



October 25, 1991

Mr. Patrick Sharp  
Federal Trade Commission  
Room 301

Creditors of Bankrupt Debtor

Dear Mr. Sharp:

This letter is to confirm our conversation of September 30, 1991 concerning the applicability of the Hart-Scott-Rodino Premerger Notification Requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") to a proposed transaction. The situation we

*subject to 801,40*

were as follows:

In accordance with a Plan of Reorganization ("Plan") filed under the U.S. Bankruptcy Code (which Plan was confirmed by the Court on October 18, 1991 on the terms we discussed), the debtor corporation ("Debtor") will transfer certain of its assets and liabilities to a new corporation formed by the

*801,40  
acquiring persons  
choice of  
debtor*

will be distributed 55 percent to a secured creditor of Debtor ("Corporation A") and 45 percent to a newly-formed creditors trust whose beneficiaries consist of the unsecured creditors

*the "Trust"*

Trust to hold the shares rather than to make a distribution of shares to individual creditors was made by the unsecured creditors for business and legal reasons unrelated to the HSR Act. Corporation A will contribute \$2 million in new

*type  
irrevocable*

*the "Trust" of  
Creditors  
trust*

*plus the value of the  
foreign debt - 0-*

*The  
creditors  
are on  
beneficiaries  
of set this  
trust*



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that will be held by NEWCO is estimated at between \$17-18 million.

*or more*

While this situation does not fit neatly within any of the typical transaction structures, in our discussion we agreed that this transaction was probably most closely akin to

assets pursuant to the existing rights of Corporation A and the beneficiaries of the Creditors Trust in the assets of Debtor, as provided in the Plan. The assets are then held jointly in NEWCO. We reviewed the HSR Act jurisdictional requirements applicable to formation of a joint venture, which require that (i) at least one of the joint venture partners have annual net sales or total assets in excess of \$100 million, (ii) the joint

at least one other joint venture partner have total assets or annual net in excess of \$10 million. CFR 801.40.

*sales* I represented that factor (i) is met due to the size of Corporation A's ultimate parent entity, and that factor (ii) is met by virtue of the value of assets to be held by NEWCO when the transaction is complete. Factor (iii), however, is ~~not met because the Creditors Trust does not have assets or~~ sales in excess of \$10 million (in fact, it has no assets or *OK*

Premerger Notification was required with respect to the formation of NEWCO.

I believe this fairly reflects our discussion and analysis. Please call me immediately if this is not the case. The bankruptcy court order becomes effective on October 28, and the plan calls for a closing on or before October 31.

Thank you very much for your assistance.

Very truly yours,

*called [redacted] 10-29-91 - 801.40 does not apply since size thresholds are not met (RS) concurs but notes flaws*