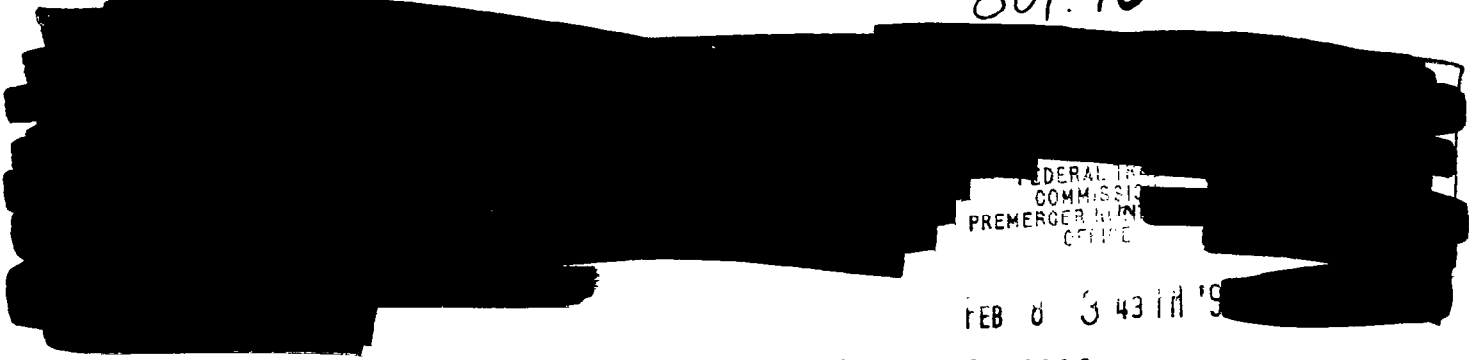


801.10



February 8, 1996

**VIA TELECOPY**

Ms. Nancy Ovuka  
Compliance Specialist  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Ms. Ovuka:

This letter is to request confirmation of our telephone conversation yesterday in which you advised me that if a client of this firm purchases certain assets of another company in exchange for its publicly traded voting stock and prior to the closing of the acquisition the stock and a general bill of sale for the assets are placed in escrow, subject to distribution upon the closing after all preconditions contained in the purchase agreement are satisfied or waived, then even if the market value of the stock placed in escrow increases from less than \$15 million to in excess of \$15 million during each of the 45 calendar days preceding the closing, neither the buyer nor the seller would be obligated to file a Notification and Report Form for Certain Mergers and Acquisitions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules promulgated thereunder.

Our client ("Company A") intends to purchase for shares of its voting stock (the "Stock") certain assets of another company ("Company B"). For purposes of this letter, it is assumed that the ultimate parent entity of each of Company A and Company B have net sales and/or total assets sufficient in amount to meet the "size-of-person" test established in section 7A(a)(2) of the Clayton Act. The stock of Company A is publicly traded and quoted on NASDAQ. At the time Company A and Company B enter into a purchase agreement, Company A will deposit a fixed number of shares of Stock into escrow and Company B will deposit a general bill of sale for the assets into escrow. When all conditions precedent set forth in the purchase agreement are satisfied or waived, the acquisition will be consummated and the Stock and bill of sale will be released from escrow and delivered to the appropriate company. The market value of the Stock that Company A will be obligated pursuant to the purchase agreement to deliver to Company B in exchange for its assets and to place in



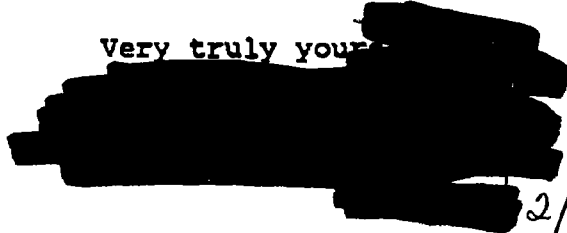


Ms. Nancy Ovuka  
Compliance Specialist  
February 8, 1996  
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escrow is currently less than \$15 million. As a result, this transaction will not on the date the parties sign the purchase agreement and establish the escrow satisfy the "minimum size-of-transaction" test. Because the assets being acquired by Company A from Company B are utilized in a regulated industry, it is currently anticipated that more than 45 days may elapse before certain preconditions to closing contained in the purchase agreement requiring regulatory approval from various municipal, state and federal regulatory authorities are satisfied. It is possible that if the price of the Stock does not increase substantially within the 45 days preceding consummation of the acquisition the Stock held in escrow will continue to have a value of less than \$15 million. It is also possible that a substantial increase in the price of the Stock during such period could cause the value of the Stock to exceed \$15 million.

To protect against the uncertainty of an increase in the value of the Stock, the parties to the transaction would have to file a premerger notification and report form even though none may ultimately be required. Placing the Stock and bill of sale into escrow, subject to release and distribution upon the satisfaction or waiver of the specific conditions contained in the purchase agreement, increases the likelihood of the transaction's consummation on the terms and for the consideration agreed to by the parties at the time the parties enter into the purchase agreement. The parties will also be obligated to use reasonable efforts to obtain all necessary approvals from regulatory authorities in order to satisfy this condition precedent. In view of the foregoing, I request that you confirm that the consummation of the above transaction in the manner described above without filing a premerger notification and report form and the observance of the waiting period required by Section 7A of the Act will not violate the Clayton Act and that the Federal Trade Commission will take no action.

Very truly yours



2/9

No! Escrow arrangement does not negate need for market price calculation pursuant to 801.10 and fair market value determination of the assets

RS concurs