



August 1, 1994

VIA FACSIMILE AND MESSENGER

Mr. Patrick Sharpe
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION SECTION
AUG 1 4 48 PM '94

Dear Mr. Sharp:

I am writing to confirm the content of our two telephone conversations today concerning whether certain items of a stock purchase agreement are considered part of the value of the transaction for purposes of determining whether the transaction must be reported under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

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As I stated, the agreement at issue involves the following elements that are potentially relevant to determining the size of the transaction:

1. Payment, at closing, by the acquiring person to the acquired person, of \$14,742,000 in consideration for 100 percent of the outstanding securities of the acquired person;
2. Payment, at closing, by the acquiring person to creditors of the acquired person, of \$2,961,000 in payment of debts of the acquired person;
3. At closing, the acquired party becomes contractually obligated to, six months from the date of closing, pay \$3,316,000 in cash to employees of the acquired person in consideration for cancellation of the employees' options to buy voting securities of the acquired person. The \$3,316,000 amount was determined by subtracting the options' "exercise" price of \$231,000 from the securities' "strike" price of \$3,547,000.

See #119
PMP manual



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You informed me that items 2 and 3 of the transaction did not constitute part of the value of the transaction for purposes of the Act, and that, based on the information that I had provided you, it was your conclusion that the transaction did not have to be reported under the Act. You also told me that you had discussed this matter with Dick Smith and that, in his opinion, neither items 2 or 3 constitute part of the value of the transaction under the Act.

*note: I did
not discuss #3
with RS.*

As I stated, the terms of this transaction were not negotiated or structured to avoid having to report under the Act. The \$14,742,000 payment for the acquired party's securities was determined independently from considerations concerning the size of the transaction for purposes of the Act.

Our law firm represents the acquiring person in the transaction. I have discussed this letter with counsel for the acquired person who concurs with the description of the transaction contained in this letter.

I appreciate your assistance in this matter. Please contact me if I have incorrectly described the content of any portion of our telephone conversations or if you believe that the parties need to file Notification Report Forms pursuant to the Act.

Sincerely yours


*I concur with
this letter. (PS)*
