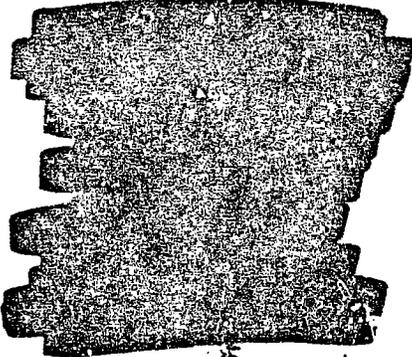


DA

FIR



March
25th
1986

By Messenger

Dana Abrahamson, Esq.
Federal Trade Commission
Room 301
500 Pennsylvania Avenue, N.W.
Washington, DC 20580

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Dear Mr. Abrahamson:

This will confirm oral advice that you gave to me this morning.

I described to you the following hypothetical transaction. Purchaser is a power agency formed by an "organization agreement" pursuant to a state statute. It is a separate legal entity and political subdivision of the state, and is comprised of 23 members, all of which are municipal utilities. Purchaser and Seller have, in the ordinary course of business, previously entered into a coal supply contract pursuant to which the Purchaser acquires coal supplies.

Purchaser proposes to acquire from the Seller raw land with proven coal reserves. The extent of the coal reserves has been determined by core hole drilling and historic mining, but the reserves are not being mined currently. Simultaneously with the land acquisition, Purchaser and Seller will amend the coal supply contract, to reduce both the price and amount of coal being supplied pursuant to the contract. The total purchase price under the purchase agreement for the land is \$28 million. Of that amount, based on an independent engineer's certification as to the extent of the reserves, Purchaser has allocated approximately \$5 million to the coal reserves, and has allocated the balance to the contract amendment.

Based on the foregoing facts, you have advised me that no filing would be required under the Hart-Scott-Rodino Antitrust Improvements Act because (i) the acquisition of land and coal reserves alone does not meet the size of

according to our conversation the purchase to do K would qualify for (C) because they are not and do not constitute an acquisition of an enterprise

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transaction test; (ii) the contract amendment would seem to be analogous to entering into a contract, which is not a reportable event; and (iii) in any event, the contract is an ordinary course of business transaction to obtain coal supplies, not a reportable acquisition.

even if it were the acquisition of an asset it would be report as

In connection with a separate transaction, you have advised me that proposed Rule 801.11(e), with respect to the valuation of assets of a newly formed person, is simply a codification of the current interpretation of the FTC. Hence, notwithstanding that the proposed rules have not yet been finalized, in valuing the assets of a newly formed person, assets that will be used to make the acquisition are disregarded.

If the foregoing does not accurately reflect your advice, please call me at [redacted] or, in my absence after March 27, [redacted]. As always, I appreciate your assistance.

With Best regards,

Sincerely,

[redacted signature block]

[redacted]

o.k. as amended