

Reinsurance
802.1 (b)
7(A)(c)(d)

PREMERCER NOTIFICATION
OFFICE

SEP 7 1 40 PM

September 7, 1995

BY FACSIMILE

Mr. Patrick Sharpe
Compliance Analyst
Premerger Notification Office

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Re: Applicability of HSR Reporting Requirements to
Reinsurance Transaction

Dear Mr. Sharpe:

This letter confirms our discussions regarding whether a transaction (described below) which is essentially a reinsurance agreement would trigger the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. This transaction is referred to below as Transaction 2. Transaction 2 follows on an earlier-occurring transaction, referred to below as Transaction 1, which is also discussed. In order to analyze Transaction 2, it is necessary to first understand Transaction 1. Thus, I have described Transaction 1

Transaction 1:

In a transaction which will occur just prior to Transaction 2, Reinsurance Company B will agree to reinsure, on an indemnity basis, all of Reinsurance Company A's reinsurance policies (termed "treaties" in the industry). (Reinsurance of reinsurance is termed "retrocession" in the industry.) A

45 insurance companies, with aggregate liability of approximately \$750 million. As consideration, B will give A \$125 million. A will transfer to B its reserves related to these reinsurance treaties. After the transaction, B will receive the income stream associated with the reinsurance treaties, and A will no longer be responsible for administering the treaties. Pursuant to the overall agreement between A and B, B will write separate

porcha
\$125 m
worth of
assets

Mr. Patrick Sharpe
September 7, 1995
Page 2

reinsurance treaties with A for each of the 45 insurance companies reinsured by A.

After this transaction, A will no longer write reinsurance treaties for any insurance companies, including the

because A and B are entering into an indemnity reinsurance agreement rather than a reinsurance agreement. As a

"chain"). Prior to this transaction, B has not entered into

Because of the size of Transaction 1, B itself must seek to further reinsure ("retrocede") its reinsurance treaties with A. Our client, Reinsurance Company C, is in the business of reinsurance and is substantially larger than B. In Transaction 2, Reinsurance Company C, will agree to reinsure, on an indemnity basis, B's reinsurance of A. Although this transaction is larger than most reinsurance agreements entered into by C, it is the type of transaction which C enters into in the ordinary course of its business.

In contrast to Transaction 1, B will not transfer any reserves to C. C will retire \$125 million of the \$750 million in liabilities by paying \$125 million to B. C will then acquire \$625 million in letters of credit from affiliates and third parties to cover its remaining liability. After this agreement is in place, B will pay C an income stream consisting of more or

separate reinsurance treaties with B for each of the 45

affiliated reinsurers.



Mr. Patrick Sharpe
September 7, 1995
Page 3

Analysis:

For each of these transactions, an analysis needs to be undertaken. First, it must be determined whether or

There is little prior analysis of the reportability of publicly available which discusses the reportability of reinsurance transactions specifically. Interpretation Number 139

NO. 139 analyzed the value to be assigned to an acquisition of insurance policies where buyer received a lump sum cash payment (representing the cash reserves which ensured seller's ability to meet its further obligations under these insurance policies). The interpretation states that the value consists of the "premium" being "paid" by buyer, i.e., the difference between (i) the cash reserves and rights to future premiums being transferred and (ii) the actuarially determined present value of the obligations being transferred. In the transaction discussed in Interpretation No. 139, this premium was \$7.5 million, which did not satisfy the "size of transaction" test. Thus, the transaction received no further analysis.

This analysis may not shed much light on the questions presented here, whether or not the acquisition is an acquisition.

Section of Interpretation NO. 139 suggests that such acquisitions may be exempt under § 7A(c)(1) as acquisitions in the ordinary

If the two transactions at hand are analyzed pursuant to § 7A(c)(1) (and 16 C.F.R. § 802.1(b)) -- assuming Transaction 2 is an "acquisition" at all -- it appears clear that Transaction 2 should be considered an ordinary course transaction. Transaction 1 provides an instructive contrast. In Transaction





Mr. Patrick Sharpe
September 7, 1995
Page 4

the reinsurance policies being indemnified by B. In transaction 2, the "buyer" (C) is not receiving any reserves or other assets from B; C merely receives an income stream from B.

NOT an acquisition
not reportable

Correct

Based on these characteristics and the other facts set forth, Transaction 1 does not appear to be in the ordinary course of business -- A is exiting this line of business and B is "acquiring" substantially all of the assets associated with A's business, by acquiring the reserves and by indemnifying A's reinsurance policies. The acquisition of A's reserves also causes Transaction 1 to more closely resemble the acquisition

agreed

transferred to the buyer. The end result of the analysis of ~~Transaction 1~~ is that this transaction should be reported under

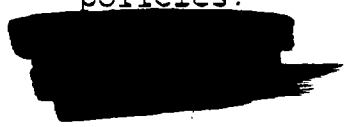
By contrast, Transaction 2 appears to be an ordinary course transaction -- the transaction is of the type that is in the ordinary course of both B and C's businesses, B is not exiting this line of business, and C is not acquiring any assets from B associated with the policies, other than the right to an income stream. Essentially, Transaction 2 is not an acquisition at all -- it is merely the writing of reinsurance policies. The end result of this analysis is that Transaction 2 need not be reported under the HSR -- either it is not an acquisition, or, if it is an acquisition, it is in the ordinary course of business, and thus exempt.

agreed

In your analysis, you agreed with this result. You first indicated that Transaction 1 appeared to be subject to the requirements of the HSR Act. You then indicated that Transaction 2 sounded like a transaction in the ordinary course of business, and was not an acquisition for purposes of the HSR Act. You also observed that reinsurer C was merely receiving an income stream

agreed

increase B's ability to write reinsurance. C's reinsurance frees up B's capital which otherwise would have to be held in reserve against the reinsurance treaties. It is apparently B's plan to use this free capital to allow B to write additional reinsurance policies.



[REDACTED]

Mr. Patrick Sharpe
September 7, 1995
Page 5

from entering into reinsurance treaties and
any productive assets
Transaction

please contact me immediately to reflect your conclusions
your interest in this matter.

Sincerely,

[REDACTED]

cc: [REDACTED]

called [REDACTED] 9/18/95

Transaction 1 - Appears to be reportable
(if size-thresholds are met
for the size-of person test).
It is the purchase of \$25mm
worth of assets.
It goes beyond letter #139.

Transaction 2 - The focus of the letter
appears to be an ordinary
course of business deal

(RS)

RS concurs

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Patrick Sharpe
September 7, 1995
Page 6

bcc [REDACTED]

[REDACTED]