

Filing Fee

[REDACTED]

This material may be...
the confidentiality provisions of
Section 7A (a) of the...
which require...
of...

October 11, 1990

Mr. Thomas Hancock, Compliance Specialist
Federal Trade Commission, Bureau of Competition
Pre-Merger Notification Office
Room 303
Washington, D.C. 20580

Dear Tom:

This will confirm our telephone call on October 10 in which I explained that Acquiring Company A intends beneficial ownership of Partnership F, an entity controlled equally by Corporations D and E who have separate ultimate parents, B being the u.p.e of D and C being the u.p.e. of E. Instead of acquiring F's assets, A instead proposes simultaneously to merge Corporations D and E into it. D and E's principal business is conducted through Partnership F, and their interests in F are the principal assets of each D and E.

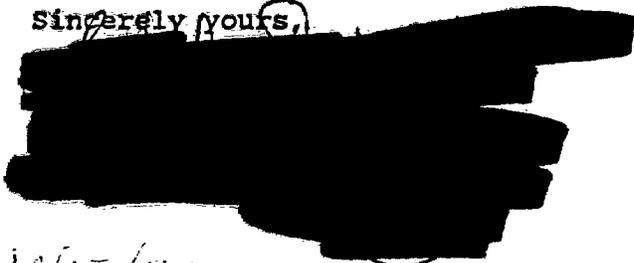
My question was whether A would have to pay two filing fees, owing to the fact that D and E are technically each separate corporations having separate u.p.e.'s and whose securities are each being acquired (by merger) by A. I indicated, further, that only one fee should be paid because both D and E's principal asset is their interest in F; because the mergers will occur simultaneously pursuant to a single agreement signed by B, C, D, and E as acquired persons and A as the acquiring person; and because the mergers are simply the vehicle through which A will accede to beneficial ownership of the business of Partnership F.

You indicated that the Commission Pre-Merger staff has taken the position that only one filing fee must be paid in this kind of transaction, focusing on the fact that the acquiring entity, in substance, is really acquiring beneficial ownership of the same assets although those assets are technically held (50%-50%) by two separate acquired entities.

Mr. Thomas Hancock, Compliance Officer
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We have communicated to our client our discussions with you as outlined above. If the foregoing account of our discussion is materially incorrect, please call me at your earliest convenience.

Thank you very much for your prompt assistance.

Sincerely yours,


10/15/90

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Told  that the advice I had given her was wrong. We charge one fee ~~fee~~ when technically there are two acquisitions of what is being acquired as the same thing. E.g. we are acquiring F's assets directly. Nothing in the rules permits looking through the form of a transaction to get to the substance. Therefore, what is being acquired here is the sole equity of two different issuers — not the same thing.