

7A(c)(8)

[REDACTED]

[REDACTED]

[REDACTED]

October 18, 1999

[REDACTED]

VIA HAND DELIVERY

Marian Bruno, Esq.  
Premerger Notification Office  
Room 303  
Federal Trade Commission  
6th & Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Reportability of a Foreign Bank Acquisition

Dear Marian:

This letter will summarize our telephone conversation of October 13, in which you tentatively concurred that the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, as amended, would not require notification in the following circumstances.

The proposed transaction is a purchase of one foreign bank by another foreign bank. The acquiror owns several U.S. banks. The acquired person has one branch and two representative offices in the United States, which were established pursuant to the International Banking Act of 1978 ("IBA") (12 U.S.C. § 3101 et seq.); the acquired person also has several U.S. affiliates, which are engaged in permissible non-banking activities and which were established pursuant to section 4 of the Bank Holding Company Act ("BHCA") (12 U.S.C. § 1843) and section 25(a) of the Federal Reserve Act ("FRA") (12 U.S.C. § 611 et seq.). Pursuant to each of these banking statutes, the entire transaction must be notified to and approved by the Board of Governors of the Federal Reserve System ("Federal Reserve"). All information and documentary material filed with the Federal Reserve in connection with the proposed transaction will be contemporaneously filed with the Federal Trade Commission and with the Justice Department pursuant to section 7A(c)(8) of the HSR Act.

Certain provisions of the HSR Act and its enabling regulations specifically exempt banking transactions from reporting, at least insofar as notification to the Federal Reserve is mandated by sections 3 or 4 of the BHCA (12 U.S.C. §§ 1842, 1843) and sections 25 or 25(a) of the FRA (12 U.S.C. §§ 601-604a, 611-31). See Sections 7A(c)(7) and 7A(c)(8) of the HSR Act; see also 16 C.F.R. § 802.53. Most of the U.S. part of the proposed transaction falls within section 4 of the BHCA and section 25(a) of the FRA and, for this reason, would be exempt from HSR reporting. The question is whether HSR compliance is required with respect to the small part of this transaction that does not fall within one of these specific exemptions. In particular, the proposed acquisition of the U.S. branch and representative offices of the foreign bank must be notified to and approved by the Federal Reserve pursuant to 12 U.S.C. § 3102 et seq., which provision is not included in the banking exemptions of the HSR Act and HSR Rules.

Commentary to Interpretation Number 36 suggests that HSR compliance is required in these circumstances only "as to that portion of the transaction that [does] not require Fed approval if it is valued at more than \$15 million." See ABA, *Premerger Notification Practice Manual* (1991), Interpretation No. 36. In this case, the entire transaction, including the proposed acquisition of a US branch and representative offices of the foreign bank, is required by statute to be submitted to and approved by the Federal Reserve. If the ABA commentary is correct, then no separate HSR notification should be required.

In our conversation, you agreed that the "common sense" approach would be to consider the entire transaction exempt from HSR notification requirements. Full copies of all Federal Reserve notifications regarding the transaction will be contemporaneously filed with the antitrust enforcement agencies, which makes your common sense approach particularly compelling. We also believe this approach to be commonly accepted understanding of banking practitioners. After speaking with you last week, we also spoke informally with members of the Federal Reserve staff, who advised us that to their knowledge no HSR filing has taken place with respect to any of the banking transactions -- structurally identical to the subject transaction -- which have been reviewed by the Federal Reserve in recent years.

Please contact me to confirm that the Premerger Notification Office does not consider this transaction to be subject to HSR reporting requirements. Many thanks for your time and attention.

Best regards,

[Redacted signature block]

cc:

[Redacted recipient list]

10/22/99 Consulted with Tom Hancock  
called [Redacted] and confirmed  
this transaction is not reportable  
beyond 24 (c)(8) requirements.