



January 9, 1995

VIA FACSIMILE

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: 16 C.F.R. 802.9

Dear Dick:

This letter confirms our recent telephone conversation regarding the applicability of 16 C.F.R. 802.9 to the following fact scenario:

"A" will acquire 100% of the voting securities of "B". As consideration, the shareholders of "B" will receive voting securities of "A". One shareholder of "B" ("S") will acquire voting securities of "A" valued in excess of \$15 million. "S" will acquire less than 10% of "A"'s voting securities, however, and is acquiring these securities solely for the purpose of investment. He will not be an officer or director of "A" or any entity that "A" will control, nor will he in any other way have the ability to influence the management of "A" or any entity that "A" will control.

By virtue of its acquisition of "B", "A" will acquire 78% of the voting securities of "C". At the time of the transaction, "S" will own the remaining 22%. "S" ultimately would like to acquire 100% of "C". "A" therefore has agreed that if requested to do so by "S" prior to the first anniversary of the closing of its acquisition of "B", it will negotiate in good faith for a period not to exceed 60 days, the sale to "S" of its shares in "C".

[REDACTED]

[REDACTED]

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We discussed the impact on "S"'s investment only intent of this agreement by "A" to negotiate for the sale of "C" and determined that it does not negate his investment only intent since he in no way intends to or can influence the management of "A" or any entity that "A" will control. He ultimately may control "C", but he will not have any influence over its management unless and until he acquires control. He thus will hold voting securities of "A" as a passive investor and his acquisition of the "A" voting securities is exempt from the requirements of the HSR Act under 16 C.F.R. 802.9.

Please call me at [REDACTED] soon as possible to confirm that the foregoing accurately reflects our conversation.

Sincerely,

[REDACTED]

1/17/95 - Called writer and advised that it was the view of the PMN Office that the fact situation presented here did not create circumstances which are inconsistent with S's claiming a "solely for purposes of investment" exemption for the taking of less than 10% of A's voting stock.

RBSmith