

[REDACTED]

[REDACTED]

[REDACTED]

(2)

2 December 1988

FEDERAL EXPRESS

Mr. Richard Smith
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

PLEASE EXPEDITE REVIEW
pursuant to § 363(b)(2)(B)
of the Bankruptcy Code

This material may be subject to
the automatic stay provisions of
the Bankruptcy Code under the
Act

DEC 11 1988
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Re: Acquisition of [REDACTED]

Freed

Dear Mr. Smith:

Over the last several days, you and I have discussed by telephone a transaction in which [REDACTED] will acquire the assets of [REDACTED]. The bulk of our conversations have concerned specific items of information required in the Antitrust Improvements Act Notification and Report Form. Yesterday, you were kind enough to spend a considerable amount of time with me discussing the exemption found at 16 CFR § 802.20 from the provisions of the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C. § 18a (the "Act")). In this letter, I would like to confirm my understanding of the substance of our conversation.

Background

[REDACTED] is a [REDACTED] corporation with its principle [REDACTED] is presently the debtor-in-possession in a proceeding under Chapter 11 of the Federal Bankruptcy Code. [REDACTED] Plan of Reorganization as currently proposed would include a transaction in which [REDACTED] would purchase every asset owned by [REDACTED] except for claims or causes of action for recovery of property by the bankruptcy estate for preferences, fraudulent conveyances or transfers to insiders recoverable under the Bankruptcy Code. I enclose for your records and convenience one copy of the Bankruptcy Disclosure Statement (the "Disclosure Statement"). The Disclosure Statement provides a more detailed description of the transaction and the parties involved.

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Exemption

Based on my review of the applicable statute and regulation, as well as my discussion with you yesterday afternoon, it appears to me that, because of the size of the transaction, [REDACTED] is exempt from the requirements of the Act pursuant to 16 C.F.R. § 802.20. Specifically:

- (1) The acquisition satisfies § 7A(a)(3)(A) of the Act: [REDACTED] proposes to acquire virtually 100% of [REDACTED] assets.
- (2) The acquisition does not satisfy § 7A(a)(3)(B) of the Act: As a result of the acquisition, [REDACTED] will not hold an aggregate total amount of voting securities and assets of [REDACTED] in excess of \$15,000,000. Specifically, [REDACTED] will not hold any voting securities of [REDACTED] after the transaction and the total amount of assets (at book value) as of October 31, 1988, will equal \$6,891,346. The purchase price of those assets equals \$5,068,134 plus current trade payables, sales expense and costs of executory contracts. I am advised that the trade payables, sales expense and costs of executory contracts would not cause either the purchase price or book value of the assets to exceed the \$15,000,000 ceiling.
- (3) [REDACTED] will not hold assets valued at more than \$15,000,000: The purchase price can, in my judgment, be taken as the fair market value of the assets to be purchased for two reasons. First, the bargaining between [REDACTED] and [REDACTED] has been at arms length and both firms are represented by counsel. Second, the transaction must be approved by [REDACTED] creditors and ultimately by the Bankruptcy Court. The purchase price can, therefore, constitute the "value" of the assets as that term is used in 16 C.F.R. § 802.20(a).

It appears to me, therefore, that the transaction is exempt from the Act under 16 C.F.R. § 802.20.


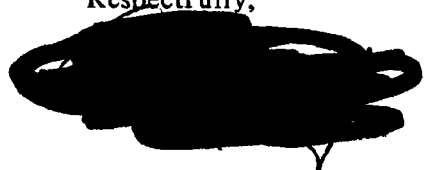
Request for Confirmation

In order to complete the acquisition, we respectfully request that you confirm in writing that our analysis is correct. I understand that this may be some inconvenience. Compliance with the Act is, however, a condition precedent to our ability to close the acquisition. In addition, we will need to establish compliance with the Act in order to secure the approval of the Bankruptcy Court.

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The acquisition is scheduled to close on December 19, 1988. I would appreciate, therefore, any consideration you could afford us in expediting our request. Please address any questions and your response to the undersigned.

Respectfully,



smith.lt(e)
Enc.
cc:



12-5 called 
and advised that conclusion
that transaction does not
meet minimum size test of
802.20 appears correct
