

*see notes of
J. Apple in reply to this
letter on last page*

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Freedom of Information Act

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Federal Trade Commission
~~Emergency Notification Office~~
Bureau of Competition
Room 301
Washington, D.C. 20580

10/11/80

The question presented is whether, under the facts below,

written agreement of that corporation's post-merger shareholders to

1/ It is irrelevant to this letter, but nonetheless worth noting,
that we do not as yet know whether each of the parties to the

assuming, for purposes of obtaining your guidance, that the
transactions will be reportable.

Andrew Scanlon, Esq.
June 16, 1987
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divest assets of that corporation very shortly after the effective time of the merger. We believe the answer should be yes, because there is no issue here of a "speculative transaction"; the corporation will cooperate with its nascent ultimate parent in providing information sufficient for the nascent parent to make a correct filing; the corporation will itself be filing on the prior

precedes in time the post-merger dispositions) a person who has filed on such dispositions to whom a valid second request can be made. 2/

The facts for this hypothetical are as follows. A, a corporation that is now its own ultimate parent, has signed an agreement with B, a corporation, to merge B into A. B is controlled by a partnership C, which in turn is controlled (under the new regulations) ultimately by D, a natural person. At the effective time of the merger, the partnership (C) will hold 100% of A's voting securities. A and D will file the required H-S-R forms prior to the effective time of the merger, which we will post for purposes of example as August 1, 1987.

It is A's understanding that the partners who comprise partnership C have agreed in writing that shortly following the effective time of the merger, the partnership will cause A to sell certain of A's assets to other entities somehow affiliated with certain of the partners in the partnership. A is not a party to this agreement. Obviously, it will be a party to the asset

For reasons entirely unrelated to any issue of antitrust or

filing for A when the asset dispositions take place after D actually becomes A's ultimate parent. However, D will not become A's ultimate parent until August 1--and in order to maintain an August 2 date as the time for closing the postmerger asset dispositions, any required filings on these dispositions would have to be made prior

2/ It is our understanding that the entities to whom the corporate

is engaged.

concerning the assets to be disposed of. Indeed, because A will be making a filing itself for the merger, there would be two forms on file showing A's operations (one filed by A, one by D on behalf of A). A and D are further willing to do anything that might reasonably be required in order to enable D to make the filing on its behalf a short time prior to the actual filing.

Under these circumstances, we request that you confirm to us that D, as A's nascent ultimate parent, may make any filing required in order to facilitate the post-merger dispositions of certain of A's assets.

Sincerely,

[Redacted signature block]

Called [Redacted] on 6/19.

Told him we would accept filing from D for subsequent sale of

to complete the form, i.e. A must provide D with

2) Both D and A should certify the form;

3) Both D, as the acquiring person, and the acquiring person must submit letters stating that they understand that if a request for additional information is issued the extended writing

John D Apple