[redacted]

7A(c)(2)
802.20

[redacted]

May 3, 1999

BY TELECOPY TO (202) 326-2624

Michael Verne, [redacted]
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
[redacted]
Washington, D.C. 20580

Dear Mr. Verne:

The purpose of this letter is to confirm our understanding that no filing would be required in connection with the transaction set forth on the attached Transaction Description.

[redacted]

The issues are the same as we have previously discussed on several occasions with respect to considerations or "rollups". In fact, this is the same company that we discussed last August, except that there is a private placement of preferred stock rather than an IPO of common stock and the total number of businesses involved is less. For your convenience, I have attached a copy of the correspondence from last August.

[redacted]

[redacted]

[redacted]

Attachments

[redacted]

TRANSACTION DESCRIPTION

Corporation X was formed for the purpose of acquiring roofing contractors (SIC Code 1761). Corporation X is its own ultimate parent entity and will not have active business operations until the first acquisitions are made. Corporation X does not have annual net sales or total assets in excess of $10 million.

It is proposed that Corporation X acquire six businesses having six different ultimate [redacted] consideration for each acquisition will consist of cash and common and preferred stock of Corporation X.

Business A, the largest business, has annual net sales of approximately $22.2 million, has total assets of approximately $12.2 million and will be acquired for more than $15 million. Each of the other five businesses has annual net sales of less than $20 million, has total assets of less than $6.3 million and will be acquired for less than $13 million. The aggregate annual net sales of all six businesses is approximately $80.5 million, and the aggregate total assets is approximately $25.3 million.

All acquisitions will occur simultaneously, along with a private placement of approximately $10 million of voting preferred stock of Corporation X with investors. The ultimate parent entity of one investor, Investor Y, has total assets in excess of $100 million. The private placement is necessary to raise the proceeds to pay the cash portion of the consideration and is a condition to closing the acquisitions.

Investor Y will acquire voting preferred stock of Corporation X for approximately $8 million, which stock will represent less than 50% of the voting securities of Corporation X, and Investor Y will not have the right to elect 50% or more of the directors of Corporation X.

[redacted] closing of each of the acquisitions is that all six of the businesses be acquired; however, this condition can be waived.

[redacted]

Corporation X believes that it would be difficult, if not impossible, to complete the [redacted] agreements without the acquisition of Business A, which acquisition is a condition to the closing of [redacted] which would also adversely affect the private placement.

Business A is acquired. However, because of market conditions, there is no assurance that the transaction will close even if Business A is acquired.

[redacted] the ultimate parent entities. It is also our understanding that the FTC will permit the acquiring entity to determine the sequence of the acquisitions and the private placement if (a) there is a valid business purpose for the sequence other than the avoidance of filing under the Act or (b) there is a filing under [redacted]

the other five businesses to be acquired in order of revenues. Corporation X then proposes to sequence the sale of the preferred stock after the acquisition of the businesses.

QUESTION

Will the acquisition of Business A by Corporation X, and the acquisition of preferred [redacted]

OUR UNDERSTANDING

Corporation X has a valid business purpose for making the acquisition of Business A first, in that the transactions will likely be not consummated without the largest business being acquired. Alternatively, if one of the smaller businesses were not acquired, the transaction could still [redacted]

that Investor Y will not purchase the preferred stock unless the acquisitions of the businesses have occurred.

It is our understanding that the acquisition of Business A would be exempt because, at the time of the acquisition, there is no $100 million person for purposes of Section 7A(a)2 of the Act. It is also our understanding that the acquisition of each of the five other businesses would be exempt under the minimum dollar value exemption of 16 C.F.R. § 802.20 in that each of those

[redacted]

NO FILING REQUIRED.
Blanchard Vezer 5/4/99