80LUK

[redacted]

May 16, 1994

VIA HAND DELIVERY

This mat... [redacted]

Compliance Specialist
Federal Trade Commission
Bureau of Competition
[redacted]
Room 301
6th and Pennsylvania Aves., N.W.
Washington, D.C. 20580

...of the ... provisions ... to the release under the ... of the Clayton Act which ... of Section ... Act.
...mation

Dear Patrick:

This is to confirm our telephone conversation on Friday May 13, 1994. The facts are as follows:

Company B currently has a wholly owned subsidiary, Target, which it intends to sell (in a voting securities transaction) to Company A for $7.325 million in cash. Assume for these purposes that Company B and the entities it controls have gross assets ... [redacted]

Company A is a newly formed company which is not controlled by any person. It currently has no assets and has no income. There is no regularly prepared annual statement or balance sheet for Company A. [redacted]

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[1]There are two shareholders of Newco, Individual A and Individual B, who may have net assets in excess of $100 million and who will receive approximately 15% and 20% of the voting securities of Newco for capital contributions of $3.5 million and $2 million respectively. [redacted]

[redacted]

Mr. Patrick Sharpe

Page 2

B $7.325 million in return for the voting securities of

no ? comment

lender approximately $450,000 as a one-time fee as a

ok

[redacted]

intermediary for bringing Company B and Company A together for this transaction; and (3) accountants and lawyers fees which will be in excess of $200,000.

ok

Letter #169 ABA Manuel concurs with this

Under 16 C.F.R. § 801.11(e), the total assets of a person that does not have a regularly prepared balance sheet is calculated by the assets held by the acquiring person at the time of the acquisition, less all cash that will be used by the acquiring party as consideration in an acquisition of voting securitiers, and less all cash that will be used for expenses incidental to the acquisition

the payments delineated above would be deducted from the initial capitalization of Company A, rendering it with only $9 million of assets for Hart-Scott-Rodino purposes. Accordingly, it is my understanding that no filing need be made under the Hart-Scott-Rodino Antitrust Improvements Act in connection with the purchase of Target by Company A.

Please let me know as soon as possible whether I have in anyway misunderstood the position of the FTC Premerger Notification Office staff. As always, I appreciate you assistance in this matter. Best regards.

Sincerely,

[redacted]

The PMN is not sure about Fee (1). However, it is unnecessary to make that determination for this scenario since either of fees (2) & (3) will make ? less than a $10.0 mm person. I concur with this letter with exceptions noted. PS

KS - concurs

? not the test

discussed, since neither Individual A nor Individual B will have control of Newco and Newco does not have any net sales or assets prior to this formation, the formation of Newco is not a reportable event for either Individual A or Individual B under 16 C.F.R. § 802.20 even though Newco meets the size of the parties test for purposes of 16 C.F.R § 801.40. The advice given in ABA Interpretation No. 198 is still the interpretation followed by the Premerger Notification Office staff.

[redacted]

Called [redacted] 5-19-94