802.5116

[redacted]

[redacted]

March 15, 1988

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act

Richard Smith, Esquire
Room 301
Premerger Office
Federal Trade Commission
Main Building
Washington, D.C. 20582

Dear Mr. Smith:

Per our telephone conversation of March 14, this letter will outline the facts concerning a proposed transaction and my conclusions concerning reportability under the Hart-Scott-Rodino Act and implementing regulations. I would appreciate your confirming that my conclusions concerning reportability are correct or, if they are not correct in any respect, so advising me promptly.

The parties to the transaction, "A" and "B", are both "foreign persons" as defined in § 801.1(e)(2)(i)(A) of the [illegible]

"A" proposes to acquire from "B" (1) operating assets located in a foreign country which generate greater than $15 million in sales annually to the United States, and (2) 100% of the stock of "B's" United States issuer subsidiary. This [illegible]

"B's" assets, "A" will transfer to "B" less than 50% of the voting securities of the United States issuer included within [illegible]

As I have analyzed the transaction, "A's" acquisition of [redacted] generate sales in excess of $15 million to the United States is irrelevant.

As for "A's" acquisition of 100% of the stock of the [redacted] the acquisition of 100% of B's U.S. issuer subsidiary's [redacted] acquisition of the voting securities confers control of a United States issuer (B's subsidiary), reportability will turn on whether this issuer "together with all entities which it controls has annual net sales or total assets of $25 million or more." § 802.20(b).

Reportability of "B's" acquisition of a non-controlling amount of voting securities of "A's" United States issuer subsidiary is not subject to § 802.51 but rather is governed by § 7A(a)(3) of the statute and § 802.20 of the regulations. Hence, reportability will depend first on whether B will acquire 15% or more of A's subsidiary's voting securities or whether the acquired securities have a value in excess of [redacted] first is met, § 802.20(b) applies and the transaction is not reportable because it does not confer control.

I will call you later today to confirm your receipt of this letter and to determine when you will be able to give me a response.

Sincerely yours,

[redacted]

[redacted]