

801.2(d)(2)

August 10, 1999

BY HAND

Mr. Michael Verne
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Section 801.4 of the Hart-Scott-Rodino Rules

Dear Mr. Verne:

I write to confirm our telephone conversation today in which you advised that your Office interprets Section 801.4 of the Hart-Scott-Rodino ("HSR") Rules, 16 C.F.R. § 801.4, not to require a secondary acquisition HSR notification in a primary transaction of the kind described below.

In the primary transaction, our client () and () intend to combine their respective businesses into a newly-formed corporation ("Parent"). The consolidation will be accomplished by a "merger of equals" in the following form: (1) A wholly-owned subsidiary of Parent will be merged with and into () with () the surviving corporation. (2) A second wholly-owned subsidiary of Parent will be merged with and into (), with () the surviving corporation. (3) Each outstanding share of () stock and of () stock will be converted automatically into the right to receive a specified number of shares of Parent common stock. Thus, as a result of the transaction, () and () will be wholly-owned subsidiaries of Parent. The parties each filed HSR Notification and Report Forms with respect to this transaction on July 30, 1999, as both acquiring and acquired persons, pursuant to HSR § 801.2(d)(2).

In our telephone conversation, we discussed whether, under the "secondary acquisition" rule of HSR § 801.4(a) and Example 6 to that section, () may be required to file a separate HSR notification with respect to a deemed "acquisition" of () minority holdings of a third-party issuer's voting securities. Section 801.4(a) provides that when an acquiring person in a primary acquisition "will obtain control" of a person that holds such minority interests, the indirect "acquisition" of those minority holdings may be separately subject to HSR filing requirements. Example 6 under that section suggests that persons in a consolidation may be deemed to have such secondary acquisitions within the

157
1999 AUG 10 10:57 AM
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

[REDACTED]
Mr. Michael Verne
August 10, 1999
Page 2

meaning of this rule. In our conversation, however, you explained that your Office has concluded that there is no need to require burdensome secondary acquisition HSR notifications in a consolidation unless the consolidating persons each hold minority interests in the same issuer. Thus you advised that, under your Office's informal interpretation of the rule, [REDACTED] will not be required to make HSR filings for a deemed secondary acquisition of [REDACTED] minority holdings, unless [REDACTED] also holds voting securities in the same third-party issuer as [REDACTED].

[REDACTED] and [REDACTED] do not hold minority interests in the same third-party issuer, and thus [REDACTED] is not required to make a secondary acquisition HSR filing.

Thank you for your time and help today to discuss your Office's informal interpretation with me. If this letter does not accurately summarize the advice that you gave me and the position of your Office, I ask that you please contact me promptly.

Sincerely,

[REDACTED]

AGREE - NO FILINGS REQUIRED FOR SECONDARY
ACQUISITIONS DICK SMITH CONCURS.

Bruce Beer

8/10/99