

[REDACTED]

copy of acquisition

may be subject to
quality provision of
of the Clayton Act
which prohibits release under the
Freedom of Information Act

November 5, 1991

NOV 6 10 05 AM '91

RECEIVED
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

FEDERAL EXPRESS

Thomas Hancock, Esq.
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Tom:

This is to confirm your advice to me today regarding the premerger notification implications of four related transactions.

A finance company A is winding up its business and in the process disposing of its portfolio in four transactions with four different parties. Three of these transactions involve the assignment of the notes and security interests in the relevant portion of the portfolio in return for payment of the loans in that portion of the portfolio.

The fourth transaction involves A's inventory finance loan portfolio. In that transaction, A will provide finance company B with data on the portfolio so that B can approach the borrowers to negotiate a refinancing of that borrower's obligation to A. Company A will pay B a fee for its efforts in negotiating these refinancings. If B succeeds in refinancing a borrower's obligation to A, A will be paid in full on its loan to that borrower. If B does not succeed in refinancing an obligation, that loan remains in A's portfolio. In essence, B will seek to substitute itself for A as lender to the borrowers and receive a fee and, if successful, new customers for doing so. There are less than 20 borrowers involved in the transaction with B. It is contemplated that A may merge into its parent if it has any assets remaining after the four transactions are completed.

[REDACTED]

[REDACTED]

Thomas Hancock, Esq.
November 5, 1991
Page 2

As I informed you, I have discussed this situation with William Schechter of the Premerger Notification Office and have summarized the situation in a letter to him dated November 1, 1991. He has indicated, and you concur, that the first three transactions are not in the ordinary course of business since A is winding up its affairs and are therefore not exempt from notification (if they otherwise satisfy the notification thresholds). Bill did not form a definitive opinion as to the fourth transaction, but referred the question to you.

You have indicated that there does not appear to be an acquisition in the fourth transaction. Company B has not in that transaction acquired anything from A. The situation may be analogized to one in which a lessee is offered substitute premises in exchange for the leased premises, which is a transaction clearly not an acquisition. Therefore, there is no transaction subject to premerger notification in the fourth situation.

Please let me know at [REDACTED] if this does not accurately summarize our conversation.

Thank you.

Sincerely,

[REDACTED]

cc: William I. Schechter, Esq. (by Federal Express)
[REDACTED]

11/8/91

11/5/91

OK
C.K.

T.H.

T.H.