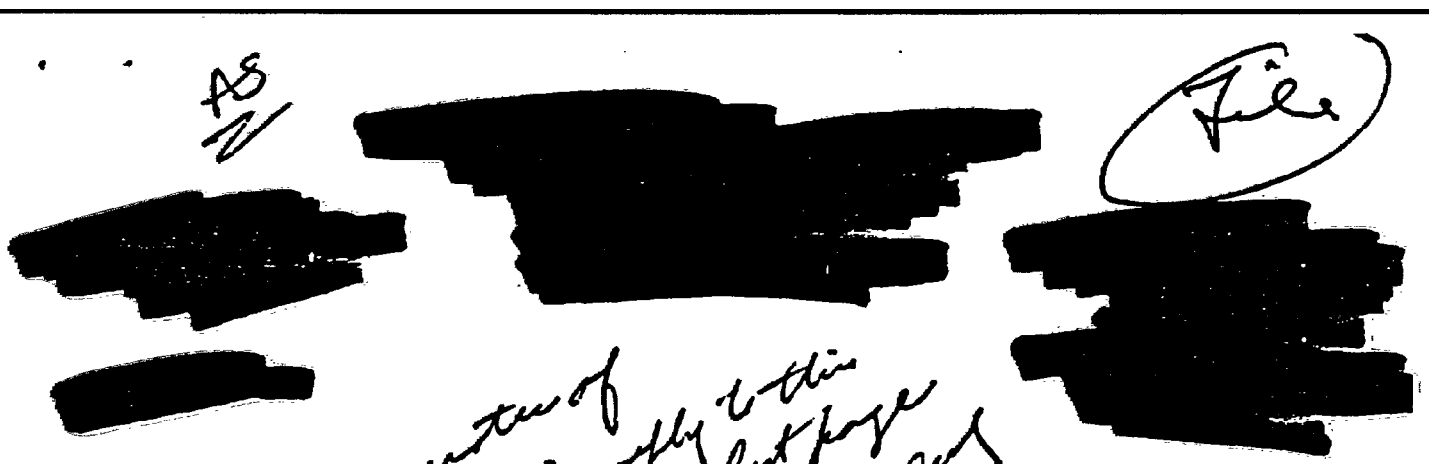

see notes of J. Lipsky in reply to this letter on last page

June 16, 1987

Andrew Scanlon, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 301
Washington, D.C. 20580

Dear Mr. Scanlon:

This will confirm my request of June 16 for an informal opinion on the following hypothetical. While the facts below are hypothetical, in the sense that we have masked the identities of the parties involved, they do reflect the substance of actual transactions, in their present form of preparation.1/

The question presented is whether, under the facts below, the "nascent ultimate parent" of a corporation which will be acquired via a merger may, prior to the effective time of the merger, file on that corporation's behalf a filing concerning the written agreement of that corporation's post-merger shareholders to

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1/ It is irrelevant to this letter, but nonetheless worth noting, that we do not as yet know whether each of the parties to the various transactions described below will satisfy the size of person test and it is therefore conceivable that no filing will be required on one or more of the transactions. We are assuming, for purposes of obtaining your guidance, that the transactions will be reportable.

divest assets of that corporation very shortly after the effective time of the merger. We believe the answer should be yes, because there is no issue here of a "speculative transaction"; the corporation will cooperate with its nascent ultimate parent in providing information sufficient for the nascent parent to make a correct filing; the corporation will itself be filing on the prior merger transaction; and the corporation is not now party to the written agreement among its putative new owners as to the post-merger disposition of groupings of the corporate assets. There will be, at least as of the effective time of the merger (which precedes in time the post-merger dispositions) a person who has filed on such dispositions to whom a valid second request can be made.2/

The facts for this hypothetical are as follows. A, a corporation that is now its own ultimate parent, has signed an agreement with B, a corporation, to merge B into A. B is controlled by a partnership C, which in turn is controlled (under the new regulations) ultimately by D, a natural person. At the effective time of the merger, the partnership (C) will hold 100% of A's voting securities. A and D will file the required H-S-R forms prior to the effective time of the merger, which we will posit for purposes of example as August 1, 1987.

It is A's understanding that the partners who comprise partnership C have agreed in writing that shortly following the effective time of the merger, the partnership will cause A to sell certain of A's assets to other entities somehow affiliated with certain of the partners in the partnership. A is not a party to this agreement. Obviously, A will be a party to the asset dispositions--but only following the merger. For purposes of example, we will posit August 2 as the proposed date of disposition of the assets.

For reasons entirely unrelated to any issue of antitrust or Hart-Scott compliance, A would like to have D, the nascent ultimate parent of A, make the filing as to these postmerger asset dispositions. Obviously, D would be the proper person to make the filing for A when the asset dispositions take place after D actually becomes A's ultimate parent. However, D will not become A's ultimate parent until August 1--and in order to maintain an August 2 date as the time for closing the postmerger asset dispositions, any required filings on these dispositions would have to be made prior to August 1. A will cooperate with D in providing D with the data

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2/ It is our understanding that the entities to whom the corporate assets will be disposed following the merger do not now compete in the four-digit SIC codes in which the acquired corporation is engaged.

concerning the assets to be disposed of. Indeed, because A will be making a filing itself for the merger, there would be two forms on file showing A's operations (one filed by A, one by D on behalf of A). A and D are further willing to do anything that might reasonably be required in order to enable D to make the filing on A's behalf a short time prior to D's actually becoming A's ultimate parent.

Under these circumstances, we request that you confirm to us that D, as A's nascent ultimate parent, may make any filing required in order to facilitate the post-merger dispositions of certain of A's assets.

Sincerely,

[redacted]

[redacted]

Called [redacted] on 6/19.

This is in which we would accept filing from D for subsequent sale of A's assets even though at time of filing it does not own A's assets provided:

1) D is able to complete the form, i.e. A must provide D with the necessary information;

2) Both D and A should certify the form;

3) Both D, as the acquired person, and the acquiring person must submit letters stating that they understand that if a request for additional information is issued the extended waiting period will not begin to run until the current owner of the asset being acquired by complies; and

4) A submits a letter stating that it will comply with a request for additional information if one is issued.

John S. Apple