

Unrecorded 03/24/87 (24)

Advised to file - [redacted]
only has two (2) out of
four (4) indicia of beneficial

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March 16, 1987

PREMERGER
NOTIFICATION
OFFICE

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Jeffrey Kaplan, Esq.
Premerger Notification Office
Federal Trade Commission
Room 303
Washington, D.C. 20580

Dear Mr. Kaplan:

I would be grateful if you or one of your
colleagues could respond to this inquiry regarding the
reportability of a proposed transaction. For your reference
enclosed herewith is a photocopy of the premerger notifica-
tion filing made by my client, [redacted]
[redacted] on October 24, 1986 with respect to the acquisition
of voting securities of [redacted]
[redacted], which was the acquired person for purposes
of such filing. This filing is, of course, confidential
pursuant to 15 U.S.C. § 18a(h), and we do not intend by this
communication to waive the protection afforded by the Hart-
Scott-Rodino Act against public disclosure.

Prior to the 1986 filing [redacted] held 42.3% of the
voting securities of [redacted]. He did not hold such voting
securities directly. Rather, pursuant to Section
801.1(c)(8) of the Hart-Scott regulations, he held such
stock indirectly by reason of his Hart-Scott "control" over
several layers of entities. More specifically, [redacted] had
contractual control, pursuant to Section 801.1(b)(2), over
[redacted]; [redacted] held approxi-
mately 60% of the voting securities of [redacted]
[redacted]; [redacted] held 100% of the voting

1/ [redacted] directly held a minority of the voting securities
of [redacted]. The majority interest was held by a trust ("Trust
M"), pursuant to Section 801.1(c)(3) of the regulations.
However, the terms of the trust agreement gave [redacted] power to
vote any shares constituting the corpus of Trust [redacted]
[redacted] exercised "control" over [redacted] by reason of Section
801.1(b)(2).

but he did not necessarily hold the 100%.

securities of [REDACTED]
and [REDACTED] held 42.3% of the voting securities of [REDACTED]
(I refer to this corporate chain as the "First Chain.")
That was true in 1986, and in essence it remains true today.

The 1986 filing was occasioned by certain transactions, more fully described in response to Item 2(a) therein, pursuant to which [REDACTED] proposed to acquire indirectly, pursuant to Section 801.1(c)(8), an additional 30.6% of the voting securities of [REDACTED]. Again, as with the First Chain described above, the new chain of "control" (the "Second Chain") would result partly from the provisions of Section 801.1(b)(2) (at the very top of the chain) and partly from holdings of voting securities, i.e., Section 801.1(b)(1)(i). Thus the top of the Second Chain would mirror the top of the First Chain, as described in footnote 1 above. All of this is spelled out in the 1986 filing.

Following the expiration of the waiting period in connection with the 1986 filing, the transactions described therein were effected. At the present time [REDACTED] continues to hold indirectly, as described above, 74% of the outstanding voting securities of [REDACTED]. The remaining 26% of such voting securities are publicly held.

In addition, [REDACTED] continues to control numerous other companies through the First Chain. Among them is [REDACTED]; by reason of Section 801.1(c)(8), [REDACTED] holds 61% of the voting securities of [REDACTED], and the remaining 39% are publicly held.

It is now proposed to merge [REDACTED] with [REDACTED] so that a new company (herein "Newco") will be substituted as a holding company for the operating companies in both corporate chains. As a result of this trans-

2/ I refer herein to the trust at the top of the Second Chain, which mirrors Trust M at the top of the First Chain, as Trust R. The voting securities constituting the corpus of Trust R are held by Trust R, pursuant to Section 801.1(c)(3). However, [REDACTED] has the power to vote such shares, and accordingly he is deemed to "hold" such shares as well pursuant to Section 801.1(b)(2), read together with Section 801.1(c)(8).

3/ I do not believe the precise steps by which this merger (footnote continued)

*(but is trust
"control" only if
he has reasonable control
or that is available)*
"control" not held

not necessarily so.

is this the word?

action, [REDACTED] will hold indirectly 68% of the voting securities of Newco. Fourteen percent of the voting securities of Newco will be held by the former public shareholders of [REDACTED] and 18% will be held by the former public shareholders of [REDACTED]

These transactions are depicted in the three "before and after" charts enclosed with this letter. These charts, however, do not describe the tops of the First and Second Chains, referring instead simply to "family trusts."

The proposed transaction may be viewed as involving the acquisition of voting securities of Newco by Trusts M and R respectively, pursuant to Section 801.1(c)(3) and (c)(8). Newco, however, will be a "foreign issuer" within Section 801.1(e)(2)(ii), and both Trust M and Trust R are "foreign persons" within Section 801.1(e)(2)(i). Moreover, Trust M and Trust R will each be acquiring less than 50% of the voting securities of Newco, and neither will have the power to designate 50% or more of the directors of Newco. Accordingly, the "acquisitions" of voting securities of Newco by Trusts M and R are exempt pursuant to Section 802.51(b).

This leaves the question of whether [REDACTED] has a reporting obligation in connection with the proposed transactions.^{4/}

(footnote continued from previous page)
will be accomplished are material to your analysis, and accordingly I have omitted this detail, in order not to add further complexity to an already complex inquiry.

^{4/} Most of the public shareholders of [REDACTED] and [REDACTED] who will become public shareholders of Newco, are "foreign persons." Because none of the public shareholders will be acquiring as much as 50% of the voting securities of Newco, their acquisitions are exempt under Section 802.51(b). Acquisitions by "United States persons" of Newco shares do not benefit from this exemption, and would be subject to the normal rules of Hart-Scott reporting. My client believes that no "United States person" will be acquiring voting securities of Newco valued in excess of \$15,000,000. We will, however, keep this point in mind, as well as the "investment only" exemption, as we proceed.

Jeffrey Kaplan
Premerger Notification Office
Federal Trade Commission

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In the proposed transaction, [redacted] and [redacted] will each be acquiring and acquired entities. Both [redacted] and [redacted] are controlled by [redacted] by reason of holdings of voting securities. Accordingly, I believe the merger of [redacted] and [redacted] (or the acquisition by one of the voting securities of the other) should be exempt pursuant to Section (c)(3) of the Hart-Scott-Rodino Act.

In this connection I note Example 3 to Section 802.30, which indicates that an entity possessing contractual "control" but holding no voting securities is required to comply with the Hart-Scott-Rodino Act reporting requirements upon the acquisition of voting securities. I believe the facts presented in this letter are not analogous to the facts in Example 3. Here, [redacted] already holds a majority of the voting securities of [redacted] and [redacted] pursuant to the provisions of Section 801.1(c)(8).

Moreover, unlike the situation addressed in Example 3, here there is one and only one ultimate parent entity, [redacted], both before and after the proposed transaction.

Please note also that in his 1986 filing [redacted] gave full and complete information on the First Chain, including SIC breakdowns for revenues derived from U.S. operations by subsidiaries of [redacted]. Similarly, [redacted], as the acquired person in 1986, gave full and complete information on U.S. dollar revenues derived by its subsidiaries. Accordingly, if Section 802.30 were deemed inapplicable and new filings were required, we would be covering essentially the same ground as the filings made in 1986.

I look forward to being in touch with you to discuss this matter.

Sincerely yours,

Enclosure