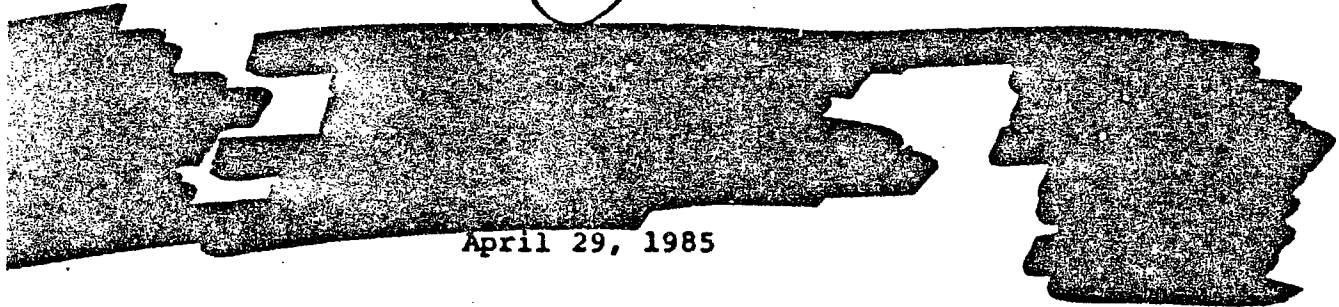


WK



April 29, 1985

VIA CERTIFIED MAIL
No. [redacted]

Wayne Kaplan, Esq.
Federal Trade Commission
Room 301
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

RECEIVED
MAY 3 2 28 PM '85
PRE-MERGER
NOTIFICATION
OFFICE

Dear Mr. Kaplan:

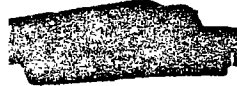
I am writing to confirm the preliminary views you expressed in our phone conversations of April 26 and 29, 1985.

A client of our firm ("Seller") intends to sell certain of its assets to "Buyer" in a transaction which would not be considered "in the ordinary course" within the meaning of Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Act"). Given the size of the parties and other features of the transaction, it appears that the transaction will be reportable under the Act if, but only if, the value of the assets being acquired will exceed \$15 million. The assets consist principally of plant, property and equipment used by Seller to manufacture certain of its products; raw materials, work-in-progress and completed inventory; and certain intangibles.

First Issue: Treatment of Receivables

Buyer will not acquire Seller's accounts receivable. The acquisition price plainly reflects that fact. However, following the closing, Buyer will serve as a collection agent for Seller; it will attempt to collect Seller's receivables associated with the business being sold and will remit the proceeds of that collection effort to Seller. Seller and Buyer's agreement will provide that if Buyer fails to collect and remit the amount of Seller's receivables shown on Seller's closing balance sheet within a specified period after the closing (probably eight months), Buyer will pay Seller an amount in cash equal to a portion (probably one-third) of this shortfall. If Buyer later collects those slow-paying accounts, it will be entitled to retain

1/3 of the receivables under arrangement, it has the loss but benefit of gain collected at the outstanding accounts
w does the agreement part with way things normally

 Wayne Kaplan, Esq.
Federal Trade Commission

DATE 4/29/85 P. 2

that one-third for itself and will only remit the other two-thirds to Seller. These arrangements were negotiated solely for business reasons and without regard to (indeed, without knowledge of) their possible implications under the Act.

What bus. reasons?

Under the circumstances, we believe that when the Board of Directors of Buyer determines the "fair market value" of the assets being acquired under Section 801.10(c)(3), it need not take into account the value of Seller's receivables, except to the extent the Board anticipates that Buyer will ultimately "acquire" slow-paying receivables represented by the one-third payment. In our judgment, Buyer will be functioning as a collection agent for Seller (save to the extent of one-third of any shortfall) and will not be assuming any of the benefits or risks normally associated with a change in ownership of receivables. This conclusion is supported by the fact that the acquisition price would be substantially greater if Buyer were acquiring Seller's receivables.

Second Issue: Treatment of Note Interest

The consideration Buyer will pay Seller for the assets will include a one-year promissory note bearing interest at a market rate. Assuming that it will be necessary to determine the "acquisition price" for Seller's assets under Section 801.10(b), it is our understanding that the interest payments under this note would not constitute part of the acquisition price and that only the principal amount of the note need be included. We draw this conclusion in part from the Commission's response to "Comment 115" which appears at 43 Fed. Reg. 33471.

* * *

In our phone conversations of the 26th and 29th, I believe you concurred with these conclusions, albeit on a preliminary basis. In accordance with those phone conversations, Seller and Buyer intend to act on the basis of those conclusions unless you or one of your colleagues advises us, by the close of business on Wednesday, May 8, 1985, that you disagree with those conclusions or need more time to consider them.

I again thank you for your courtesy and assistance in this matter.


Very truly yours,

-TO PMNO Staff

5/3/85

Please inform me by COB 5/6/85
if you have any problems with
the portion in the attached letter -

Thanks
Wayne.