

July 18, 2000

Mr. Michael Verne  
Federal Trade Commission  
600 Pennsylvania, NW  
Washington, DC 20580

Via Facsimile: 202-326-2624

Dear Mr. Verne:

Thank you for your phone response to my query regarding the application of the premerger notification rules to the following facts. A plaintiff in a patent infringement suit is choosing to settle its claim by purchasing for an amount far below the reporting threshold the equipment, customer list and related business assets of the defendant arising from defendant's business which is the subject of the suit. It is possible that the claim of plaintiff against the defendant has a value in excess of \$15 million. Such claim will be released.

In determining the consideration being paid for the assets acquired, we wondered if the claim being released must be included in the fair market value of the assets. It is our belief that such claim covers the improper use of technology which belongs to the plaintiff already. Therefore, the plaintiff is not acquiring the technology, but merely assets and customer names. The Board of Directors of the plaintiff, therefore, could limit its determination of value to the equipment and customer contacts apart from consideration of the use of the technology.

As I understand your response, the Federal Trade Commission normally does not opine on the fair market value accorded to assets. You confirmed that such is normally reserved to the Board of Directors of the acquiring person. You also confirmed that the value of our claims being released in the settlement does not necessarily have to be included as the purchase price. Rather, the Board of Directors of the plaintiff should determine in good faith the fair market value of the assets being acquired to the plaintiff given the plaintiff's already owned interest in the technology.

Thank you for your time.

Sincerely,

AGAC -  
Burchalson  
7/19/00

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