

801.10 (c)(2)

[REDACTED]

[REDACTED]

[REDACTED]

This [REDACTED] subject to the
com [REDACTED] provisions of Section
7A(a) of the Clayton Act which restricts
release under the Freedom of Information
Act.
May 20, 1994

VIA FACSIMILE (202) 326-2050

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

Attention: Melea Epps (Room 309)

Re: Determination of Acquisition Price in an Assumption
Reinsurance Transaction

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE
MAY 25 10 15 AM '94

Dear Ms. Epps:

This letter confirms my understanding of our conversation yesterday regarding the method for determining whether an acquisition of insurance policies through an assumption reinsurance transaction meets the size-of-the-transaction test under section 7A(a)(3) of the Clayton Act, 15 U.S.C. § 18a (1976). This letter also confirms my understanding of our conversation regarding Rule 801.10, 16 C.F.R. § 801.10, and Interpretation No. 139 of Premerger Notification Practice Manual (1991) ("Interp. 139").

Brief Background of the Transaction

"Reinsurance" is the practice whereby a reinsurer agrees, in consideration for a reinsurance premium, to indemnify an insurance company against all or a portion of the liability underlying the insurance policies issued by the indemnified insurer. "Assumption reinsurance" is a form of reinsurance under which the contractual relationship with the insured, as well as all liabilities and policy administration responsibilities, pass to the reinsurer.

Brief Statement of the Question

A life insurance company ("A") seeks to acquire life insurance policies from an unaffiliated insurance company ("B") through an assumption reinsurance agreement (the "Agreement"). As consideration for the Agreement, A will assume the liabilities underlying the policies and B will transfer to A assets (consisting of mortgages, private placement debentures, and cash) with a market value equal to the liabilities assumed.

In determining whether a premerger filing is due, how does A calculate the acquisition price of the life insurance policies?

Interpretation of the Issue

The acquisition is similar to the acquisition of policies set forth in Interp. 139 except that the acquiring company in Interp. 139 received cash exclusively and A will receive, in addition to cash, other types of assets for the liabilities assumed. A may rely on Interp. 139 for guidance.

For purposes of section 7A(a)(3) of the Clayton Act, the assumption of policies by A is treated as an acquisition of contracts and, therefore, the acquisition price is determined by calculating any "premium" paid for the policies (contracts) as a whole plus the value of any customer lists obtained by A. If there is no premium or customer lists, the value of the transaction is presumably zero.

While acquisitions of mortgages, private placement debentures, publicly traded bonds and cash are generally not considered assets of another person from which they are acquired, these items may be included when calculating the premium paid in A's purchase of insurance policies. The premium paid by A, if any, is equal to the difference between x) the present value of the obligations assumed by A and y) the assets (including cash and the other assets specified above) transferred by B to A to cover reserves held by B in support of liabilities underlying the policies.

Federal Trade Commission
May 20, 1994
Page 3

Upon your review of these facts I would appreciate it if you would call me at the above-referenced number so that we may discuss this further.

Very truly yours,

[REDACTED]

5/23/94 - Discussed w/ PG, who concurred that the letter correctly states current PNO policy. I called and informed [REDACTED] on 5/23/94 —