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July 12, 1991

*I am not an attorney*

Patrick Sharpe, Esq.

Federal Trade Commission  
Washington, D.C. 20580

Division of Enforcement  
Bureau of Consumer Protection

Re: Hart-Scott-Rodino Inquiry

Dear Mr. Sharpe:

Thank you for your advice and counsel on the inquiry we discussed over the past two days.

The question arose under § 801.40 of the FTC Rules and Regulations interpreting the HSR statute, as reported in Chapter 16, Code of Federal Regulations. In particular, our client was unclear whether § 801.40(c)(1) encompassed assets which may be contributed in the future to the new corporation, subject to certain contingencies. Your answer was "no."

I thought it might be helpful to describe the situation more

New Corporation. Company B will be contributing at the outset an additional \$2.5 million, for 11 percent of the voting securities. Company A does have sales or assets in excess of \$100 million, and Company B has sales or assets in excess of \$10 million.

The agreement to be signed contemplates the possibility of

development activities are met. The first milestone requires the completion of a mechanical specification agreed to both by the new

The third contingency/milestone is commencement of the

[REDACTED]  
Patrick Sharpe, Esq.  
[REDACTED]

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The agreement provides that the additional equity purchases by Company A must be made upon satisfaction of these contingencies. It is, nevertheless, not at all certain that these milestones will be met. Our reading of the statute and interpreting rules would therefore suggest that the possible future contributions are not "assets" to be counted in determining whether the \$10 million threshold has been met under § 801.40(b)(1)(ii). As I understand your view, any contingency -- as distinct from a current commitment to make contributions at a future time -- should not be counted as "assets" of the new corporation or joint venture.

If any of this additional detail changes your view, or if you have additional thoughts that might be helpful on this issue, please give me a call. Otherwise, we thank you again for your assistance, recognizing that you have not purported to offer any formal "official" position of the FTC on this issue.

Very sincerely yours,  
[REDACTED]

[REDACTED]

I agree with this letter. (PS)  
see # 202 <sup>new</sup> BMM (RS) (TH) concur

[REDACTED]