

802.20(b)  
801.1(b)

[REDACTED]

[REDACTED]

[REDACTED]

May 13, 1992

Ms. Nancy Ovuka  
Federal Trade Commission  
Premerger Notification Office, Bureau of Competition  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

State material may be exempt from disclosure under the confidentiality provision of Section 7A (h) of the Clayton Act. Restrictions relative to release of information apply.

*via teletype  
original to follow  
by regular mail*

MAY 18 11 36 AM '92

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Dear Ms. Ovuka:

I am writing this letter to confirm and clarify our discussions of May 7, 1992, concerning exemption of the following described transaction from filing under the Hart-Scott-Rodino Act of 1976, as amended (the "Act").

The transaction is as follows: Corporation "A" is the ultimate parent entity of subsidiary "X"; individual "B" is (indirectly) the ultimate parent entity of corporation "Y". A has total assets (for purposes of the Act) in excess of \$100,000,000, and B has total assets in excess of \$10,000,000. Pursuant to a merger agreement, Y will merge with and into X, with X as the surviving corporation. As a result of the merger, A and B will receive the following securities of the surviving corporation (B is actually the majority shareholder of an intermediate corporation that owns all of the voting securities of Y and will actually receive the securities of X and B is deemed to acquire the securities below for purposes of the Act):

| Issued to: | Class of Stock | Voting | No. of Shares | Total Value |
|------------|----------------|--------|---------------|-------------|
| B          | Class A Common | Yes    | [REDACTED]    | [REDACTED]  |
| A          | Class B Common | Yes    | [REDACTED]    | [REDACTED]  |
| A          | Class C Common | No     | [REDACTED]    | [REDACTED]  |

[REDACTED]

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[Redacted]

*Of this is right,  
any holder (not just B)  
can appoint - seems to  
suggest that Class A  
stock ~~is~~ had right  
to appoint itself  
in to it!*

In addition, although the shares of Class A Common Stock and Class B Common Stock would each have a single vote per share (meaning that A would initially hold approximately 75% of the voting securities of the surviving corporation), the parties will execute a Stockholders' Agreement providing that (the holders) of the Class A Common Stock (deemed to be B, for corporation. Upon the occurrence of certain events of default, however, the holders of the Class

The acquisition of securities by B as a result of the merger and the contractual right contractual. Although the Stockholders' Agreement provides that the Class B Common Stock, Class C Common Stock and Preferred Stock held by A will be redeemable by the surviving corporation at its option over a period of twelve years, eventually leaving the holders of Class A Common Stock (deemed to be B, for purposes of the Act), as the majority or sole

In our discussion, you stated that the position of the FTC staff is that the transaction would be analyzed as follows. With respect to A, A would be viewed as acquiring approximately [Redacted] of securities of Y, and the transaction would be exempt under Rule §802.20 under the Act provided that Y (and any entities controlled by Y) had neither net sales

transaction that conferred control of the surviving corporation, the transaction would be exempt under Rule §802.20. The possibility of later events of default giving A the right to elect a

*YD  
control*

Finally, you stated that it is the position of the FTC staff that, under the language of Rule §801.40, a corporation resulting from a merger or consolidation will not be treated as the formation of a joint venture for purposes of the Act.

[Redacted]

[REDACTED]

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If the analysis stated above does not correctly state the position of the FTC staff, please advise me immediately. If I have not received a response to the contrary from you within ten days of the date of this letter, I will assume that the analysis stated above is correct.

Very truly yours,

[REDACTED]

[REDACTED]

cc: [REDACTED]

5/14

Called [REDACTED]. I advised him that based on this letter, B has a filing obligation because the contractual power to appoint is connected to the voting stock being acquired - not exempt under 802.20(b)

[REDACTED]