

802.30; 801.1(c)(2); 7A(c)(3)

[REDACTED]

March 12, 1998

[REDACTED]

Mr. Richard Smith  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Sixth and Pennsylvania Avenues N.W.  
Washington, D.C. 20580

Re: Proposed Merger of Corporations  
16 CFR Part 802 Exemptions  
Specific Section: 16 CFR §802.30 (Intraperson transactions)

Dear Mr. Smith:

As you know from our conversations, I am legal counsel for nine separate corporations, all of which are "S" Corporations.

All of the corporations except one are in the business of [REDACTED]. The corporation which does no actual retail selling is - technically - a management corporation whose purpose is to oversee the operation of the remaining corporations.

The corporations operate 16 retail stores located primarily in the Commonwealth of [REDACTED] although there are two stores in the State of [REDACTED] and one in the [REDACTED]. All of the corporations' retail locations are in units which are leased from third parties (generally the owners of a mall, a shopping center, a strip mall, etc.) and are not leased from any corporation involved in this prospective merger.

No Lessor with which the corporations deal is in any way related to any of the nine corporations, or any member of the Board of Directors, any shareholder, or any officer thereof. Stated simply, all leases for all of the retail stores are "arm length" transactions involving non-related and/or non-affiliated individuals and/or entities as Lessors.

The first corporation was formed in 1968. This corporation and all subsequent corporations were formed by [REDACTED]. At the time of the formation of these corporations, the [REDACTED] were - and still are - married.

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As far as the formation of corporations subsequent to 1968 is concerned, [REDACTED] deemed it prudent to set up a separate corporation for a certain geographic area, and then have that particular corporation enter into leases for the retail outlets in that geographic area.

The existence of nine separate corporations conducting virtually the same business has proven to be unwieldy and cumbersome for many reasons, including but not limited to a duplication of corporate maintenance (e.g. nine different Annual Shareholders Meetings, nine different Annual Meetings of the Board of Directors, the paperwork attendant thereto), the preparation of Federal, Commonwealth (and/or State) and Local Tax Returns, etc.

To streamline the entire corporate operation, [REDACTED] have finally decided to merge all of the corporations, except one.

Accompanying this letter are two additional pages. The first page is labeled "Detail Information" and the second page is labeled "Current Stock Structure".

The "blue starred" corporation on the Detail Information sheet identifies the corporation into which the other corporations - except the one with the "blue dot" - will merge. The registered name of the "blue starred" corporation is [REDACTED]. It was formed, organized and exists under the laws of the [REDACTED]. The "blue dot" corporation, i.e. [REDACTED] Enterprises", is the corporation that [REDACTED] intend to keep separate, i.e. it will not be one of the "constituent corporations" at this time.

As far as all corporations are concerned, [REDACTED] are:

- A. The members of the Board of Directors.
- B. The only shareholders.
- C. Married.

No other person or entity owns any shares of these corporations.

The second enclosed page, i.e. the "Current Stock Structure" sheet, shows for each corporation the following information:

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- The number of authorized shares.
- The par (or stated) value of each share.
- The number of shares owned by [REDACTED]
- The number of shares owned by [REDACTED]

The merger of the seven corporations into [REDACTED] will be a "Statutory Merger", i.e. it will be effectuated and governed by the provisions of the Act of the [REDACTED] P.L. 1444, No. 177, et seq. (15 Pa.C.S.A. §1101, et seq.), as amended, i.e. the Pennsylvania "Business Corporation Law of 1988" ("BCL").

Pursuant to a formal, written "Plan of Merger" required by §1922 ("Plan of Merger or Consolidation") of the BCL, [REDACTED] will deliver their shares of the "non-surviving" corporations to [REDACTED] Inc. and will receive shares of [REDACTED] for the tendered shares of the "non-surviving" corporation.

Once the merger becomes effective, the separate existences of the "non-surviving" corporations will cease by operation of law.

As an aside, pursuant to §368(a)(1)(A) of the Internal Revenue Code as amended, this particular merger is a "Type A" merger.

Based on my review of the facts and issues involved in this proposed merger, I believe that the provisions of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976 (15 U.S.C. §18(a) et seq.) would apply to this proposed merger.

However, in my opinion, this proposed merger is "exempt" according to a sub-provision of Title 16, Chapter I, Sub-Chapter H, Part 802 ("Exemption Rules").

Specifically, I am relying on 16 CFR §802(30) ("Intraperson Transaction") as the basis for my opinion, since this proposed merger involves the acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which by reason of holdings of voting securities the "Acquiring" and "Acquired" persons are the same "person", namely [REDACTED]

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Thank you very much.

Sincerely,  


  
Enclosures

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3/18/98 Writer confirmed that on chart included on Section 4 Page 2, the husband and wife initial held all of the outstanding voting stock of the said corporation listed. The volume of that authorized voting stock for each of the corporations had never been issued. I advised that only merger or consolidation among such new corporations under exempt under 807.30 (and 7A(c)(3)).

RR Smith