802.90, 802.30, 801.10

[redacted]

September 28, 1992

VIA FACSIMILE

Richard B. Smith
Premerger Notification Office
Bureau of Competition
[redacted]
Washington, D.C. 20580

Dear Dick:

I am writing to set forth my understanding of the [redacted]

The first hypothetical I gave you was one in [redacted]

You advised me that there is no requirement to aggregate the assets and voting securities under either §802.20(b) or §802.50(a)(2). They need be aggregated only for purposes of determining whether the value of the transaction is over $25 million, which in the [redacted] issuer from which Party A was acquiring 100% of the voting securities, had sales and assets of under $25

foreign assets was not reportable because less than $25 million in U.S. sales were attributable to those assets. Therefore, the first hypothetical acquisition would not be reportable.

[redacted]

To a second conversation I provided you with a wholly-owned subsidiary Y. Party A wanted to purchase 100% of the voting securities of subsidiary X, but only certain assets of subsidiary Y. Again, the transaction would be valued at under $10 million. In such a case, I asked you whether it was necessary to include the total sales and assets of subsidiary Y for purposes of

million under §802.20(b). Although I made clear that not all of subsidiary Y was being sold, you stated that an aggregation of the sales and assets of subsidiary Y was required by §802.20(b). You stated that the assets and sales were measured by the last regularly prepared balance sheet and annual statement of expense and income, respectively, under §801.11(c). If there existed

of §802.20(b) were met.

Prior to the sale, subsidiary Y would be spun off to another entity of the same acquired person. The sale would then involve the purchase of 100% of the voting securities of subsidiary X and certain assets of subsidiary Y, which would no longer be held by subsidiary X. Closing would not occur until after the fiscal year for subsidiary X had ended. A new regularly

sales nor assets of $25 million. You stated that if the new statements reflected the spin-off (therefore putting both sales and assets under $25 million) and were prepared in the ordinary course of business, no filing obligation would exist for the acquisition.

I questioned whether such a spin-off and preparation of new financial statements in the ordinary course could be construed as an avoidance device under §801.90. You stated that even if there were an intent

be met because the substance of the transaction was the sale of 100% of the voting securities of an issuer, subsidiary X, with less than $25 million in sales or assets, a transaction which was not reportable

[redacted]

Richard B. Smith

[redacted]

Thank you again for all your assistance. Please let me know if this does not accurately reflect the informal advice you provided me.

Sincerely,

[redacted]

10/6/92 Agreed with conclusion in Letter. In hypothetical on page 2, the "business justification" for the spin-off is that [redacted] of subsidiary Y. The "substance" of the transaction after [redacted] non-recog. [redacted]