COMMENT No. 06

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UNOCAL 76

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Federal Trade Commission
Secretary
Room 136
Washington, D.C. 20580

Assistant Attorney General
Antitrust Division
Department of Justice
Room 3214
Washington, D.C. 20530

Re: Premerger Notification; Reporting and Waiting Period Requirements

Dear Sirs:

We are writing to you on behalf of Unocal Corporation in connection with the proposed amendments to the premerger notification rules. Unocal opposes the proposed exemption to the premerger notification obligations.

Section 7 of the Clayton Act prohibits acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." 15 USC 18. The Hart Scott Rodino Antitrust Improvement Act of 1976 (the "Act") was enacted to enhance enforcement of Section 7 of the Clayton Act by requiring advance notification of acquisitions which could potentially violate such section. Stock acquisitions contravening Section 7 are those which give the acquiring person the power to influence target management in an anticompetitive manner. United States v. E. I. du Pont de Hemours and Co., 353 U.S. 586 (1957). The proposed exemption for a person who acquires up to 10% of the securities of an issuer when such acquirer has the intent of influencing target's management (which is virtually always the case for an acquisition of 10% of an issuer's stock) is in diametric opposition to the fundamental purpose of the Act. Since power to influence the target's management is the primary concern of Section 7, it is beyond our comprehension why the FTC would exempt review for acquisitions of up to 10% of an issuer's stock when the acquisitions may be made for the purpose of influencing management. Our concern in this regard applies regardless of the dollar value of such acquisition. This type

of transaction is suspect on its face and should be reviewed by the FTC and Department of Justice when it amounts to a certain dollar value.

It is inherently unfair and illogical to distinguish voting securities from other assets. If the exemption is adopted, it would give the appearance that stock acquisitions, which may be in the hundreds of millions if not billions of dollars, do not raise antitrust concerns. On the other other hand, an asset acquisition of more than $15 million would raise such concerns.

10% stock ownership of a publicly traded company, with widely distributed stock ownership, could allow an acquiring party to exercise considerable power if not control. As an example, Unocal has 116 million shares of issued and outstanding stock but no one shareholder or shareholder group, including Unocal's various employee benefit plans, own as much as 10% of the company's stock. Theoretically, an acquiring party could become the company's single largest shareholder without filing a premerger notification. It is ludicrous to think that a significant shareholder would not have the intent of influencing the issuer's management.

Premerger notification requirements should be based on strong, coherent and well defined antitrust policy. The proposed exemption appears to be based on concerns unrelated to antitrust policy. Treating asset acquisitions differently than stock acquisitions would lead to an incoherent policy with diminished credibility thereby creating additional enforcement problems.

Securities laws are irrelevant in this context. Securities laws were enacted to assure disclosure. An acquirer of 5% of an issuer's stock must disclose such acquisition within 10 days. Securities laws were not enacted to forbid disclosure or protect the acquirer from any disclosure for up to 10 days from the time of acquisition of 5% of an issuer's stock. In practice, some acquirers have managed to acquire well over 5% of an issuer's stock prior to disclosure. This, however, was not the intended result of the law. It is by manipulating the law and taking advantage of the filing delay that stock purchasers may acquire well over 5% prior to filing. Securities laws require disclosure when a threshold is reached. Before this threshold is met, securities laws permit disclosure without requiring it. Thus, requiring the filing of a premerger notification prior to the time when disclosure is required by the securities laws is in no way contrary to the framework of the securities laws.

Finally, we do not believe that regulations should be changed because they are currently violated. Rather, it is our opinion that the antitrust laws and regulations should be vigorously enforced. The proposed exemption could be viewed as a relaxation of the FTC's enforcement activities and provide another tool for hostile raiders to abuse the system.

Very truly yours,

Denis Coolon

DPC/jn