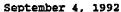
0-1







VIA FACSIMILE

Mr. Patrick Sharpe Premarger Notification Office Bureau of Competition Federal Trade Commission Room 310 6th & Pennsylvania Avenue, N.W. Washington, D.C. 20580

Dear Mr. Sharpe:

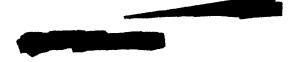
This letter is a revised version of the letter I sent you on Septmeber 3, 1992. The purpose of this letter is to follow up on a telephone conversation we had on August 3, 1992, concerning

 ∞ 19

minter at trade in padition to these T mentioned to you over the

FACTUAL BACKGROUND

This transaction concerns the transfer of lease, contract and permit rights with respect to undeveloped land. Company A owns a large tract of undeveloped land in County X, which is located in State Y. Company B has entered into a contract with Company A to purchase this land for \$3 million (the "Land Contract"). Company B also has entered into a contract with County X (the "County X Contract"), under which Company B will assign all of its rights under the Land Contract, including the right to purchase the land to the County, and the County will lease the land to Company B. The County will pay Company A \$1 to obtain its fee simple interest; Company B still is obligated to pay the balance of the purchase price for the land to Company A. The lease contains an option under which Company B can purchase for table the land from the County at the end of the lease term at fair market value.



Mr. Sharpe

Company Ris intent is that the land he used as a landfill.

Industry to Jun the landilli, including primits from the state

permits. When operational, the landfill will accept waste from municipalities, corporations, other businesses and individuals located in a multistate region.

Company B now intends to enter into an agreement with Company C under which Company B would assign to Company C (1) its

County's agreement to exercise its condemnation nower with

related to operation of the landfill, including the right to construct the landfill and environmental permits. Before assignment of these permits can be made final, Company C will nave to submit certain information about itself to the state and County just as if it was applying for the permits itself.

pon Company C obtaining the lease interest in the land after it

i the land still will be undeveloped. Company C will pay an litional \$15 million to Company B after all permits have been eived, the landfill has been constructed (by Company C), and landfill has received its first waste. Finally, Company C pay Company B a monthly royalty fee based on the number of of waste deposited in the landfill.

YSIS

THE R. SHOT MITTER PARTY

The assignment of lease, contract and permit rights embodied e transaction described above is exempt from the filing rements of the Act.

Mr. Sharpe September 4, 1992 Page 3

put not the lease

First, Company B's acquisition of lessee rights and related contract rights is exempt under Section 7A(c)(1) of the Act as an acquisition of "manifer transformed in the Act as an acquisition of "manifer transformed in the Act as an acquisition of "manifer transformed in the Act as an acquisition of "manifer transformed in the Act as an acquisition of "manifer transformed in the Act as an acquisition of the Act as a cquisition of the Act as a cqu

Incerest in underelorg teal eather for the dea 30740 30756

commission also has applied this exemption to the acquisition of an existing lease interest in undeveloped land, as is happening here. Similarly, it would seem that contractual rights closely related to this lease interest, such as the County's agreement to use its condemnation power to counter claims of access rights to the land by owners of adjacent parcels or the public, also should be considered exempt.

In this transaction, the \$3 million liability being assumed by Company C to pay for County X's acquisition of the land is properly allocable to the lease interests and related contractual rights. See ABA Premerger Manual, Interpretation No. 123 (Commentary) ("Any lump sum paid by the buyer to the seller in connection with the assumption of an existing lease is presumed to constitute a premium that must be included in the seller."

undeveloped land.

Second, the assignment of the permit rights also is exempt. Like the lease interest and contract rights mentioned above, these rights all relate directly to the future use of the

In addition, it should be noted that if these normits were

political subdivision thereof). While Company C is purchasing the permit rights from Company B, and Company B already has passed through many regulatory hurdles in getting the permits that Company C will not have to overcome, the fact that the

Mr. Sharpe September 4, 1992 Page 4

transaction similar in many respects to the permits being granted

3ex :	
MIC TOMMETTY, MOD GATERA MICH TO MEET MAD ATMIN AND ACTION EMPTO.	
the right to open a landfill within the County, numerous other	is therefor
jurisdictions in the multistate region to be served by the	17 110
	exclusive
landfill retain the authority to issue permits to others to	CAVITY

Company C's acquisition of the permit rights thus should be exempt. Since the balance of the consideration being paid by Company C to Company B is allocable to these rights, it follows that the entire transaction is exempt.

We would appreciate your prompt response as to whether you agree with the analysis contained in this letter.

Note: Most notes in margin were sincerely.

This is an acquisition of rights in and to

called 7-9-9

Acquisition of the permits also is more like a direct grant

construct landfill facilities.