

301.10

ATTORNEYS AND COUNSELORS

WRITER'S OFFICE

DIRECT DIAL TELEPHONE:

October 29, 1999

Mr. Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Request for Interpretation

Dear Mr. Sharpe:

The first proposed scenario involves an asset acquisition in which as part of the assets acquired, the acquiring entity will assume the obligation to perform maintenance contracts, which were prepaid by customers of the selling entity who desired continuing maintenance on items purchased by the customers of the selling entity in the ordinary course of business. In other words, the acquiring entity will assume the liability to perform the services under the maintenance contracts. As I mentioned in our conversation, the contracts are currently a line item on the balance sheet of the selling entity as deferred revenue. Essentially, the selling entity has received the money up front, and the acquiring entity will now be assuming the obligations thereunder on an ongoing basis. You advised that when the acquiring entity "stands in the shoes" of the selling entity, assuming the obligation to perform the contract, the contract is a wash and has zero (0) value for purposes of the Act in determining value under the size-of-the-transaction test. Therefore, the assumption of the liability under the maintenance contracts by the acquiring entity has zero (0) value for determining

contracts

OK

[Redacted signature block]

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Nonexclusive Intellectual Property Licenses

[REDACTED]

determination of non-exclusivity; the Licensor's retained rights would be sufficient to constitute the

[REDACTED]

of the license or not at all, depending on use by the Licensee. You advised that because the

[REDACTED]

immediately reportable. However, the license could become exclusive once the royalty amount was reached, possibly making the acquisition reportable at that time if the relevant tests are satisfied.

[REDACTED]

Thank you again for your advice and assistance; it was very helpful. In order to confirm the

[REDACTED]

modifications, please contact me at [REDACTED]. Thank you again for your assistance in this matter.

Sincerely,

Called [REDACTED]  
10/29/99  
I concur with  
the conclusions of  
this letter. (P)

[REDACTED]

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I hereby confirm that the foregoing accurately represents the facts as provided to me and the advice given by me regarding Hart-Scott-Rodino premerger notification compliance.

Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Federal Trade Commission