

VIA FACSIMILE

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Application of HSR Act to

Dear Dick:

I am writing to review with you the transaction we discussed on the telephone last week, and to review the conclusion my colleagues and I have reached that the transaction would not and should not require notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act").

·	Chiparangeleng sang sesiman pin yer) dan dan dan dan	
, T		
en com <u>inaria en en</u>		
•		i
,	to the state of the party of th	
<u> </u>		
<u> </u>		
	the shares of C to be contributed by each have a value	
	in excess of \$15 million. C holds assets located in	_

majority of such assets consist of accounts receivable and inventory.

Richard B. Smith, Esq. February 22 1004

Analysis

We have discussed whether this requires a filing under the HSR Act. Analyzed under Rule 801.40, both the "size of person" test and "size of transaction" test would be met by the formation of D. As we discussed, the Rule 802.30 intra-person exemption does not apply by its terms to the formation of D, although the spirit of that exemption clearly is met by this transaction, a mere internal in which no new parties are brought to the corporation. Similarly, the formation of D does not fall within the letter of the Section 72(2)(10) exemption (22 abserted of 2 different Missuars are being

transaction. It therefore may be appropriate to conclude on these facts and under the intent of these exemptions that no filing should be required.

This would be consistent with the position the Premerger Notification Office apparently has taken in certain other

reincorporates in another state, distributing shares of the "new" corporation to its shareholders. <u>See</u> Interpretation 38 of the Premerger Notification Practice Manual. Although that

for the formation of a new wholly-owned subsidiary by a corporation with two ultimate parent entities, again applying the snirit of the HSR Act rather than nerhand its letter. See

Additionally, this transaction should be exempt under the

of the voting securities of a lissuer is exempt if it will not confer control of an issuer which holds assets located in the United States having an aggregate book value of \$15 million or more. In this transaction, the formation of D and the acquisition of its voting securities by A and B will

Exemption under Rule 802.51 Would be consistent with its

11---

54. B-2 P- - 00/00

Richard B. Smith, Esq. February 22, 1994 Page 3

parties to such as that described above would likely never suspect that the HSR Act could require parties to make any filings. To require filing under these circumstances would impose an unnecessary burden on transactions that do not result in any underlying change in the holding of U.S. assets.

spirit of the HSR Act. Should you or your office be of a different view, please notify me as soon as possible, as the parties intend to proceed with the future. Thank you for your assistance, and please do not hesitate to call me at require any additional information.

Very truly yours,

2/28/14 - advised writer that no Jeleng is required. Exempt ander interputations the Pold office has got in regarding the emorphications "under 802.10 or the Jail that we argue when earlier 802.51 (b)