

May 3, 1988

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Section 7A (a) of the Clayton Act
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Wayne Kaplan, Esq.
Staff Counsel
Federal Trade Commission
7th and Pennsylvania Avenue, N.W.
Premerger Notification Office
Room 303
Washington, D.C. 20580

Dear Mr. Kaplan:

This letter is to confirm our telephone conversation of April 29, 1988 regarding the premerger notification obligations of the various entities involved in the transaction described below pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a, enacted as Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, and the rules promulgated thereunder (the "Act").

Proposed Transaction

The proposed transaction involves a merger among three corporations, A, B and C. The voting securities of each of A, B and C prior to the merger are owned as follows:

A - 50% by Corp. 1
50% by Corp. 2

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- B - 50% by Corp. 1
- 50% by Corp. 2

- C - 50% by Corp. 1
- 50% by Corp. 3

In the merger B and C will merge with and into A and A will be the surviving corporation in the merger. Pursuant to the merger, A will acquire all of the outstanding voting securities of B and C and will issue additional shares of its voting securities to each of Corps. 1, 2 and 3 so that the voting securities of A owned after the merger will be 50% by Corp. 1, 33% by Corp. 2 and 17% by Corp. 3.

For purposes of this letter it is assumed that the size of persons and size of transaction tests are satisfied in the proposed transaction.

Notification Obligation

As I understand it, your conclusions regarding the notification obligations arising from the proposed transaction are as follows:

CORP. 1: Acquisition by A of Voting Securities of B and C. Even though it is an ultimate parent entity of the acquiring person in the acquisition of the voting securities of B and C by A, Corp. 1 has no notification obligation as a result of the intraperson transaction exemption provided in Section 7A(c)(3) of the Act. However, you indicated that Corp. 1 has a notification obligation as an ultimate parent entity of the acquired person in the acquisition of voting securities of C by A due to Corp. 2's obligation to file as the acquiring person in such acquisition (see below). This outcome appears to the undersigned to be inconsistent with the plain language of Section 7A(c)(3) and Section 802.30, which sections seem to provide Corp. 1, as an ultimate parent entity of both A and C, with an absolute exemption in the acquisition of C. Please advise.

Acquisition by Corp. 3 of 15% or more of the Voting Securities of A. Corp. 1 has a notification obligation as an ultimate parent entity of an acquired

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person in the acquisition by Corp. 3 of 17% of the voting securities of A.

CORP. 2: Acquisition by A of Voting Securities of B. Corp. 2 has no notification obligation in the acquisition of B's voting securities by A as a result of the intraperson transaction exemption provided in Section 7A(c)(3) of the Act.

Acquisition by A of Voting Securities of C. Corp. 2 has a notification obligation in the acquisition of C's voting securities by A because Corp. 2 is an ultimate parent entity of only the acquiring person and cannot rely on the intraperson transaction exemption.

Acquisition by Corp. 3 of 15% or more of the Voting Securities of A. Corp. 2 also has a notification obligation as an ultimate parent entity of the acquired person in the acquisition by Corp. 3 of 17% of the voting securities of A.



CORP. 3: Acquisition by A of Voting Securities of C. Corp. 3 has a notification requirement as an ultimate parent entity of C in the acquisition of the voting securities of C by A.

Acquisition by Corp. 3 of 15% or more of the Voting Securities of A. Because it is acquiring more than 15% of the voting securities of A, Corp. 3 has a reporting obligation as an acquiring person.

Please contact the undersigned at your earliest convenience with any comments regarding the above.

Thank you for your cooperation.

Sincerely



I confirmed my original
advice. The caveat on
pg 2 of the letter is
incorrect.
Wayne
Kaplan
5-7-88