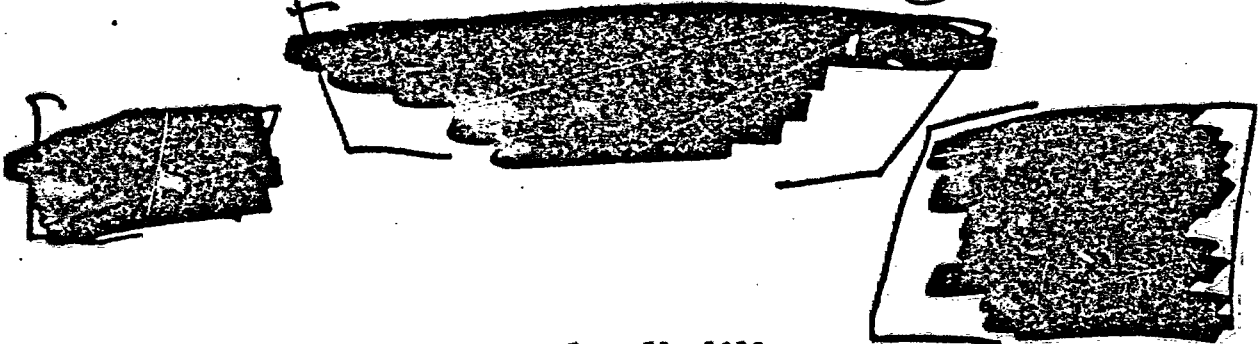


(54)



June 28, 1983

Dana Abrahamson, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D. C. 20580

This material may be exempt from
the confidentiality provisions of
Section 7A (b) of the Act
which restricts disclosure under the
Freedom of Information Act

JUN 29 1983

FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION
WASHINGTON, D.C.

Dear Mr. Abrahamson:

This is to confirm our telephone conversation of yesterday afternoon in which we discussed the applicability of the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act" or "H-S-R") and the regulations thereunder (the "Rules") to the following proposed transaction:

In connection with the sale of a business, our client ("Seller") is entering into an agreement granting a right of first refusal (the "Agreement") to acquire certain natural resource properties (the "Land") to the purchaser of the business ("Buyer"). Under the Agreement, should Seller receive an offer to purchase the Land which is acceptable to it, it must give notice to Buyer, after which Buyer has a set period of time within which to exercise its right under the Agreement to buy the Land on the same terms as the offer. Upon the exercise of its right of first refusal, Buyer will enter into a management agreement and will receive an unconditional call on the Land. Seller will receive a put for the Land to Buyer, exercisable only after four years.

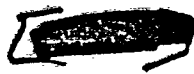
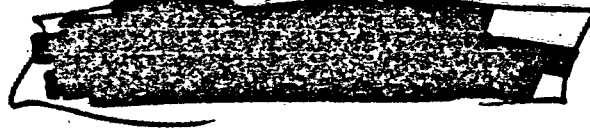
Pursuant to the management agreement, Buyer will operate the Land for its own account, with full rights to deplete the natural resources. The call, which may be exercised by Buyer at any time, and the put, which may be exercised by Seller after four years, are both unconditional and provide for payment of the full purchase price established at the time of exercise of the right of first refusal by Buyer increased by 10.5% per year compounded from the date of exercise.

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I explained to you that we had concluded that beneficial ownership passed from Buyer to Seller at the time the management agreement was implemented because Buyer would have the right to any profits and liability for any losses from operating the Land; Buyer would have an insurable interest in the Land; through its call Buyer would have the right to get title and thus to transfer its interest in the Land; and because Seller's put to Buyer after four years is unconditional, Buyer would have the risk of loss. You indicated that determination of when beneficial ownership changes hands is generally to be by the parties but that you agreed that beneficial ownership should be deemed to pass when the management agreement was implemented rather than when title passed at some time in the future. On that basis, you informed me that the filing and waiting period requirements of the Act should be observed at the time the right under the Agreement was exercised and that no filing or other obligations under the Act and the Rules would arise at the time the put or call is exercised and title passes.

Although I understand that it is not the usual policy of the Premerger Notification Office, I would appreciate written confirmation from you of this informal interpretation because any question as to the lack of necessity for filing when the title and payment are exchanged may not arise for several years. Should you determine that it is not possible for you to provide written confirmation, I will conclude that you find this letter to accurately reflect the substance of your informal advice unless I hear from you to the contrary.

Sincerely,



Talked to 37 - said it looked fine
FA