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Via Facsimile and Federal Express

Charles A. James
Assistant Attorney General for Antitrust
U.S. Department of Justice
Room 3744
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Timothy J. Muris
Chairman
Federal Trade Commission
Room 440
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Muris and Assistant Attorney General James:

This letter is written on behalf of the Section of Antitrust Law of the American Bar Association (the "Section"). The Section's views are presented on behalf of the Section and have not been approved by the House of Delegates of the American Bar Association ("ABA") and should not be construed as representing the position of the ABA.

Based on the presentations of Department of Justice ("DOJ") Deputy Assistant Attorney General Deborah Majoras, Federal Trade Commission ("FTC") Chairman Timothy Muris and FTC Commissioner Mozelle Thompson at our recent Council meeting, the Section understands that the DOJ and the FTC are considering, with respect to the "clearance process," an agreement pursuant to which the enforcement agencies would allocate between themselves the responsibility for investigating a merger or other practices in certain industries.

The Section supports the concept of such an agreement -- without commenting on the specifics of the particular allocation agreement, which we have not seen, or the particular process by which it was reached.

The Section's support is consistent with prior Section positions that measures should be adopted to expedite the "clearance process" of transactions subject to the Hart-Scott-Rodino Antitrust Improvements Act ("HSR"). In the Report of the Section's Task Force on the Federal Antitrust Agencies, "The State of Federal Antitrust Enforcement - 2001" (the "Report"), the Section noted that, in connection with HSR reporting and compliance, the "clearance process" had in the past consumed a significant part of the 30-day waiting period in a number of transactions, leading to either "second requests"

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occasioned solely by a lack of time for a preliminary review of the proposed transaction or unnecessary re-filings to avoid such “second requests.” While the Report acknowledged that the agencies have made progress in this area, it stated that an expeditious and efficient clearance process is an area that requires further improvement.

The Section continues to believe that the agencies’ decisions as to whether to issue “second requests” should be as fully informed as possible and that the amount of time for resolution of potential anticompetitive concerns should be maximized to avoid unnecessarily resorting to the “second request” process. As the Report concluded, “it is much more important that the clearance decision be made quickly than which agency eventually handles the matter”

Because a publicly announced agreement allocating responsibility by industry will lead to a more expeditious, efficient and transparent review process at least with respect to the allocated industries, the Section’s Council unanimously supports an agreement embodying that concept.

Sincerely,

Roxane C. Busey
Chair, Section of Antitrust Law
2001-02

RCB:jf

cc: Deborah P. Majoras
Commissioner Sheila F. Anthony
Commissioner Thomas B. Leary
Commissioner Orson Swindle
Commissioner Mozelle W. Thompson

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