801.1(b); 802.51(b)

[redacted]

March 2, 1998

VIA FACSIMILE

[redacted]
Attorney
Federal Trade Commission
Premerger Notification Office
Room 300
5th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

This will confirm our conversation on February 17, relative to the control provisions of [redacted] promulgated thereunder (the "HSR Regulations").

We discussed the following hypothetical situation: Company A, a foreign issuer, has several billion dollars of sales and assets in the United States. Company A owns 30% of the issued and outstanding voting securities of Company B, another foreign issuer. Company B has no assets in or sales in or into the United States. However, Company B owns 40% of Company C, another foreign issuer, which has approximately $500 million dollars of non-manufacturing sales in or into the United States. Company A proposes to acquire the remaining voting securities of Company B which it does not currently own.

Under the laws of the country in which Company A, Company B and Company C are [redacted] shareholders have not attended and voted at Company C's meetings of it's shareholders.

We discussed the question whether the HSR Act and the HSR Regulations would require Company A to file a premerger notification filing in connection with its acquisition of the

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outstanding voting securities of Company B that Company A does not currently own. As we discussed, the answer to this question would turn, in part, on the answer to another question, *i.e.*, whether Company B controls Company C.

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following three ways: (1) direct ownership by one entity of 50% or more of the issued and outstanding voting securities of the other entity; (2) possession by the first entity of the contractual right to designate 50% or more of the members of the board of directors of the second entity; or (3) a combination of sufficient voting rights and contractual power to vote the

[redacted]

The fact that the laws of the country where the issuers were organized deemed the first entity [redacted]

Thus, as Company B owned only 40% of the voting securities of Company C and did not have any contractual rights to vote the other shares of Company C, you concluded that Company B did not control Company C. As such, you concluded further, for purposes of Company A's acquisition of Company B, that the sales of Company C in or into the United States would not be imputed to Company B in determining Company B's total sales in or into the United States. If Company B does not have the requisite sales or assets in or into the United States, the acquisition of its voting securities by Company A would not be reportable under the HSR Act. Please call me at (202) 672-5378, if I have misstated your interpretation of the HSR Act and HSR Regulations to this possible acquisition of Company B by Company A.

Sincerely yours,

[redacted]

cc: [redacted]

3/3/98 - By phone mail message advised writer [illegible] B [illegible] does not control C (foreign issuer), even though foreign jurisdiction says it has [illegible] B [illegible] C since there are no U.S. assets [illegible] purchase of 70% of B reportable since the U.S. would not make A's [illegible] only test under 802.51(b)(1) is assets in U.S. [illegible] RBSmith