

201.11(a)  
801.11(e)  
C-4

[REDACTED]

[REDACTED]

[REDACTED]

May 27, 1994

**VIA HAND DELIVERY**

Mr. Patrick Sharpe  
Compliance Specialist  
Federal Trade Commission  
Bureau of Competition  
Pre-Merger Notification Office  
Room 301  
6th and Pennsylvania Aves., N.W.  
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This material may be subject to  
confidentiality provisions of  
7A(b) of the Clayton Act and  
release under the Freedom of Information Act.

JUN 1 12 00 PM '94  
FEDERAL TRADE  
COMMISSION  
PRE-MERGER NOTIFICATION  
OFFICE

Dear Patrick:

This is to confirm our telephone conversation the Thursday, May 19, 1994 and Wednesday, May 25, 1994 in which the following facts were discussed:

Agency A, an agency created by a state legislature to "be an independent agency for the state . . . to manage money and property for the state, its agencies and trust funds," proposes purchasing, on behalf of a state employee retirement fund qualified under § 401 of the Internal Revenue Code ("Trust"), in excess of 50% of the voting securities of Newco, a newly-created corporation with no regularly prepared balance sheet. Newco intends to purchase the assets of a division of Company B for approximately \$24 million. Agency A and Company B each control entities which have assets and annual sales well in excess of \$100 million. Trust also has in excess of \$100 million in assets. Trust has granted Agency A sole investment control over its assets. Newco's initial capitalization will consist of approximately \$20.0 million of debt and between \$4.0 - \$5.0 million of equity, of which approximately \$24 million will be paid to Company B for the assets of the division and additional funds will be disbursed incidental with the purchase of these assets.

[REDACTED]

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Does this trust  
meet the test on page 1  
as an agency of the State?  
yes

Based on our telephone conversations, it is my understanding that the formation of Newco will not be reportable under the Hart-Scott-Rodino Act and 16 C.F.R. §801.40 even though Agency A and Trust each have assets in excess of \$100 million and Newco will initially have raised capital contributions in excess of \$10 million. Under 16 C.F.R. 801.1(a)(2), the term "entity" is defined expressly to exclude a state agency and the FTC staff has applied this reasoning to state trust. The definition of "person" in 16 C.F.R. §801.1(a)(1) means an "ultimate parent entity and all entities which it controls." Thus, for Hart-Scott-Rodino purposes, neither Agency A nor Trust will be considered the "ultimate parent entity" of Newco or a "person" with reporting requirements. The other shareholders of Newco also will not have any reporting requirements in connection with the formation of Newco under 16 C.F.R. §802.20 since none will be contributing \$15 million or more nor controlling Newco.

Furthermore, we understand that the purchase of the division of Company B by Newco will not be a reportable event under the Hart-Scott-Rodino Act. Even though Trust will be the beneficial owner of greater than 50% of the voting securities of Newco, Newco will be considered its own "ultimate parent entity" since neither Agency A nor Trust will be able to be an "ultimate parent entity" under the rules. Under 16 C.F.R. §801.11(e), the total assets of an acquiring person that does not have a regularly prepared balance sheet is defined as the assets held by the acquiring person at the time of the acquisition less all cash that will be used as consideration in an acquisition of assets and all cash that will be used for expenses incidental to the acquisition. Based on this provision, Newco will not be deemed as having \$10 million in assets at the time of the acquisition. Thus, the size of the parties test will not be met in connection with Newco's acquisition of the assets of the division of Company B.

Please let me know as soon as possible whether I have in any way misunderstood the position of the FTC Premerger Notification Office staff. As always, I appreciate your assistance in this matter. Best regards.

Sincerely,



contacted   
I concur with this  
letter. (PS)

RS concurs