

FR A → AA (1) → FOI
A + therefore, A must file before
acquisition by through [redacted] [redacted] C. otherwise
an FOI.90 violation will occur re purpose [redacted]
is to make filings [redacted]

FOI.90

both A+B are liable for civil penalties.

October 17, 1991

This material may be subject to the confidentiality provision of the Freedom of Information Act.

OCT 17 2 16 PM '91

Premerger Notification Office
Room 303
Federal Trade Commission
Washington, D.C. 20580

Dear Sir or Madam:

During discussions with your office yesterday concerning a hypothetical Hart-Scott-Rodino question, it was suggested that the issue was somewhat complex and could be analyzed more fully by your office if set forth in writing. This letter is for that purpose.

Company A proposes to acquire Company B in what would clearly be a reportable transaction, requiring Hart-Scott-Rodino filings by both A and B. B is a domestic company; however, its owners are foreign individuals who have little patience with governmental procedures. They have attempted to market B for some time with little success. They feel that the uncertainty inherent in that marketing process has been disruptive to both

make no filings such as those required by Hart-Scott-Rodino.

Company A cannot acquire Company B under such terms, since, ~~reported~~ the transaction would be reportable, and it would be in violation. Thus, Company A proposes the following:

Individual C who is currently unknown to B but who, in [redacted] status, the transaction would not be reportable, and no filings

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2. During the period of time that C owns B, both would ~~remain fully independent from A, and A would have no input of any~~
kind into the management or operations of B.

3. Company A would then acquire Company B from Individual C in a reportable transaction, complying with all applicable Hart-Scott-Rodino requirements. Filings would be made by both A and B.

Company A's concern, of course, is whether, should it pursue this course of action, it could be accused of failing to comply with Hart-Scott-Rodino and possibly be subjected to civil penal-

reportable. Yet, were that argument pursued there could be no acquisition, since B will make no filings under current ownership.

Clearly, A is not considering the proposed course of action

The purpose of Hart-Scott-Rodino is to give enforcement agencies

situation is exactly the same under what is proposed as it would

There is some time sensitivity to this matter, and it would be appreciated if you would contact me as soon as possible.

Sincerely,

