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602,20

[REDACTED]

May 16, 1994

VIA HAND DELIVERY

Mr. Patrick Sharpe
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Federal Trade Commission
Bureau of Competition
Pre-Merger Notification Office
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FEDERAL TRADE
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Dear Patrick:

This is to confirm our telephone conversation on Friday
May 13, 1994. The facts are as follows:

Company B currently has a wholly owned subsidiary,
Target, which it intends to sell (in a voting securities
transaction) to Company A for \$7.325 million in cash.
Assume for these purposes that Company B and the entities
it controls have gross assets or net sales of \$100
million or more and Target has net sales of \$25 or more.
Company A is a newly formed company which is not
controlled by any person. It currently has no assets and
has no income. There is no regularly prepared annual
statement or balance sheet for Company A. Sometime prior
to the consummation of this transaction, the shareholders
of Company A will raise \$17.5 million in capital to fund
the company¹. At closing, in addition to paying Company

¹There are two shareholders of Newco, Individual A and Individual B, who may have net
assets in excess of \$100 million and who will receive approximately 15% and 20% of the voting
securities of Newco for capital contributions of \$3.5 million and \$3 million respectively. As we

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Mr. Patrick Sharpe
November 19, 1993
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B \$7.325 million in return for the voting securities of Target, Company A will pay the following: (1) Target's lender approximately \$450,000 as a one-time fee as a condition of the refinancing of the loan under Company A's ownership of Target; (2) a "finder's fee in the amount of \$525,000 to the individual who acted as the intermediary for bringing Company B and Company A together for this transaction; and (3) accountants and lawyers fees which will be in excess of \$200,000.

no comment
OK
at 5.38
OK

Letter #169
ABA Manuel
concur
with
this

Under 16 C.F.R. § 801.11(e), the total assets of a person that does not have a regularly prepared balance sheet is calculated by the assets held by the acquiring person at the time of the acquisition, less all cash that will be used by the acquiring party as consideration in an acquisition of voting securities, and less all cash that will be used for expenses incidental to the acquisition. Based on our telephone conversation, it is my understanding that the payments delineated above would be deducted from the initial capitalization of Company A, rendering it with only \$9 million of assets for Hart-Scott-Rodino purposes. Accordingly, it is my understanding that no filing need be made under the Hart-Scott-Rodino Antitrust Improvements Act in connection with the purchase of Target by Company A.

Please let me know as soon as possible whether I have in anyway misunderstood the position of the FTC Premerger Notification Office staff. As always, I appreciate your assistance in this matter. Best regards.

The PMN is not sure about Fee (1).
However, it is unnecessary to make that determination for this scenario since either of fees (2) & (3) will make
less than a \$10.0 mm person.
concur with this letter with exceptions noted. (PS) AS-concurs

Sincerely,

[Redacted signature]

not the test

discussed, since neither Individual A nor Individual B will have control of Newco and Newco does not have any net sales or assets prior to this formation, the formation of Newco is not a reportable event for either Individual A or Individual B under 16 C.F.R. § 802.20 even though Newco meets the size of the parties test for purposes of 16 C.F.R § 801.40. The advice given in ABA Interpretation No. 198 is still the interpretation followed by the Premerger Notification Office staff.

called [Redacted] 5-19-94