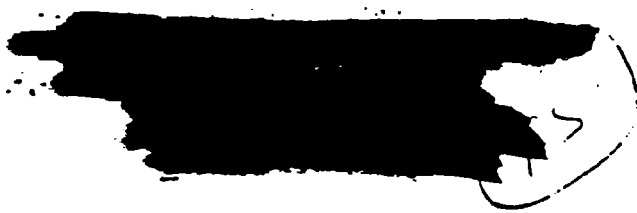


802.516



March 15, 1988

*This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act*

*April 15 10 21 AM '88*

Richard Smith, Esquire  
Room 301  
Premerger Office  
Federal Trade Commission  
Main Building  
Washington, D.C. 20582

Dear Mr. Smith:

Per our telephone conversation of March 14, this letter will outline the facts concerning a proposed transaction and my conclusions concerning reportability under the Hart-Scott-Rodino Act and implementing regulations. I would appreciate your confirming that my conclusions concerning reportability are correct or, if they are not correct in any respect, so advising me promptly.

The parties to the transaction, "A" and "B", are both "foreign persons" as defined in § 801.1(e)(2)(i)(A) of the regulations because each of them has an ultimate parent entity which is a non-U.S. corporation whose principal place of business is outside the U.S. Included within "A" is a United States issuer (§ 801.1(e)(1)(ii)) with U.S. sales in excess of \$100 million. Included within "B" is a smaller U.S. issuer whose annual sales in the United States are not known at this time. The parties meet the Act's commerce and size of person tests.

"A" proposes to acquire from "B" (1) operating assets located in a foreign country which generate greater than \$15 million in sales annually to the United States, and (2) 100% of the stock of "B's" United States issuer subsidiary. This stock is valued at less than \$15 million.

As part of the consideration for the acquisition of "B's" assets, "A" will transfer to "B" less than 50% of the voting securities of the United States issuer included within "A". (The rest of the consideration is assumed to be cash.)

Richard Smith, Esquire  
March 15, 1988  
Page 2

As I have analyzed the transaction, "A's" acquisition of foreign operating assets from "B" is exempt from reporting under § 802.51(a). This determination is based solely on the fact that the operating assets are located outside the United States. Under § 802.51(a) the fact that these assets generate sales in excess of \$15 million to the United States is irrelevant.

As for "A's" acquisition of 100% of the stock of the United States issuer included within "B", under § 801.21(b) these voting securities are not considered "assets" of "A". Therefore, reportability is governed by § 7A(a)(3) of the Act and § 802.20 of the regulations. In applying § 7A(a)(3), the assets located outside the United States which "A" is acquiring from "B" are not counted since, under § 801.15(a)(2), assets the acquisition of which was exempt under, among other sections, § 802.51(a) are not deemed to be "held as a result of an acquisition" for purposes of § 7A(a)(3). Therefore, the acquisition of 100% of B's U.S. issuer subsidiary's voting stock meets the requirements of § 7A(a)(3)(A) of the statute but not § 7A(a)(3)(B) (\$15,000,000 or greater value) so that § 802.20 of the regulations applies. Since the acquisition of the voting securities confers control of a United States issuer (B's subsidiary), reportability will turn on whether this issuer "together with all entities which it controls has annual net sales or total assets of \$25 million or more." § 802.20(b).

Reportability of "B's" acquisition of a non-controlling amount of voting securities of "A's" United States issuer subsidiary is not subject to § 802.51 but rather is governed by § 7A(a)(3) of the statute and § 802.20 of the regulations. Hence, reportability will depend first on whether B will acquire 15% or more of A's subsidiary's voting securities or whether the acquired securities have a value in excess of \$15,000,000. If neither condition is met, the transaction is not reportable under § 7A(a)(3). If both are met, or if the second is met, the transaction is reportable. If only the first is met, § 802.20(b) applies and the transaction is not reportable because it does not confer control.

Richard Smith, Esquire  
March 15, 1988  
Page 3

I will call you later today to confirm your receipt of this letter and to determine when you will be able to give me a response.

Sincerely yours,

