

802.20; 7A(a)(3)(B)

[REDACTED]

February 8, 1995

By Hand Delivery

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

is subject to the
Division
information

Re: Hart-Scott-Rodino Requirements with respect to
Technology Licensing Agreements

Dear Mr. Smith:

Thank you very much for your time on January 23, 1995, to discuss with me and [REDACTED] the interpretation of the Premerger Notification Office concerning the applicability of the Hart-Scott-Rodino reporting requirements to a particular technology licensing arrangement. This letter will confirm the substance of our telephone conversation.

As we discussed, the Premerger Notification Office has taken the position that, under certain circumstances, the grant of an exclusive license may be treated as an acquisition of assets under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"), thereby invoking the Act's reporting and waiting requirements. Given the particular set of circumstances we described to you in our telephone conversation, however, you determined that the arrangement at issue was not reportable under the Act.

During our conversation, [REDACTED] and I described a proposed transaction that involves the grant of an exclusive right to market certain technology to third parties. Under the arrangement at issue, the grantor will retain the right to use the technology. The grantee is an engineering and construction company that will not use the licensed technology itself to manufacture products, but rather will license this technology to others who will produce the products. The agreement with the grantor gives the grantee the exclusive right to license this technology to third parties, and the grantee will be obligated contractually to license to third parties and to promote the licensing of the technology. The grantor may revoke this right if it

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is not satisfied with the grantee's performance in licensing third parties. As we discussed, in essence, this agreement is an exclusive marketing or distribution arrangement.

Based on our discussion of the facts set forth above, you agreed that this licensing arrangement is not subject to the Hart-Scott-Rodino reporting requirements. You explained that the grant of the exclusive right to license the technology to third parties is akin to an exclusive distribution arrangement, which the Premerger Notification Office has determined is not reportable under the Act.

If this letter does not accurately summarize the advice which you gave us, I ask that you contact me promptly. Thank you again for your guidance and assistance in this matter.

Very truly yours,

[Redacted signature]

[Redacted]

3/8/95 - Called [redacted] and advised that the PMS office agreed with the conclusion that the license was an exclusive marketing or distribution grant and, since the grantor retained the right to itself use the technology, not an exclusive grant of technology. No filing is required.
RBSmith