801.11

[redacted]

January 14, 1994

By Fax No. (202) 326-2050

Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue N.W.
Washington, D.C. 20580

JAN 19 2 10 PM '94

FEDERAL TRADE COMMISSION

Re: Hart Scott Rodino Filing Requirements

Dear Ms. Ovuka:

[illegible] is necessary to file [illegible]

Corporation A, which is engaged in [redacted] and [illegible] in excess of $100 million intends to acquire all of the voting securities of Corporation B in exchange for preferred stock of Corporation A with a [illegible]

securities of Corporation B, B will sell or spin off 8 of the 15 [redacted] The total assets of Corporation B as shown on its last regularly prepared consolidated balance sheet are $9.7 million. Total sales of Corporation B are in excess of $25 million as shown on its last regularly prepared consolidated income statement.

In addition to preparing a balance sheet and income statement for its consolidated operations, Corporation B regularly prepares separate balance sheets [illegible]

[redacted]

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[redacted] separate balance sheets maintained by B for its constituent operations. Each of those 5[redacted] has annual sales of less than $25 million as shown on the last regularly prepared balance sheet for those [redacted]

Individual C owns 50% of the voting securities of Corporation B. C's [redacted] Corporation B and excluding the fair market value of his ownership interest in Corporation B, of approximately $1.4 million.

Today, if individual C were to prepare a financial statement, his investment assets excluding all assets of Corporation B and showing no fair market value for his ownership interest in B would be $2 million. If C were to prepare a financial statement showing all of his investment assets plus the value of the assets A will acquire, C's total assets would be $9.6 million.

Under these facts, are filings required of the parties.

It is our understanding that under informal FTC opinions, if B were its own ultimate parent entity and if on B's last regularly prepared balance sheet it had anticipated the sale and spin off, such as by a footnote, no filing would be necessary. B would be entitled to rely upon that balance sheet for the conclusion that its assets at the time of the acquisition by A were less than $10 million. We believe that the [redacted] constituent operations should be treated in a like manner.

C will be required to prepare a new financial statement since his last regularly prepared statement was over 15 months ago and it was not prepared according to Hart Scott Rodino concepts. We believe that since C must prepare a [redacted] test.

The parties hope to close this transaction by January 31, 1994. We [redacted]

[redacted]

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Thank you in advance for your attention to this matter.

Very truly yours,

[redacted]

[redacted]

cc: Patrick Sharp, Esq. – not an attorney

[redacted]

If, prior to the acquisition by A, monthly, [illegible]

[redacted]

[illegible] divestiture of any [redacted] then C can consolidate all existing individual, monthly balance sheets. However, C cannot recreate a balance sheet to reflect his intent to spin-off [redacted] at consummation. C must use B's existing balance sheet(s) [illegible] investment income to determine size

NMO
RS & PS
concur.