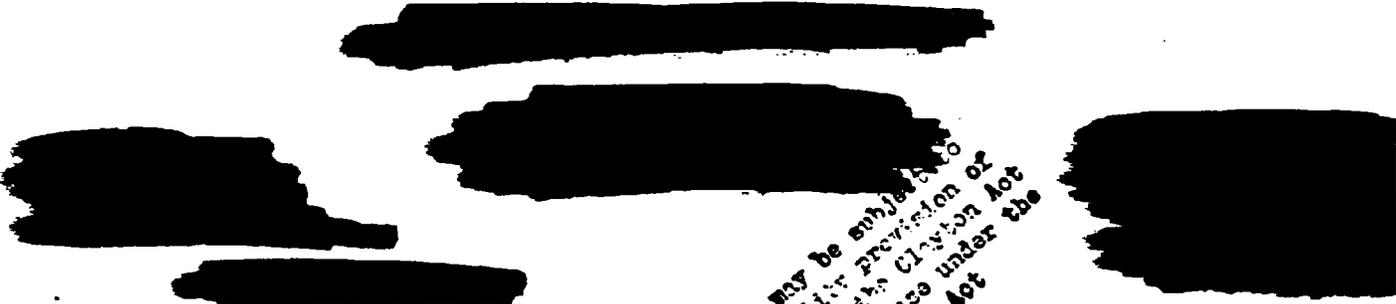


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This material may be subject to the automatic declassification provision of Section 1.4(a) of the Clayton Act which requires its release under the Freedom of Information Act . . . . . August 1, 1988

Wayne Kaplan, Esq.  
Premerger Notification Office  
Bureau of Competition, Room 301  
Federal Trade Commission  
Pennsylvania Avenue at 6th Street  
Washington, D.C. 20580

Dear Mr. Kaplan:

I here confirm my understanding of our telephone discussion on August 1, 1988. That discussion concerned the applicability of the exception provided by §802.21 of the HSR Regulations from the notice and waiting period requirements of the HSR Act to the "Second Transaction" described below.

FACTS.

1. The First Transaction.

In December, 1987, Company A (the acquiring person) made an HSR filing at the \$15 million threshold to acquire voting securities of Company C (the issuer). All other persons required to do so made HSR filings in respect of the said acquisition. The waiting period expired. Thereafter, Company A acquired more than \$15 million but less than 15% of the voting securities of Company C.

2. Acquisition of Company C.

In 1988, Company B acquired all of the voting securities of Company C in consequence of a tender offer. Company A tendered to Company B all of the voting securities of Company C which Company A had previously acquired. Company C continues to exist, under its original charter, as a wholly-owned subsidiary of Company B.

**3. The Second Transaction.**

Company A proposes to buy from Company B more than \$15 million but less than 15% of the voting securities of Company C.

**QUESTION.**

Is the Second Transaction exempt from the notice and waiting period requirements of the HSR Act in consequence of the exemption provided by §802.21 of the HSR Regulations?

**ANALYSIS.**

As I stated during the course of our aforementioned telephone conversation, my analysis of the question presented is based on the following points.

- A. The Acquiring Person in the Second Transaction (3 above) is identical to the Acquiring Person in the First Transaction (1 above).
- B. All persons required to make HSR filings in connection with the First Transaction made such filings.
- C. The HSR waiting period for the First Transaction expired; the First Transaction was consummated within one year thereafter [see §803.7 of the HSR Regulations]; and the Second Transaction will be consummated within five years after expiration of the HSR waiting period pertaining to the First Transaction.
- D. The Issuer in the Second Transaction is identical to the Issuer in the First Transaction.

Therefore, the Second Transaction is exempt from the notice and waiting period requirements of the HSR Act under §802.21 of the HSR Regulations, notwithstanding the fact that the Issuer the voting securities of which will be acquired in the Second Transaction, although precisely the same as the Issuer the voting securities of which were acquired in the First Transaction, is now included within an Acquired Person within which it was not included at the time of the First Transaction.

I understand that you concur in the conclusion set out in the preceding paragraph.

During our aforementioned telephone conversation, you inquired particularly as to whether the Issuer was in fact precisely the same in the First and Second Transactions. I responded:

- a. that the Issuer had sold certain lines of business after having become a wholly-owned subsidiary of Company B, but had made no significant additions to its business; and
- b. that I believed, but was not sure, that the Issuer was precisely the same in a corporate sense at the time of the Second Transaction as it had been at the time of the First Transaction.

I have subsequently inquired into the possibility that the identity of the Issuer may have been changed in a corporate sense, and hereby confirm that the Issuer is now precisely the same, in a corporate sense, as it was at the time of the First Transaction.

If the above summary of our discussion varies from your recollection of it in any way, or if you have further comments regarding the applicability of \$802.21 to the Second Transaction, I would appreciate your contacting me as soon as possible and in any event before the close of business on Thursday, August 11, 1988. Thank you for your valuable assistance.

Very truly yours,



OK. Wayne Kaplan  
8/4/88.  
Limited to the facts.