

802.51

[REDACTED]

[REDACTED]

April 28 1994

VIA FACSIMILE AND FEDERAL EXPRESS

Premeger Notification Office
Bureau Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

APR 29 10 32 AM '94

Attention: Patrick Sharpe
Compliance Specialist

Re: Request for informal interpretation relating to the joint venture proposed by [REDACTED] and [REDACTED]

Gentlemen:

Pursuant to 16 C.F.R. §803.30, we are requesting on behalf of [REDACTED] a company organized under the laws of the [REDACTED], and [REDACTED] a company organized under the laws of the [REDACTED], an informal interpretation regarding the availability of an exemption from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") pursuant to 16 C.F.R. §802.51 in connection with a proposed world-wide joint venture to be entered into by [REDACTED] and [REDACTED] relating to the [REDACTED]

As part of the joint venture arrangement, [REDACTED] will be forming a joint venture corporate entity under the laws of the [REDACTED] [REDACTED] shall each own fifty (50%) percent of the issued and outstanding voting securities of the [REDACTED] It is through this [REDACTED] that all assets and voting securities of subsidiaries of [REDACTED]

[REDACTED]

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[REDACTED] which are to be a part of the joint venture are to be directly or indirectly held.

The only U.S. operations to be involved in the joint venture will be held through a [REDACTED] corporation [REDACTED] to be formed by [REDACTED] which shall become a wholly-owned subsidiary of the [REDACTED]. As part of the joint venture arrangement the assets of the [REDACTED] corporation and an indirect wholly-owned subsidiary of [REDACTED] and certain of the current assets and liabilities (inventory and accounts receivable and payable only) of the [REDACTED] business of [REDACTED] and a wholly-owned indirect subsidiary of [REDACTED] will be transferred to the [REDACTED] in consideration of cash equal to the fair market value of the assets transferred. In addition, the [REDACTED] will undertake the [REDACTED] purchasing, marketing and sales functions of [REDACTED] and the employees of [REDACTED] engaged in the [REDACTED] purchasing, marketing and sales functions will be transferred to the [REDACTED]. [REDACTED] shall also be entering into a toll manufacturing agreement for a ten (10) year period with the [REDACTED] pursuant to which [REDACTED] shall use its manufacturing facilities to produce products for the [REDACTED] in consideration of an annual facility fee and a per ton tolling charge.

The book value of the "total assets" to be transferred by [REDACTED] to the [REDACTED] based upon the last regularly prepared balance sheet of [REDACTED] is approximately \$7,500,000 and the book value of the "total assets" to be transferred by [REDACTED] to the [REDACTED] based upon the last regularly prepared balance sheet of [REDACTED] is approximately \$4,000,000. The "annual net sales", as determined in accordance with 16 C.F.R. §801.11, attributable to the assets of [REDACTED] to be transferred to the [REDACTED] which assets are a part of a distinct division, are approximately \$17,000,000 for the 1993 fiscal year. The "annual net sales" attributable to the [REDACTED] business of [REDACTED] are approximately \$10,000,000 for the 1993 fiscal year, but such sales were not only derived from the

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sales don't follow assets transferred to a joint venture - ABA letter # 198 4246 (RS)

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current assets to be transferred to the [REDACTED] but also from the production assets which are to be retained by [REDACTED] and are to be used in connection with the production of product for the [REDACTED] through the above-referenced toll manufacturing agreement.

Based upon the total assets of [REDACTED] and the total assets to be held by the [REDACTED] as a result of its formation and related transactions, it is apparent that both [REDACTED] would be required to make a filing pursuant to the Act based upon 16 C.F.R. §801.40. We have determined, however, that the acquisition by each of [REDACTED] and [REDACTED] of a fifty (50%) percent interest in the [REDACTED] would be exempt from the requirements of the Act under 16 C.F.R. §802.51(b), which states that a foreign person shall be exempt from the requirements of the Act if the acquisition is of voting securities of a foreign issuer and shall not confer control of an issuer which holds assets located in the United States having an aggregate book value of \$15,000,000 or more, or a U.S. issuer with annual net sales or total assets of \$25,000,000 or more. As noted earlier, the [REDACTED] as a result of the above-referenced transaction shall have total assets of less than \$15,000,000 based upon their current book value. Furthermore, since the [REDACTED] will have had no operations, we have concluded that the annual net sales of the [REDACTED] under 16 C.F.R. §802.51(b)(2) would be zero or, in the worst case scenario, \$17,000,000, which relates to the annual net sales attributable to the assets of the [REDACTED] being transferred. It would not include the \$10,000,000 in annual net sales which relate to the current assets of [REDACTED] being transferred to the [REDACTED] since only the current assets and none of the production assets to which such sales are also attributable are being transferred.

I take it that the requirements of 801.40 have been met

Must meet both 802.51(b)(1) and (2)

802.51(b)(1)

802.51(b)(1)

Although 16 C.F.R. §801.11 and §802.40(c) clarify the application of the test under 16 C.F.R. §802.51(b) as it relates to "total assets" for a joint venture, these provisions do not indicate whether annual net sales attributable to such assets are to be used in connection with a joint venture or whether the annual net sales portion of this test is inapplicable to joint ventures. As a result, we request your advice as to

see ABA 199 and 2nd

For 801.40 include sales if an entity is being contributed, otherwise sales are -0-

[REDACTED]

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whether our analysis is correct that in connection with a joint venture the annual net sales test under 16 C.F.R. §802.51 (b)(2) is not applicable or that it will only relate to situations where annual net sales can be directly linked to assets of a complete division or company being transferred or conveyed to the joint venture, as in the case set forth above with respect to [REDACTED] but not in the case with respect to [REDACTED]

Your comments and interpretation with respect to this issue would be greatly appreciated. Please be advised that the parties wish to have the joint venture operational by May 31, 1994, and that if a filing under the Act is necessary it shall have to be made shortly in order to satisfy the requirements of the Act prior to that date. If any additional information or facts are required, please do not hesitate to contact me. I look forward to your response.

Very truly yours,

[REDACTED]

[REDACTED]
called [REDACTED] 5-3-94

I concur with this letter with exceptions noted in margins. (PS) RS concurs