

801.10

February 17, 2005

Mr. Michael B. Verne  
Pre-Merger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Verne:

I am writing to confirm our discussion yesterday about whether a particular category of payment that my client, the buyer, is making to the seller in an asset acquisition can appropriately be excluded from the calculation of the "acquisition price" for the transaction.

As I explained, my client is purchasing assets that the seller has used to provide a service to my client for a number of years. In providing that service, the seller has, in turn, relied upon services provided by numerous third-party providers with which it has contracts.

In connection with the asset purchase, my client has offered to make incentive payments to the seller to encourage it to persuade the third-party providers to enter new contracts directly with my client. The contractual mechanism used to create the new contracts with my client involves the third-party providers executing an addendum to their contract with the seller providing that upon a specified event they will be deemed to have entered an identical new contract with my client. The third-parties will retain their contracts with the seller because the seller will also continue to need their services.

You agreed with me that my client's calculation of the acquisition price under Rule 801.10 can exclude these incentive payments because they do not represent consideration for the assets being acquired.

Very truly yours,

AGREE -  
B. Michael  
2/22/05