of the newly-formed joint venture corporation's subordinated notes in the amount payable to the shareholders of the corporations being acquired; (ii) the sum of twenty million dollars (\$20,000,000) in cash to be paid to the shareholders of the corporations being acquired, which amount will be obtained immediately prior to the transaction from a lending bank in a transaction for which the acquiring person will pay no consideration to the lending bank other than ordinary and customary interest charges and other lending fees; and (iii) the additional sum of ten million dollars (\$10,000,000), also in cash, to be paid to the shareholders of the corporations being acquired, which amount will be obtained immediately prior to the transaction from a lender to the acquiring person in exchange for the acquiring person's thirteen percent (13%) Senior Subordinated Notes. Except for the components of the purchase price as described above, the total assets of the acquiring person immediately prior to the proposed transaction will be substantially less than ten million dollars (\$10,000,000).

We have concluded that the proposed transaction does not require a filing under the Act since it fails to meet the Act's "size of parties" test due to either or both of the following reasons (i) neither the acquiring person nor the acquired person (subject to verification) will have annual net sales or total assets of one hundred million dollars (\$100,000,000) or more, or (ii) if the annual net sales or total assets of the acquired person meet or exceed one hundred million dollars (\$100,000,000), the annual net sales or total assets of the acquiring person will not meet or exceed ten million dollars (\$10,000,000) as computed pursuant to the recently-adopted Section 801.11(e) of the rules under the Act.

We would greatly appreciate your informal response confirming as correct the foregoing conclusions.

Facts Concerning Formation of Acquiring Person

As stated above, the acquiring person will be a newly-formed joint venture corporation. The three (3) shareholders who will form the joint venture corporation and their related contributions to and pertinent transactions with the joint venture corporation are as follows:

Shareholder A is a limited partnership which will receive thirty seven and one-half percent (37.5%) of the voting securities of the joint venture corporation in exchange for one hundred eighty-seven thousand five hundred dollars (\$187,500) in cash and will receive fifty percent (50%) of the joint venture corporation's non-voting preferred stock in exchange of seven hundred fifty thousand dollars (\$750,000) in cash. Shareholder A also will loan ten million dollars (\$10,000,000) to the joint venture corporation in exchange for that corporation's thirteen percent (13%) Senior Subordinated Notes. Shareholder A will obtain the right to appoint two (2) of the joint venture corporation's seven (7) directors. It is believed that Shareholder A has total assets in excess of one hundred million dollars (\$100,000,000).

Shareholder B consists of a principal corporation and certain affiliated or controlled corporations (considered herein, subject to further investigation, to be a single person within the meaning of the Act) which will receive, in the aggregate, thirty-seven and one-half (37.5%) of the joint venture corporation's voting securities in exchange for one hundred eighty-seven thousand five hundred dollars (\$187,500) in cash and will receive, in the aggregate, fifty percent (50%) of the joint venture corporation's non-voting preferred stock in exchange for seven hundred fifty thousand dollars (\$750,000) in cash. Shareholder B will obtain the right to appoint two (2) of the joint venture corporation's seven (7) directors. Shareholder B has total assets, subject to verification, in excess of ten million dollars (\$10,000,000).

Shareholder C is an individual who will receive twenty-five percent (25%) of the voting securities of the joint venture corporation in exchange for one hundred twenty-five thousand dollars (\$125,000) in cash. Shareholder C will obtain the right to appoint three (3) of the joint venture corporation's seven (7) directors. The total assets and annual net sales of Shareholder C are as yet not determined.

  
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We have concluded that even if it is finally determined that Shareholder B is a single person (within the meaning of the Act) with annual net sales or total assets of ten million dollars (\$10,000,000) or more and/or that Shareholder C has annual net sales or total assets of ten million dollars (\$10,000,000) or more, the formation of the joint venture corporation will, nevertheless, not require a filing under the Act in reliance on Section 802.20 of the rules under the Act so long as the voting securities required by each of Shareholder A, B and C are not valued, pursuant to Section 801.10 of the rules under the Act, in excess of fifteen million dollars (\$15,000,000). (See Statement of Basis and Purpose, 43 FR 33491, July 31, 1978).

We would greatly appreciate your informal response confirming as correct the foregoing conclusions concerning the formation of the joint venture corporation.

Since it is very important that the closing for the proposed transaction take place as soon as possible, we anticipate taking the liberty of telephoning you in the near future for purposes obtaining an oral response. Thank you very much for your assistance in this matter.

Very truly yours,  
  
