



August 23, 1984

VIA COURIER

Mr. Pat Sharp
Premerger Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
Washington, D.C. 20580

Re: Minimum dollar value exemption to the
premerger notification requirements
of the Hart-Scott-Rodino Act

Dear Mr. Sharp:

This letter will serve to confirm our telephone conversation of August 22, 1984 regarding the necessity of the filing of a Notification and Report Form under Section 7A of the Clayton Act in the particular circumstances described below.

An acquiring person ("P") proposes to acquire 100% of the outstanding capital stock of three issuers -- "A", "B" and "C" -- from a single acquired person. None of the three issuers to be acquired has any equity interest in the other issuers and none of the three issuers is under the control of another. The capital stock of each of the issuers, however, is to be sold by a single ultimate parent entity.

The proposed acquisition by P of A would meet the "size-of-the-persons" test under Section 7A(a)(2) of the Clayton Act because P has net sales in excess of \$100,000,000 and A has total assets and net sales in excess of \$10,000,000. The proposed acquisition of B and C, each treated separately, would not meet the "size-of-the-persons" test, because neither B nor C has net sales or total assets of \$10,000,000 or more.

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The proposed acquisition by P of A, considered alone, is exempt from the premerger notification requirement of Section 7A(a) of the Clayton Act under the minimum dollar value exemption provided in Section 802.20 of the Federal Trade Commission's Premerger Notification Rules ("Rule 802.20"), pursuant to Section 7A(a)(3) of the Clayton Act. Rule 802.20 provides an exemption for:

An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but which does not satisfy section 7A(a)(3)(B) ... if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than \$15 million; or

(b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of \$25 million or more.

The acquisition of A by P satisfies Section 7A(a)(3)(A), but does not satisfy 7A(a)(3)(B). Furthermore, the acquisition of A by P would not confer upon P control of an issuer, A, which, together with all entities which A controls, has annual net sales or total assets of \$25 million or more. Thus, Rule 802.20 provides an exemption for the acquisition of A by P.

P, however, intends to acquire the outstanding capital stock of A, B and C in a single transaction. The net sales of A, B and C, in the aggregate, exceed \$25 million. During our telephone conversation, I inquired whether the net sales or total assets of issuers B and C should be aggregated with those of A in determining whether or not the exemption from the obligation to file a premerger notification afforded by Rule 802.20(b) was available in the proposed transaction.

You pointed out that Rule 802.20(b) referred to "an issuer ... together with all entities which it controls", and not to, for example, "an acquired person", and that, therefore, the acquisitions of A, B and C should be considered individually for the purposes of Rule 802.20(b). Thus, the simultaneous acquisitions of B and C by P, neither of which satisfies the "size-of-the-persons" test of Section 7A(a)(2) of the Clayton Act, do not affect the applicability of the exemption provided in Rule 802.20 to the acquisition of A by P.

[REDACTED]

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Please telephone me at the above number to confirm that I have correctly described our conversation. Please retain this letter for your files.

Thank you very much for your assistance and cooperation.

Very truly yours,

[REDACTED]

*... reported that ...
... for ...
... (...) ...
...
...
...*

Wayne ...

(WK)

8-24/84

Would you please take
a look at this letter

[REDACTED]

was not aware that P.S.
was going on vacation
and he is very concerned
about the info in the
attached letter. ~~He~~

He would like for you
to read the letter and
telephone him (today)
as to whether the contents
of the is correct

Thanks
SIAAP