

801.11(c)(2)

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

AUG 2

July 31, 1995

BY FACSIMILE 202-326-2050

Mr. Richard Smith, Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Smith:

1976 and the Federal Trade Commission's implementing rules (the "Act").

As we discussed, we represent a partnership organized under [redacted] which is its own "ultimate parent entity" under the Act's definitions. This client's only business activity has been

other than the Corporation A Stock is a small amount of cash. The client has derived no income from its investment in Corporation A or any other activity. The only financial statements that the client has prepared have been in connection with its annual income tax returns, which include a balance sheet. In preparing the tax

less than \$10 million. As a result, its total assets are reflected on its most recent annual tax return balance sheet at less than \$10 million. The client has also prepared a proforma balance sheet in

described in the next paragraph on which, consistent with the accounting principles used in preparing the client's annual tax



Richard Smith
July 31, 1995
Page 2

return balance sheets, the Corporation A Stock and, therefore, the client's total assets are reflected as having a value of less than \$10 million. However, the current fair market value of the Corporation A Stock held by the client has been determined to exceed \$10 million.

Corporation A is proposing to merge with Corporation B, with the surviving entity being Corporation B. As a result of this proposed merger, the client will receive voting stock of Corporation B having a value in excess of \$15 million. The person

~~is a person whose annual sales in excess of \$100 million. Other~~

~~under the Act with regard to the merger itself and, possibly, with~~

Based on 16 C.F.R. sec. 801.11(c)(2) and Interpretation 162 contained on pages 134 and 135 of the ABA Premerger Notification

~~not file a premerger notification under the Act with regard to its acquisition of Corporation B's voting securities (the "Transaction") because the Transaction does not satisfy the Act's "size-of-person" test. This proposed advice assumes that the last annual tax return balance sheet of the client qualifies as its~~

with the transaction, which reflects the Corporation A Stock at acquisition value, may be used in determining whether the client will satisfy the "size-of-person" test, even though the current

this letter, we are asking for an informal staff interpretation confirming the correctness of these assumptions.

