



ITEL

Itel Corporation

2 N. Riverside Plaza, Suite 1950
Chicago, Illinois 60606
(312) 902-1515
Telecopy (312) 902-1573

November 8, 1988

Office of the Secretary
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Room 136
Washington, D.C. 20580

Assistant Attorney General
Antitrust Division
Department of Justice
10th Street & Pennsylvania Avenue, N.W.
Room 3214
Washington, D.C. 20530

Re: Proposed Rulemaking concerning Premerger
Notification under the Hart-Scott-Rodino
Antitrust Improvements Act of 1976, 53
Fed. Reg. 36831 (Sept. 22, 1988)

Dear Sir or Madam:

This letter is submitted in response to the invitation to comment on the proposal to amend the premerger notification rules promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), 53 Fed. Reg. 36831 (Sept. 22, 1988).

Itel Corporation is engaged in transportation services, including railcar leasing, container leasing, rail transportation and distribution services; distribution of wiring systems products; heavy marine construction, primarily dredging; and equipment, commercial and specialized financing. Itel also has a substantial investment in the securities of other companies. Since its reorganization under Chapter 11 of the U.S. Bankruptcy Code in September 1983, Itel has made a substantial number of acquisitions and investments to diversify and strengthen its businesses. Our equity securities are traded on NASDAQ's National Market System.

November 8, 1988
Page Two

We believe that the principal proposal granting an unrestricted exemption from notification under the HSR Act of acquisitions of ten percent or less of an issuer's securities would best serve the interests of the antitrust, securities and other regulatory schemes. For this reason and for the reasons set forth below, we support the adoption of proposed Section 802.24 of the premerger rules implementing the unqualified exemption.

We find it very difficult to apply the ambiguous "solely for the purpose of investment" standard. Consequently, we are forced to stop at the \$15 million threshold even though the majority of our purchases fall short of 10% and turn out to be for investment purposes only. We believe the unqualified exemption will be easier for both the Commission and acquirors to administer without prejudicing antitrust enforcement efforts.

Moreover, acquisitions of ten percent or less of an issuer's voting securities are unlikely to raise antitrust concerns due to the inherent difficulties of a minority shareholder influencing the management or operations of the issuer. In addition, by allowing the acquisition of securities under the secrecy afforded by the securities laws, acquirors will be able to purchase stock at prices that are not artificially inflated by the publicity which can be generated by an HSR Act notification filing at the \$15 million reporting threshold. Finally, the unqualified exemption will free the valuable resources of the antitrust authorities, purchasers and issuers which are presently expended on these unnecessary filings.

The principal proposal to grant an unrestricted exemption would have an additional beneficial effect by reducing the present confusion and ambiguity caused by the interaction of the HSR Act with the Interstate Commerce Act ("ICA"). Under the ICA, rail carriers are subject to the jurisdiction of the Interstate Commerce Commission ("ICC"). The ICA requires the prior approval of or an exemption from the ICC before a carrier or person controlling a carrier may attain control of another regulated carrier. Since approval or exemption immunizes the transaction from the antitrust laws, 49 U.S.C. Section 11341, notification pursuant to the HSR Act is not required, 15 U.S.C. Section 18a(C)(6). We understand that the Commission has taken the position that acquisition of more than \$15 million of securities of a carrier by a person owning or controlling another carrier is subject to the HSR Act even if the percentage of voting securities acquired is insufficient to confer control upon the acquiring person and therefore trigger the jurisdiction of the ICC. This results in an anomalous situation: acquisition of control of a carrier by a person

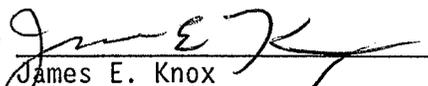
November 8, 1988
Page Three

owning or controlling another carrier is exempt from the HSR Act, but acquisition of less than control is subject to the HSR Act. Thus, one effect of the principal proposal would be to reduce the circumstances in which such an anomalous result occurs by exempting acquisitions of ten percent or less of an issuer's securities from the HSR Act.

We, therefore, urge the antitrust agencies to adopt the proposed pre-merger rule that exempts absolutely acquisitions of ten percent or less of an issuer's voting securities from the requirements of the HSR Act.

Very truly yours,

ITEL Corporation

By 
James E. Knox
Senior Vice President,
General Counsel & Secretary