

Item 4(c)

[REDACTED]

May 24, 1999

**VIA HAND DELIVERY**

Richard Smith, Esq.  
Premerger Notification Office  
Room 303

This material may be subject to confidentiality provisions of the Freedom of Information Act

Washington, DC 20580

Re: Scope of Item 4(c) In Multi-Step Transaction

Dear Dick:

This letter will confirm our telephone conversation earlier today, and your concurrence with our conclusions as to the scope of the Item 4(c) response to be made by our client in its report and notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, as amended.

**Summarizing the transactions:**

Our client is planning to engage in two HSR reportable transactions with the same

Meanwhile, Target is in the process of acquiring another company ("X"). Target's acquisition of X has already cleared the HSR process and is awaiting other federal and state non-antitrust regulatory approvals.

Our client's second reportable transaction is a merger with Target ("Merger"), the Merger will result in a combination of three companies: Client + Target + X. An HSR

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notification and report form will be filed on the Merger, which will afford the antitrust agencies an opportunity for review of that transaction at that time.

Note that if the Merger fails to take place (e.g., because regulatory clearances are not obtained for Target's acquisition of X) and the 9.5% CTO has already closed, our client retains its financial investment in Target. The 9.5% CTO is not contingent upon Target's acquisition of X.

Our client does not feel that notification of the Merger is appropriate at this time, given these uncertainties, and particularly given the possibility that Target's acquisition of X will

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**The scope of the 4(c) response:**

Our question goes to the scope of the response to HSR Item 4(c).

will be submitted in response to the premerger notification of the Merger, assuming that various contingencies permitting that deal to go forward are met.

Our client is in the process of searching for documents responsive to HSR Item 4(c) with respect to the filing for the 9.5% CTO. It has discovered that the documents fall into two categories: those which directly evaluate the 9.5% CTO and those which discuss the Merger, without any separate analysis of the 9.5% CTO.

of evaluating or analyzing" the 9.5% CTO, and we believe are not 4(c) documents at this time. Of course, we will produce any documents generated for the purpose of evaluating the 9.5% CTO itself or any documents that separately evaluate both the 9.5% CTO and the Merger.

We believe this is the correct conclusion for two principle reasons. First, we (and presumably the premerger notification offices as well) would wish to avoid an unnecessarily duplicative production of documents. Such duplication will occur if our client produces the same documents analyzing the Merger twice. There is no question that documents analyzing the Merger will be responsive 4(c) documents when the Merger is required.

More importantly (remembering that the Merger is contingent upon and thus can occur only after the Target has completed its acquisition of X, an event still subject to regulatory

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approval and the usual vagaries that can beset any corporate transaction), we are concerned that  
production of Merger related documents

the Merger takes place, the 9.5% CTO stands on its own as a separate transaction. As noted

Merger (if and when it occurs), as to which all such documents will be responsive.

When I spoke with you earlier, I was not aware of the urgent need for a prompt  
response. The HSP report regarding the 0.5% CTO is to be filed immediately, and any other

As always, many thanks for your time and attention.

Best regards,  
[Redacted Signature]

cc: [Redacted]

5/25/99 - Discussed letter with NU, TH and MB. We  
concluded that, in this particular fact situation, the CTO filing should  
include only those 4(c)s relating to the CTO transaction, at the 50% threshold.  
For the later merger, if and when a filing is made, all 4(c)s  
beyond the control of the acquiring person, subject to document production.

RTS