

802.52

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June 17, 1999

U.S. DEPARTMENT OF JUSTICE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20547
A 11:48

BY TELEPHONE

Richard B. Smith, Esq.
Premier Notification Office
Federal Trade Commission

Dear Sir:

This letter confirms the advice you communicated to me in our conversation yesterday and in your voice-message of earlier today.

The Primary Acquisition

Company "A" intends to acquire 100% of the outstanding voting securities of Company "B" (the "Primary Acquisition").

[REDACTED]

Company "A" is a foreign person within the meaning of Section 801.1(b)(2)(A). Assuming for analytical purposes that A's acquisition of 100% of B's outstanding voting securities satisfies all jurisdictional thresholds of the FTC Act (i.e., change of control, size of transaction),

primary notification would be required.

Information contained in those Sections would be exempted. However, because A is controlled by [REDACTED]

You further confirmed that the availability of the 802.51 exemption is

pursuant to Section 802.52, we discussed the potential reportability of a secondary acquisition resulting from the Primary Acquisition.

B (the entity whose voting securities are being acquired in the Primary Acquisition) holds approximately 38% of the outstanding voting securities of X, a United States issuer which is its own ultimate parent entity. If A were to directly acquire 38% of X's voting securities, it is our understanding that all relevant HSR jurisdictional thresholds would be satisfied and we are aware of no exemption from notification that would be available. Accordingly, I inquired whether A's indirect acquisition of X's voting securities as a result of the (exempt) Primary Acquisition would be a "secondary acquisition," separately subject to HSR notification pursuant to Section 801.4 of the HSR Rules.¹

You confirmed that A's indirect acquisition of the 38% interest in X as a result of the Primary Acquisition would be a secondary acquisition within the meaning of Section 801.4, however, you advised me that no HSR filing would be required in connection

wrong," the call was made that secondary acquisitions in the "foreign/foreign" context are exempt from HSR notification by virtue of Section 802.51(h) because the acquiring person is not gaining control of a US issuer.

1 If this indirect acquisition was subject to HSR notification and no exemption from reporting was available, A and X would be required to file HSR notification as acquiring and acquired person, respectively.

If the foregoing in any way fails to accurately reflect your advice, please call me possible. or [redacted] as soon as possible.

Very truly yours,

[redacted signature]

6/17/99 TS (co-counsel with writer) advises that [redacted]

of [redacted] under 804.5N(b). 192 to potential responsibility of [redacted]

of [redacted] 334500 of 7/31/78 SBI indicates that it considered [redacted]

RR Smith