

7A(6)(9):8029

NMN

[REDACTED]

[REDACTED]

April 4, 1996

APR 5 3 48 PM '96

VIA FACSIMILE AND U.S. MAIL

Emergency Notification Office

Washington, D.C. 20580

Re: Request for an Informal Interpretation of the "Acquisition Solely for the Purpose of Investment" Exemption, 16 C.F.R. § 802.9, of the Hart-Scott-Rodino Act

Dear Ms. Epps:

Reference is made to our telephone conversation of April 4, 1996 and 16 C.F.R. § 802.9, 16 C.F.R.

of Investment" Exemption, 16 C.F.R. § 802.9, of the Hart-Scott-Rodino Act.

The factual background from which my request arises is as follows:

1. Company A intends to acquire 9.9% of Company B's voting securities. The purchase price of the acquisition will exceed \$15 million. Company A is a \$100 million person and Company B is a \$10 million person.

2. Company A and Company B are [REDACTED] companies. The products of each [REDACTED] different stages of the same business process. More specifically, the companies view the business process in three steps. Company A is the leading vendor of [REDACTED]

[REDACTED] Company B is the primary [REDACTED] Step 2. Company B sells [REDACTED] of Step 3. Company B needs to work closely with [REDACTED] vendors with Step 2 solutions to integrate their products with [REDACTED]

3. Simultaneous to its investment in Company B, Company A and Company B intend to enter into a Collaboration Agreement, the object of which is to define an [REDACTED] for integrating Company A's new Step 2 [REDACTED] with Company B's Step 3 [REDACTED] the Collaboration Agreement is also expected to include provisions for joint marketing [REDACTED]

Melea Epps, Esq.
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Collaboration Agreement also is expected to have several provisions to protect Company A from
[REDACTED]
five days to make a counterproposal prior to accepting a proposal for a change in Company B
control; (ii) upon a change in control of Company B, Company A will have numerous options to
ensure continuing support for its existing customers and its ability to develop a product to replace
the collaboration product, including acquiring a limited, non-exclusive license to the collaboration

Collaboration Agreement, I have confirmed that Company B does not have a subjective intention
to participate in the formulation, determination, or direction of Company B's basic business
decisions. In particular, I have confirmed that: (i) Company A has no intention to, and in fact will

[REDACTED]
and (ii) Company B has no intention to make proposals to Company A
shareholders.

We believe that Company A should be able to rely on the exemption for acquisitions made
solely for the purpose of investment. 16 C.F.R. § 802.9. As a threshold issue, Company A is
acquiring less than ten percent of Company B's voting securities. Accordingly, the exemption is

The companies element required for the exemption to be applicable focuses on the

- (1) Nominating a candidate for the board of directors of the issuer; (2) proposing corporate action requiring shareholder approval; (3) soliciting proxies; (4) having a controlling shareholder, director, officer or employee simultaneously serving as an officer or director of the issuer; (5) being a competitor of the issuer; or (6) doing any of the foregoing with respect to any entity directly or indirectly controlling the issuer.

42 Fed. Reg. 33465 (July 31, 1978).

In our telephone conversation we agreed that a contractual relationship, such as the
collaboration agreement, is not, without [REDACTED]

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In addition, I confirmed that Company A had no plans to engage in the conduct described in items

Your role was to determine whether Company A and Company B should be viewed as

could explain in your report its competition with the subject having an intention to do so.

view Company A's product as an alternative to Company B's product.

I appreciate your attention to this informal request. Please contact me directly if you have any questions or need additional information before responding.

Sincerely,

[Redacted signature block]

NN/nmn

4/9/91

A handwritten note that the PMW office

acquiring and acquired person. While it is true that the PMW office

steps. As such, the products could be viewed as more so directly competitive. Such situation appears not inconsistent with

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