



June 25, 1984

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U.S. DEPARTMENT OF JUSTICE  
FEDERAL TRADE COMMISSION

Dana Abrahamsen, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6th Street & Pennsylvania Avenue  
Washington, D.C. 22580

Dear Mr. Abrahamsen:

During our telephone conversation today, I requested an informal opinion relating to the following factual situation.

FACTS

A corporation, A, is entering into a merger agreement with B, a separate corporation. Under the terms of the merger agreement, A proposes to acquire the entire equity interest of B by means of (i) a cash tender offer by A for all the outstanding common shares of B, to be followed by (ii) a merger of B with A in which each common share of B (other than those owned by B shareholders who properly exercise dissenters' rights) would be converted into the right to receive a certain sum in cash from A. The cash tender offer is not conditioned upon any minimum number of common shares being tendered. In the event A acquires less than 90 percent of the outstanding shares of B by means of the cash tender offer, the merger agreement requires that a shareholders meeting be convened to approve the merger.

ISSUES PRESENTED

For purposes of the notification required under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, should the above-described transaction be treated as a cash tender offer, a merger, or both? A closely-related issue is which waiting periods will apply under the Act.

This material may be subject to the confidentiality provisions of Section 24 of the Clayton Act and Section 8(b) of the Federal Trade Commission Act.

[REDACTED]  
Dana Abrahamsen, Esq.

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INFORMAL OPINION

You explained that, in the above-described situation, the transaction should be treated as both a cash tender offer and a merger. A should file its Notification and Report Form as an "acquiring person", but provide the affidavits required under both Rules 803.5(a) and (b). B must also provide the affidavit required by Rule 803.5(b) with its Notification and Report Form.

With respect to the waiting period, you described that only the 15-day period applicable to cash tender offers would apply if A obtained 50 percent or more of B's common shares by means of the cash tender offer; otherwise the 30-day waiting period would apply.

I believe this letter accurately describes our conversation and the informal opinion which you rendered today. If it does not, please contact me or Peter Feldman as soon as possible.

Sincerely,

[REDACTED]

[REDACTED]