

April 20, 1999

By Facsimile

*I am not an attorney*

Patrick Sharpe, Esq.  
Premerger Notification Office  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, DC 20580

APR 20 1999  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Re: Advice Concerning Size of the Transaction Test

Dear Patrick:

Thank you for taking our call on Monday afternoon. Following up on my conversation with you and [redacted], I want to summarize the facts, analysis and conclusions of our conversation. If I have mischaracterized your advice in any way, please let me know.

Bob described a proposed transaction that includes the following elements:

- (1) The deal is structured as an asset sale, and the purchase price is less than (but reasonably close to) \$15 million.
- (2) The Seller keeps a supply of raw material at several of its customers' locations, to be used in the processing of such customers' orders with the Seller. In each case, the raw material is consigned by the Seller to its customer under a consignment agreement.
- (3) In connection with the asset purchase, Buyer will acquire title to the Seller's raw materials at customer locations. All such material will remain consigned to the various customers after the closing of the transaction for use in processing customer orders with Buyer. Buyer will assume the consignment agreements.
- (4) Buyer will replenish Sellers supply of the raw material (which Seller can also use in other processing endeavors unrelated to the business or assets being acquired) by delivering to the Seller a like amount of the raw material from Buyer's own inventory of raw material, in effect exchanging several units of the raw material at customer sites for the same number of units of Buyer's raw material.

[redacted]

[redacted]

6300 [redacted]

[redacted]

[redacted]

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(5) The value of the raw material is about \$1 million. You may assume for purposes of our discussion that if the value of the raw materials were aggregated with the purchase price, the HSR filing threshold would be triggered.

The question that we presented to you yesterday afternoon is whether and how the exchange set forth as element (4), above, affects the calculation of the "Size of the Transaction Test." Put another way, is the value of the raw material being exchanged required to be added to the purchase price in measuring the total consideration for the deal?

I believe that we concluded that the value of the exchanged raw material is not included in the measure of the "size of the transaction." While the Buyer is acquiring raw material worth about \$1 million, it is simultaneously giving up the very same amount of the very same material it already owns - the only thing that has changed is the location of the raw material. The exchange is a wash, undertaken only to facilitate transfer, and should not be included in the measurement of the size of the transaction.

*you should include it in the size of transaction test,*

I would appreciate it if you would confirm for me whether this accurately reflects our conversation and your conclusion. Would you call me, [redacted] with your thoughts?

Very truly yours,

[redacted signature]

*The consideration going over to seller is in excess of \$15.0mm. This meets the size-of-transaction test.*

*called [redacted] 4/20/99 and informed her of the above*

*(PS) (RS) concur (TH) concur*

*Did not read letter but concur with my answer based on initial presentation*

[redacted]

[redacted]

[redacted]