

801.40; 801.90

[REDACTED]

January 9, 1992

Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580

ATTENTION: Richard Smith

Dear Mr. Smith:

This will confirm our telephone conversation on Wednesday, January 8, 1992 regarding the proposed formation by two foreign entities of a [REDACTED] limited partnership for the purpose of engaging in the business of [REDACTED]

[REDACTED] (the "Business"). Based on the following description of the factual background of the planned transaction, we tentatively concluded that it would not require the filing of a premerger notification report form.

The Business is presently conducted by an affiliated group of 23 domestic corporations (the [REDACTED]) which are ultimately owned by [REDACTED] corporation [REDACTED]. The [REDACTED] collectively owns assets used in the Business which have an aggregate value of approximately \$25,000,000 (the "Assets"), and a net value of approximately [REDACTED]. The Business presently generates annual sales of approximately \$50,000,000. The assets and revenues of the Business constitute the principal assets and source of revenues of [REDACTED]

Mr. Richard Smith  
January 9, 1992  
Page 2

\_\_\_\_\_ is a corporation organized and existing under the laws of the \_\_\_\_\_. It is engaged in the business of \_\_\_\_\_ commonly referred to as \_\_\_\_\_ in North America and throughout the World. In 1990, \_\_\_\_\_ had assets and annual sales in excess of \$100,000,000.

The \_\_\_\_\_ has suffered substantial operating losses and is presently in financial difficulty. It has entered into negotiations with \_\_\_\_\_ to induce \_\_\_\_\_ through a domestic subsidiary formed for that purpose, to join it in forming a limited partnership to conduct the Business previously conducted by the \_\_\_\_\_. Under the terms of the Partnership agreement, the \_\_\_\_\_ as limited partners, would contribute the Assets to the Partnership and the Partnership would assume certain liabilities associated with the Assets and the Business. \_\_\_\_\_ as general partner, will contribute approximately \$3,000,000 in cash to the Partnership. Immediately after the receipt of the \_\_\_\_\_ contribution, the Partnership will distribute the sum of approximately \_\_\_\_\_ to the \_\_\_\_\_.

\_\_\_\_\_ will be entitled to a preferred return on its contribution and to a preferred return of the amount of its contribution. After providing for the preferred return to \_\_\_\_\_ the payment of certain corporate liabilities and the payment to the \_\_\_\_\_ of an amount equal to the \_\_\_\_\_ return, the partners will share equally in the profits of the Partnership.

The \_\_\_\_\_ will have an option to purchase the Partnership assets at any time on or before July 1, 1998. If that option is not exercised, \_\_\_\_\_ will have the right to purchase \_\_\_\_\_ interest in the Partnership on July 1, 1998.

The selection of a limited partnership entity as the business vehicle for the transaction was motivated exclusively by tax and other business considerations, and not as a device to avoid the obligation to comply with the requirements of the Act.

On the basis of the foregoing facts, we tentatively concluded that the proposed transaction would not require premerger notification under the Act. We would appreciate your confirmation of that conclusion.

Mr. Richard Smith  
January 9, 1992  
Page 3

Thank you for your courtesy and assistance in this matter. Should you have further questions, please give me a call. I look forward to hearing from you.

Sincerely,

[Redacted signature]

VIA TELECOPY

1/9/91 Advised [Redacted] that formation of [Redacted] partnership (where contributions of [Redacted] and [Redacted] have a direct correlation to their 50/50 partnership interest, where payout to [Redacted] is <sup>consistent with an</sup> "equalization payment", and where there are tax and other business reasons for doing the partnership format) makes its formation non-reportable. Also advised that the purchase of the partnership assets, <sup>or interests</sup> by either the [Redacted] or [Redacted], as referenced in Par. 4, on page 2, may well require an HSR filing depending on the circumstances at the time of purchase. I advised [Redacted] that I will send a copy of this letter to the litigating shop in BC with expected in potash. He advised that [Redacted] would be making a public announcement of the deal very soon.  
RBSmith