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OFFICE

JUN 22 1 58 PM '95

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Dick:

I enclose in draft a proposed letter memorializing our conversation of June 12 for your review and comment. Once I have your reaction, I will put it in final.

Thank you for your prompt attention to this matter.

Sincerely yours

Enclosure

6/29/95 - Called writer's office and advised that a filing must be made for A's purchase of B. A is eliminating only competitor and, even though acquiring a non-exclusive right, the result will be to de-install A as only competitor. Based on past filings made on similar facts, this office concludes that a filing must be made on this situation. RBA/H

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information

DRAFT

June __, 1995

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission

Dear Mr. Smith:

This confirms our conversation of June 12, 1995, in

described below in which the holder of a patent reacquired certain non-exclusive patent rights which it had previously assigned to another party.

The pertinent facts are as follows. Approximately
COVER HEARD 200 Company A assigned exclusive rights to
pursue and exploit a patent within a defined field of use
to a licensee, Company B, subject to Company B's obtaining
appropriate government approvals. Because exclusive rights
within the field of use were assigned (and because the size
of person and size of transaction tests were met), the
parties filed under the premerger notification procedure

Richard B. Smith, Esq.
June __, 1995
Page 2

Approximately three years later, Company A acquired back
from Company B non-exclusive rights to exploit the patent

two companies now held non-exclusive rights within the
field of use. Since the "reacquired" rights were non-
exclusive in nature, under Interpretation 49 of the ABA
Premerger Notification Practice Manual, no filing was
deemed necessary.

It is now proposed that Company A reacquire the
remaining rights held by Company B. Although as a result of
this acquisition, Company A will again hold exclusive rights
to exploit the patent, the rights being acquired from
Company B are non-exclusive in nature and thus fall within
Interpretation 49, i.e., they are not "assets" within the
meaning of the premerger reporting scheme.

You agreed with me that, on these facts,¹ no assets

and hence no premerger report need be filed.

¹ I represented to you that Company A's acquisition of non-
exclusive rights four years ago and the current acquisition
of Company B's remaining non-exclusive rights were
independent transactions and not a "sham" step transaction

Richard B. Smith, Esq.
June , 1995
Page 3

Thank you for your prompt assistance on this matter.

Sincerely yours,

A large, solid black rectangular redaction covers the signature area, completely obscuring the name and any handwritten notes or dates that might have been present.