

801.2(a); 801.1 (c)(1)

[REDACTED]

February 4, 1992

Richard B. Smith, Esq.
Federal Trade Commission
Premerger Office
6th and Pennsylvania Ave., N.W.

Dear Mr. Smith:

As you recall, I had asked for the Premerger Office's views on the HSR Act reportability of a transaction involving an agreement between two persons whereby one person would contribute the stock of its subsidiary to a partnership owned by the other party in exchange for controlling

the requirements of the HSR Act.

On January 20, you informed me by telephone that the [REDACTED] described in the January 23 letter -- which consists of both a stock and a partnership interests acquisition -- would not trigger any filing obligations. In essence, the stock acquisition would be exempt under Section 7(a)(2) of the HSR Act since the same entity would be both the acquiring and

As we discussed, the key issue in analyzing the filing obligations for the stock transaction is the

in turn would seem to depend on whether the two parts of the

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acquisition are deemed to occur simultaneously. If the

You indicated to me that under the above-described circumstances that the Premerger Office would view the ~~transaction to have occurred simultaneously~~. Key factors in making this assessment were that: (1) there were only two contracting persons involved; (2) there was one acquisition agreement; (3) the two relevant interests were consideration for each other; and (4) the entire transaction would occur at one closing. Under such a "continuum analysis", if both elements were an inseparable part of one continuous transaction, the Premerger Office would look at the result of the transaction when the parties "get up from the table."

I understand that if the transaction is not structured as a simultaneous acquisition, that

implications may result.

If this letter does not accurately set forward your statements or you wish to comment further, please do not hesitate to call me.

Attachment