

FILE NO.

August 11, 1988

Federal Trade Commission  
6th Street and Pennsylvania Avenue  
Washington, DC 20580  
Room 303

ATTENTION: Richard Smith

Dear Mr. Smith:

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

We are writing to request determination that the following  
acquisitions are not subject to the notification requirements of

We represent [redacted] (hereinafter [redacted]) a  
Massachusetts Corporation which is engaged in the supermarket  
business with net sales in excess of \$100,000,000. [redacted] intends to  
purchase in excess of 15 percent of the assets of [redacted]  
(hereinafter [redacted]) and [redacted]  
(hereinafter [redacted]) both Connecticut  
Corporations. Such assets include leasehold interests, leasehold  
improvements, equipment, fixtures, motor vehicles and inventory.  
Both entities are engaged in the supermarket business.

individual shareholders. The voting stock of [redacted] is held by 11  
different individual shareholders, two of whom are the owners of the

the voting stock of [redacted]. Neither corporation owns 50 percent  
or more of the stock of any other corporation.

\$3,000,000. and its net sales are less than \$25,000,000.

8010507

assets < 25M  
sales < 25M

assets < 5M  
sales > 25M

Federal Trade Commission  
August 11, 1988

*Handwritten notes:*  
A select 2/3

\$5,000,000, and its assets exceed \$25,000,000.

subject to the notification requirements of Section 7A of the Act, are [redacted] and [redacted] considered the same person?

CONCLUSION

ABC NOW

DISCUSSION

*Handwritten notes:*  
Entity  
Grl

if [redacted] the two entities are not under common control and are not deemed the same person within the meaning of the Act.

ISSUE II

Is either acquisition subject to the notification requirements of Section 7A.

CONCLUSION

THE LAW

Section 7A(a) provides that:

no person shall "acquire, directly or indirectly, any voting securities or assets of

any other person, unless both persons...file notification...if

(A) engaged in commerce or in any activity affecting commerce;...

(2) (B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more; or

(C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or more; and

the acquiring person would hold

the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000.

Regulation, Section 802.20, provides that:

[a]n acquisition which would be subject to the requirements of the [A]ct and which satisfies [S]ection 7A(a)(3)(A), but which does not satisfy [S]ection 7A(a)(3)(B) shall be exempt from

*Amended: 100M or more in net sales or total assets  
Excludes 10M or more in net sales or total assets if engaged in manufacturing*

the requirements of the [A]ct 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.

*what is the correct  
being priced value  
of assets to be acq  
is fair market value  
(not book value) or  
§ 1.16(b) greater than fair  
acquisition value,  
acquiring person's  
determination*

DISCUSSION

[redacted] is engaged in an activity affecting commerce; the assets of [redacted] including the assets of its ultimate parent entities, if its two shareholders exceeds \$10,000,000.

[redacted] would not hold an aggregate total amount of the voting securities and assets of [redacted] in excess of \$15,000,000

Were it not for the exemption under Regulation Section 802.20, this transaction would be subject to the notification requirements. However, since the acquisition satisfies the requirements of Section 7A(a)(3)(A) but not the requirements of Section 7A(a)(3)(B) and as a result of the acquisition [redacted] would not hold assets of [redacted] valued at more than \$15,000,000 or voting securities of [redacted] the transaction is exempt. || 2

DISCUSSION

[redacted] is engaged in an activity affecting commerce; since [redacted] is the ultimate parent entity and its assets do not equal \$10,000,000 and its net sales do not equal \$100,000,000, it does not

*fair market value here.*

assets of [redacted] but would not hold an aggregate total amount of

the voting securities and assets of [redacted] in excess of \$15,000,000.

Assuming that this acquisition does in fact meet the notification requirements under the statute, it would nevertheless be exempt under Regulation Section 802(20). Thus, the acquisition satisfies Section 7A(a)(3)(A) of the Act but does not satisfy Section 7A(a)(3)(B), and as a result of the acquisition [redacted] would not hold assets of [redacted] valued at more than \$15,000,000, nor is [redacted] acquiring voting securities of [redacted].

Based on the above, we request a determination, at your earliest convenience, that neither the [redacted] acquisition nor the [redacted] acquisition are subject to the notification requirements of Section 7A of the Clayton Act.

Thank you for your cooperation. We also want to express our appreciation for your telephone assistance in analyzing the statute.

Sincerely,

[redacted signature]

[redacted address]

talked to [redacted]  
8/18 confirmed that these  
were both secret transactions;

higher, the acquisition price,  
is \$15 MM or less for each  
entity ( [redacted] doing its own  
[redacted] and [redacted] having two natural  
persons [redacted], then 805.20(a)  
would apply and no filings  
are needed.   
RBJ