

REC-113-6 0 12:34

801.40
802.20

May 6, 1999

Michael Verne
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Applicability of Section 801.40

Dear Mr. Verne:

This letter is intended to confirm our understanding of the advice you provided during a telephone conversation with [redacted] and me on Friday, April 30, 1999. Based upon

described below and will, based primarily on sections 801.40 and 802.20, no premerger notifications need to be filed in connection with the transaction. The facts of the transaction are described below:

STATEMENT OF FACTS

Y Corporation and X Corporation are negotiating the terms of an agreement, titled an asset purchase agreement (the "Agreement"). Under the terms of the proposed Agreement, Y Corporation or an affiliate of Y Corporation ("Y Corporation") would organize a newly-formed Delaware corporation ("Newco"). Y Corporation would be issued shares of capital stock in connection with the formation of Newco and would be the sole stockholder of Newco prior to [redacted] the transactions contemplated by the Agreement. Upon signing of the Agreement, Y

subject to certain contingencies.

At closing, (i) new investors ("New Investors") would contribute at least \$2,000,000 cash to Newco in exchange for newly issued shares of capital stock and (ii) X

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Corporation would contribute self-transfer and option to Newco, substantially all of the assets and

\$7,500,000 (subject to reduction to \$7,000,000 in specified circumstances) and (iii) Newco will assume substantially all of the liabilities of the Business.

Following the closing, the approximate percentage of voting equity interest owned by each party will be as follows:

X Corporation	44%
Partnership	15% (?) - WHO IS PARTNERSHIP? Y CORPORATION?
New Investors	
(As a group)	41%

In addition, there will be reserved for issuance additional shares of voting stock for use in connection with management incentive arrangements and upon exercise of warrants issued

ANALYSIS

HAVE BEEN IDENTIFIED PRIOR TO THIS TRANSACTION

As you discussed and you mentioned Section 991.40 which relates to the

X Corporation's purchase price for its Newco interest is equal to \$15.5 - 16.0 million (less the cash it will receive from the assets (\$7.0 - 7.5 million))

Seems odd with ABA
#114
which is an equivalent payment

[REDACTED]
[REDACTED]
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If we have misunderstood our discussion and you conclude that, contrary to our understanding, a filing is necessary by one or more of the parties, please so notify us at your earliest convenience since the parties will be proceeding with the transaction in reliance in the

[REDACTED]
[REDACTED]
cc: [REDACTED]
AGRE - NO FILING IS REQUIRED.
B. Michael Verne 5/6/99
DICK SMITH CONCURS.