

801.1625

802.71



October 21, 1992

Oct 22 11 53 AM '92
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20540

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office
Bureau of Competition, Room 301
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Sharpe:

The purpose of this letter is to confirm your oral advice concerning preparation of the Premerger Notification and Report Form in connection with the following fact scenario. Company X is a non-profit corporation which is the sole member of Company Y, another non-profit corporation. Company A, a non-profit corporation, is the sole member of Company B, a non-profit corporation. In the proposed transaction, Company A will cease to be the sole member of Company B and Company Y will become the sole member of Company B. Company X and Company A will file Premerger Notification and Report Forms, as acquiring and acquired persons, respectively, to report Company Y's acquisition of all of the assets of Company B.

At the same time as the change of membership, Company A shall transfer certain of its assets to a charitable grantor trust established for the benefit of Company B. Company A will act as the sole trustee of the trust. As the beneficiary of the trust, Company B will receive annually at least 85% of the net income of the trust. The trust shall be dissolved and the assets transferred to Company B upon the earlier to occur of (i) ten years, (ii) Company A's loss of tax-exempt status or (iii) Company A's loss of status as a "supporting organization" under the federal tax code.

*is is
tentatively
notable
hasel
been
formed
I she
was
think*

*if trust is
dissolved "irrevocable"
because it is
transferable
it will be
Company B's
assets
The trust
is irrevocable*

You advised me that Company A's creation of the trust for the benefit of Company B should not impact Company X's filing for the acquisition by Company Y of the assets of Company B. Under the definition of "hold" (16 C.F.R. § 801.1(c)(5)), Company B, as the beneficiary of the trust, is not viewed as

and is held by X through Y



Mr. Patrick Sharpe
October 21, 1992
Page 2

holding the assets constituting the corpus of the trust. Thus, neither Company Y nor Company B are acquiring such assets at the time the trust is formed.

Pursuant to your advice, we plan to mention the trust formation in Item 2(a), but will not include the trust assets in the valuation of assets being acquired for Items 1(f) and 3 purposes and Company A will not report any revenues with respect to such trust assets under Item 5.

We are in the process of completing the filings. Please contact me as soon as possible if you do not agree with my statement of your advice.

Very truly yours,

I concur with
this with exceptions
noted in margin

called

10-26-92

PS

RS - concurs