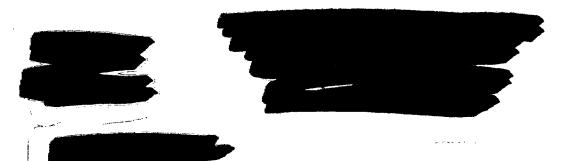
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BY HAND

Richard B. Smith, Esq. Federal Trade Commission 6th and Pennsylvania Avenue, N.W. Washington, D.C. 20580

Re: <u>Informal Opinion Letter</u>

Dear Mr. Smith:

I am writing to confirm the substance of our telephone conversation on August 28, 1990 in which, based on the facts I provided you, which are outlined below, you concluded that a Hart-Scott-Rodino filing was not required for the described transaction.

<u>Facts</u>

Commonstate the arm albimate manage and the vill and a

company b essentially provides that company A will pay company b approximately \$18 million in cash, approximately \$9 million of

The parties currently contemplate structuring the transaction such that Company A will convey approximately \$18 million worth of its stock to Company B at closing. Prior to closing, Company B will have extinguished the debt owed to it by Company C. At closing, Company B will convey the stock of Company C to Company A and also Company B will immediately resell

Company B as used in this letter refers to and includes Company C's ultimate parent entity and other subsidiaries of the ultimate parent entity.

Richard B. Smith, Esq. August 29, 1990 Page 2

the stock of Company A to or through an investment banking firm for approximately \$18 million.

<u>Analysis</u>

Company A's Acquisition of Company C Stock

Recause Commanies 1 and R collectively satisfy the

million in annual net sales or total assets, the critical inquiry

million in debt owed by Company C to Company B. Put another way, if the stock of Company C were sold to Company A with Company C's that stock. Thus, arthough there may be one you million navment being made from Company A to Company C. not all of it is

To further illustrate the issue, we discussed two variations on this structure. First, if Company A purchased the voting securities of Company C (with the intra-company debt in

Similarly, the FTC has historically excluded from consideration for the voting securities money that is paid at closing but not

the morey hald to those consultants would not be used to

In sum, the value of the consideration being conveyed for the voting securities of Company C is less than \$15 million and thus, the acquisition of Company C by Company A should not be reportable.

Richard B. Smith, Esq. August 29, 1990 Page 3

Acquisition of Company A's Voting Securities by Company B

For a brief moment, Company B will acquire title to approximately \$18 million of Company his voting sequeities before

Company B by Company A constitute less than 10% of the woting

16 C.F.R. § 802.9.

transactions described above do not require notification under the Act. I would appreciate learning from you as soon as negative

Sincerely,



distill to Company B was disquired consideration for the gustoning the gustoning the 9MM acquirible force of and 13 for Cia stock. No Reling is required. PRefund