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March 20, 1996

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Patrick Sharpe  
Compliance Specialist

Federal Trade Commission  
6th St. St. and Pennsylvania Avenue N.W.  
Washington D.C.

BY FAX

Dear Mr. Sharpe:

As I mentioned over the telephone, I have been asked by a client to give advice concerning its responsibilities under the pre-merger notification provisions of the Hart-Scott-

I have reviewed the relevant regulations, as well as Section 801, and have several remaining questions as to the application of the size-of-transaction threshold regulations in the circumstances of this case. I suspect that your office has ready answers to these from its previous experience in handling similar questions.

Because the transaction is slightly complicated, I have prepared the attached description of it. The questions that I need to answer are at the end of the description.

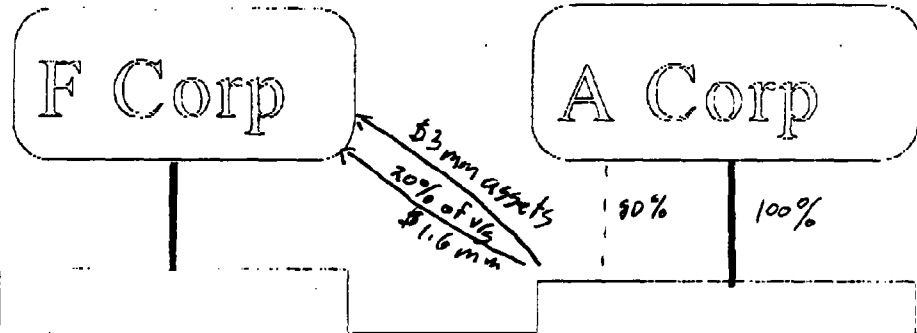
I appreciate any assistance you can give me in this matter.

Very truly yours,

[REDACTED]

[REDACTED]

✓



*Assets Plus Covenant not to compete \$4.6mm*

Before Transaction:

Assume ultimate parent entities, F Corp and A Corp, have sales in excess of, respectively, \$100 million and \$10 million annually.

A Corp owns 100% of the stock of N Corp. N Corp is an operating company (not a corporation newly created for purposes of the transaction). N Corp's going concern value is no more than \$8 million.

*what does this mean fair market value*

F Corp controls M Corp, which engages in several lines of business.

F Corp has several facilities, one of which has a fair market value of \$20 million.

as the vehicle for the joint venture.

For F Corp's transfer of one of its subsidiary M's line of business to N Corp, F Corp will receive from A Corp 20% of N Corp's stock. A Corp will continue to hold the remaining 80% of N Corp's stock. The stock of N Corp is not publicly traded.

F Corp will lease 40% of its \$20 million facility to N Corp. F Corp will purchase N Corp's old facility for \$3 million.

Details of the Transaction:

Agree Transfer for Stock: F Corp will agree M Corp to transfer one of its lines of business to N Corp.

lines of business to N Corp, including goodwill, equipment and a covenant not to compete against N Corp in that line of business. For these transfers, F Corp will

to compete against N Corp.

Lease of Facility for New Plant. F Corp will lease 40% of the \_\_\_\_\_ \$20 million facility to N Corp, which will be converted to a new operating plant. The lease is for 30 years, with a two 10 year renewal options. The rental payments are at fair market value. The nominal value of the rental payments over the 30 year lease term will amount to \$27 million.

*Is this the useful life of the plant?  
NO*

*Is a premium being paid?  
no*

- 3. Service Contracts. M Corp will supply support services to N Corp at the new plant, receiving compensation at the regular fair market value for such services. A Corp will supply management services to N Corp at the new operating plant.

*not repaid*

Disposition of Old Facility. N Corp will sell its old facility to F Corp for \$5 million. F Corp will use the facility for unrelated lines of business.

*with v/s purcha*

Questions:

In considering whether A Corp (as the ultimate parent entity of N Corp) will, as a result of an acquisition, hold more than \$15 million of the assets of F Corp,

- 1. Will A Corp "hold" the leased portion of the facility from F Corp as a result of an

million, and that the parties have reached an arms-length agreement that 20% of N Corp's stock represents the fair value of M Corp's business and covenant not to compete that will be conveyed to N Corp, can the business of M Corp (including the covenant not to compete) acquired by A Corp in the transaction be valued at 20% of \$8 million?

*what is the va.*

*3.2*

Assuming that A Corp's subsidiary N Corp is paying fair market value for the support services to be rendered to it by F Corp, can the services under the contract

*yes if loc. in*

Given that N Corp is an existing and operating company prior to the transaction, and not

Are the provisions of 16 C.F.R. 801.40 relating to joint ventures inapplicable? If

the joint venture regulations are applicable, is F's lease of its facility to N to be valued as the difference, if any, between the fair market value of the leasehold interest conveyed, and the present value of the income stream of lease payments? [Assuming that the lease is at fair market value, there is no difference].

called [redacted]

3-20-96

This does not meet

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test - comments and questions noted

PS