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September 4, 1992

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION
OFFICE

VIA FACSIMILE

Mr. Patrick Sharpe
Premerger 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 September 3, 1992. The purpose of this letter is to follow up on a telephone conversation we had on August 3, 1992, concerning

[REDACTED]

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 the land from the County at the end of the lease term at fair market value.

Potentially Reportable

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Company B's intent is that the land be used as a landfill.

necessary to run the landfill, including permits from the State
Environmental Department and a permit from the County Attorney

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
rights under the Lease Contract and the County V Contract.

County's agreement to exercise its condemnation power 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
have to submit certain information about itself to the state and
County just as if it was applying for the permits itself.

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

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

ANALYSIS

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

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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 "realty transferred to the owner of the interest in undeveloped real estate." 50 Fed. Reg. 28742-28756

out not the lease

OK

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.

incidental to the ownership of real property

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 acquisition price.")

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 permits 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

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transaction similar in many respects to the permits being granted

[REDACTED]

the landfill, has agreed that it will not grant any other entity the right to open a landfill within the County, numerous other jurisdictions in the multistate region to be served by the landfill retain the authority to issue permits to others to construct landfill facilities.

from [REDACTED] is therefore exclusive

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 from RS.

Sincerely,

[REDACTED]

This is an acquisition of rights in and to , ,

called [REDACTED] 2-9-92

(TH) & (RS) concurs

1/ Acquisition of the permits also is more like a direct grant to Company C because Company C contracts that with respect to the

more the project economically viable.