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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

This material is subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act.

Via Messenger

Ms. Melea Epps
Premerger Notification and Screening
Federal Trade Commission
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20850

Dear Ms. Epps:

This letter is to confirm the verbal opinion given by you, a member of the FTC Premerger Notification Staff, on May 31, 1994. The question raised by my telephone call pertained to the Federal Trade Commission's interpretation of the term "asset" in the Hart-Scott-Rodino Act, 15 U.S.C. § 18a. The question was whether a payment made by one entity (Party A) in exchange for another entity's (Party B) promise to relinquish its contractual rights and obligations under a contract with a third entity (Party C), results in the acquisition of an asset.

The transaction in question would be structured so that Party A would pay Party B an amount of money (greater than \$15 million), and, in exchange, Party B would terminate its rights and obligations under a contract with Party C. Party B would not, however, assign any of its contractual rights or obligations under that contract to Party A. Party A and C would, however, enter into a new, separate contract. According to our conversation, you have indicated that such a transaction, which is in effect a payment for the relinquishing of contractual rights and obligations, and not a contract assignment, does not result in Party A acquiring any asset from Party B. Please return confirmation of the above to me, or if you have any questions or concerns about this matter, please telephone me at the above number. Thank you for your assistance and cooperation.

Sincerely,

[REDACTED]

6/8/94 I called [REDACTED] and confirmed that the above-stated opinion constitutes the policy of the Premerger Notification Office and is not binding on the Commission — MRE