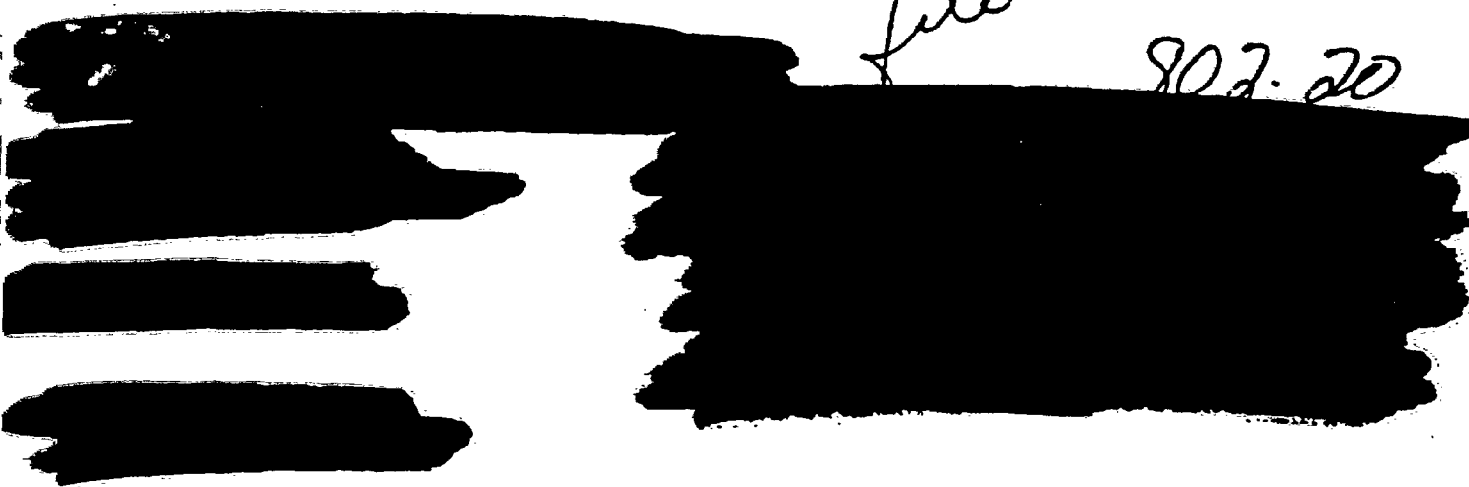


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807-20



December 7, 1987

VIA FEDERAL EXPRESS

Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
Sixth Street and
Pennsylvania Avenue N.W.
Room 303
Washington, D.C. 20580

Attention: Ms. Addie Williams

Re: Application of the Hart-Scott-Rodino
Antitrust Improvements Act (the "Act")
to Proposed Acquisitions

Dear Ms. Williams:

Pursuant to our telephone conversation of December 4, I describe herein the facts surrounding and certain questions arising from the proposed acquisitions (the "Acquisitions") by US Co, a Delaware corporation, of all of the issued and outstanding stock of each of A Corp. and B Corp. (the "Targets").

I. Facts

1. US Co will purchase all of the outstanding stock of each of the Targets from the stockholders of the Targets.

2. More than 50% of the outstanding stock of each of the Targets is owned by one individual stockholder.

3. The annual net sales and assets of the ultimate parent entity of [US Co.] are in excess of \$100 million.

4. The aggregate annual net sales and assets of the Targets are in excess of \$10 million but less than \$25 million.

5. [US Co.] will pay the stockholders of the Targets \$11 million in exchange for all of the outstanding stock of the Targets.

6. The Targets will enter into Consulting and Non-Competition Agreements with each of the stockholders which provide for annual payments to the stockholders on each anniversary of the closing date of the Acquisitions. In the aggregate those payments to the stockholders of the Targets will be \$1.75 million one year after the closing date, \$1.75 million two years after the closing date and \$1.0 million three years after the closing date.

7. [US Co.] will guarantee the payments to be made by the Targets pursuant to the Consulting and Non-Competition Agreements.

II. Summary of Applicable Requirements of the Act

1. The Act in 15 U.S.C.A. §18a(a) provides the standards for the filing of notification. The ultimate parent entity of [US Co.] and the Targets appear to satisfy the provisions set forth in Section 18a(a)(1) and (2).

2. Section 18a(a)(3) provides as an additional requirement for filing notification that

“(3) as a result of such acquisition, the acquiring person would hold --

(A) 15 per centum or more of the voting securities or assets of the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000.”

3. Rule 802.20 promulgated pursuant to the Act provides that if Section 18a(a)(3)(A) is satisfied but Section 18a(a)(3)(B) is not satisfied, the transaction shall be exempt from the requirements of the Act if as a result of the acquisition, the acquiring person would not hold:

- *(a) Assets of the acquired person valued at more than \$15 million; or
- (b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of \$25 million or more.*

III. Conclusions

Based on the above facts we have reached the following conclusions:

1. The \$15 million threshold of Section 18a(a)(3)(B) will not be met because the purchase price for the voting securities of the Targets will be \$11 million. The payments to the stockholders pursuant to the Consulting and Non-Competition Agreements in the amount of \$4.5 million will not be included in the purchase price for purposes of determining the \$15 million threshold because such payments are to be made in exchange for future services to be rendered. (See Interpretation Letter to Ms. Beverly Thomas, Esq., dated November 3, 1981, question #3).

*EXEMPT TO
SERVICES. NOT GW
IF NON EMPLOYE
AGREEMENT.
NON EMPLOYE
AGREEMENTS
CONSIDERED
ASSETS.*

2. Even if the payments to be made pursuant to the Consulting and Non-Competition Agreements were included in the purchase price, the present value of such payments using the discount rate of 8% (the current prime rate is 8 3/4%) shall be \$3.915 million. Therefore, the sum of such payments and the \$11 million purchase price for the stock of the Targets will not equal the \$15 million requirement of Section 18a(a)(3)(B).

*VALUE IS
NOT DISCOUNTED
TO PRESENT*

3. Because the Section 18a(a)(3)(B) requirement is not met, Rule 802.20 provides that US Co. will be exempt from the requirements of the Act since the amounts in subsections (a) and (b) of Rule 802.20 are not exceeded.

SBP 801.10 (c)(2) - VALUE NOT DISCOUNTED TO PRESENT.

VALUE OF AN INSTALLMENT CONTRACT IS THE VALUE OF THE TOTAL PAYMENTS OF PRINCIPAL TO BE MADE UNDER THE CONTRACT, BUT EXCLUDING INTEREST.

[REDACTED]

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At your earliest convenience, please confirm that you agree with the conclusions set forth in Section III of this letter. I would also appreciate any other comments you may have. Thank you for your assistance.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

12/14/87

Called [REDACTED]:

Confirmed exemption under 802.20

12/29/87

Called [REDACTED] back to point out inconsistent statements in letter in accordance with Wayne's review of letter.