

March 27, 1989

This material may be subject to
the confidentiality provisions of
Section 8.01(11)(e) of the Federal
Trade Commission Act, which
prohibits the disclosure of
information received under the
Premerger Notification Act.

FEDERAL EXPRESS

Patrick Sharpe,
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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PRE-MERGER
NOTIFICATION
OFFICE

Dear Patrick:

As we discussed earlier today on the telephone, I am writing to request your office's confirmation of our position regarding the calculation of the total assets of an acquiring person pursuant to Section 8.01(11)(e) regulations of the permerger notification regulations.

The acquiring person ("Buyer") is a newly formed company whose only assets consist of 10% of the outstanding stock of the company to be acquired ("Target"). Buyer will pay \$30,000,000 for the stock of Target it does not own, plus prepay \$10,000,000 of Target's bank debt. Buyer will borrow approximately \$41,000,000, \$30,000,000 of which will be used to buy the stock of Target, \$10,000,000 of which will be used to prepay Target's bank debt and the balance of which will be used to pay acquisition fees.

It is our understanding that, because both the shares of Target stock held by Buyer, and the \$41,000,000 loan proceeds used for the stock acquisition price, the debt prepayment and the acquisition fees, are all excluded under Section 8.01(11)(e), Buyer's total assets will be zero.

Based on this analysis, we will shortly be entering into an acquisition agreement which does not provide for a Hart-Scott-Rodino premerger notification. We would therefore appreciate your views on the above as soon as practicable.

If you have any questions, please call me at the above number.

Thank you.

Very truly yours,

Answer resolved at staff meeting
3-30-89

The \$10.0 mm pre-payment of debt is not consideration going to the acquired person. Section 801.11(e) does not carve out pre-payment of debt to other parties. The "buyer" is an \$11.0 mm person.

Called [redacted] 3-31-89
and informed him of our
position.