

7A(c)(3); 7A(c)(10); 801.1(c)(8); 801.30

[Redacted]

[Redacted]

15

This material may be subject to the
comparability provisions of section
7A(f) of the Clayton Act which restricts
access under the Freedom of Information
Act.

[Redacted]

September 14, 1998

SEP 16 2 00 PM '98

PREMERGER AND ACQUISITION
OFFICE

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

Re: Premerger Notification Analysis for Acquisitions
Involving a Limited Liability Company

Dear Mr. Smith:

This letter will serve to memorialize our telephone conversation of September 14, 1998, in which we discussed the proposed acquisitions of voting securities and assets involving a limited liability company ("LLC"). In particular, it will confirm our conclusion, based on the facts set forth below, that the voting securities and assets acquisitions described would not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the rules promulgated thereunder.

For purposes of our conversation, I assumed that the size of person, size of transaction and interstate commerce jurisdictional tests were met unless otherwise noted. At present, two corporations, X and Y, each directly hold equal 50% membership interests in an LLC. X and Y are each their own Ultimate Parent Entities. The LLC is managed and operated by persons who are officers, directors and/or employees of X and Y. The LLC, in turn, holds directly 100% of the voting securities of corporation Z.

In the first set of proposed transactions, Person X and Person Y each will acquire 50% of the voting securities of Z. In a second transaction, Z will acquire from Person X its 50% of the voting securities of Z for consideration consisting of land valued at approximately \$7.5 million plus approximately \$2 million in cash.

SEP 16 2 00 PM '98
PREMERGER AND ACQUISITION
OFFICE

Mr. Richard B. Smith
September 14, 1998
Page 2

As we discussed, with respect to the first set of transactions, Person X and Person Y are each acquiring persons for their respective acquisitions of Z voting securities and both Person X and Person Y are acquired persons with respect to each acquisition. You noted that Person X and Person Y would each be deemed to hold all of the voting securities of Z under Rule 801.1(c)(8). Therefore, the statutory exemptions in Sections 7A(c)(3) and 7A(c)(10) would exempt the acquisitions by Person X and Person Y of Z voting securities from the reporting requirements of the Act, although the acquisitions would not be exempt under the intraperson exemption of Rule 802.30 for the reasons set forth in Interpretation 256 of the ABA's Premerger Notification Practice Manual.

With respect to the transaction in which issuer Z acquires 50% of its voting securities from Person X, the statutory exemption of Section 7A(c)(3) is again available because, in this instance, acquiring Person Y already holds 50% of the voting securities of issuer Z. The statutory exemption of Section 7A(c)(10) is not available in this instance because Person Y will increase its percentage holdings of issuer Z nor would this qualify as an intraperson transaction under Rule 802.30. The acquisition of \$7.5 million in land and approximately \$2 million in cash by Person X in connection with the acquisition from Person X of issuer Z's voting securities does not meet the size of transaction test and therefore is exempt.

Therefore, based on the foregoing, it is my understanding that the staff of the Premerger Notification Office is of the view that the proposed transactions are exempt from the reporting requirements of the Act. If this understanding is incorrect or if you have questions or need additional information, please telephone me [REDACTED]. Thank you for your assistance.

Very truly yours,
[REDACTED]

9/17/98 Called writer and advised that transactions as described would require no 15C-7 filings due to exemptions cited. (Make sure all filings are correct.)
R.B. Smith

[REDACTED]