

[REDACTED]

September 14, 1990

Mr. Richard Smith  
Federal Trade Commission  
Pre-Merger Notification Department  
610 Pennsylvania Avenue, N. W.  
Washington, D. C. 20580

*via federal express*

RE: *Confirmation of Advice Regarding Necessity of Filing Pre-Merger Notification Form*

Dear Mr. Smith:

This letter is intended to confirm our telephone conversation of September 12, 1990, in which we discussed the necessity of filing a pre-merger notification form in this particular transaction. We have discussed this matter on two previous occasions, and I have attached both letters for your review.

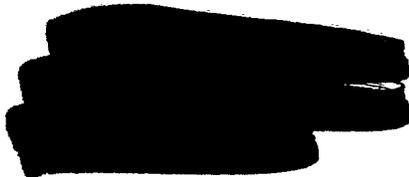
The transaction, as it is now structured, will involve only the sale of the assets of the "acquired person" for a conditional purchase price of \$29,000,000. It is our concern that although the book value of the assets of the acquired person is only \$4,000,000, and the annual sales approximately \$3,000,000, because we are selling the assets for \$29,000,000 we might be subject to pre-merger notification filing. However, you have confirmed that the "size of the person" test is determined by the book value of the assets as reflected on the last regularly prepared financial statements, provided such financial statements are no more than fifteen months old. Accordingly, it is our understanding that the change in structure of the anticipated transaction from a stock sale to an asset sale will not trigger the filing of a pre-merger notification form.

Page 2  
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I understand that we cannot receive a written opinion in the form of a no-action letter from your office. However, if in re-reviewing this transaction you have determined that we have misinterpreted the law and regulations with regard to pre-merger notification filings, or that the facts of this situation conjure up a "red flag" which should be further investigated, we would appreciate you advising us of this fact.

If we do not hear from your office to the contrary, we will proceed with this transaction on the assumption we do not have to file a pre-merger notification form. Thank you for your time and attention in re-reviewing this matter. I look forward to discussing any further comments or suggestions that you might have regarding same.

Very truly yours,



Attachments

9/18/90 advised [redacted] that pursuant to Rule 801.11, the size-test includes the required person plus all entities it controls. She agreed and stated that required person includes no one else. Further advised that if "goodwill" represents a balance sheet as an asset then it must be included in size-test.

Dick Smith