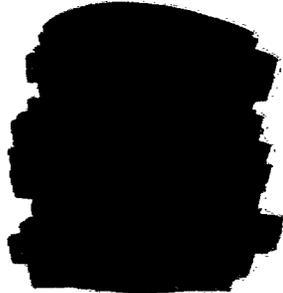


For comment from Bill

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April 14, 1992

VIA MESSENGER

Mr. William J. Schechter
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

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APR 20 8 22 AM '92
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Dear Mr. Schechter:

Our client, an individual, has entered into a letter of intent to sell two companies that he controls in a transaction that is described in detail below. We believe that a Hart-Scott-Rodino Premerger filing should be required and would appreciate your consideration of our conclusion.

Description of Transaction

A. The Parties Involved

The buyer ("A") is a newly formed United States subsidiary of a foreign corporation. The foreign corporation is the ultimate parent entity ("UPE") of A. "A" currently has no assets and will have no assets at the time of closing aside from the money it will pay out in connection with the transaction. The UPE has annual net sales and total assets in excess of \$100 million.

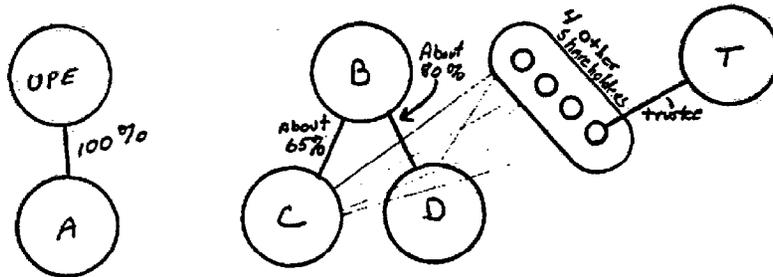
Our client, an individual ("B"), owns a majority of the voting securities of two companies, ("C") and ("D"). There are four other shareholders holding the remaining shares of C and D. C has annual net sales in excess of \$100 million.

An escrow agent, a bank ("E"), will be used to hold some of the shares involved in this transaction, however, an individual ("T"), will be granted the voting rights for such

shares. T is now a trustee for a trust that currently holds about 8 percent of the shares of C and D. When T becomes the proxy agent he will continue in his capacity as trustee for the trust. T has no connection or relationship with UPE, A or any of A's affiliates. T and the entities T controls do not have annual net sales or total assets in excess of \$10 million.

"F" is a former shareholder of C and D and is the person who developed and organized this transaction. T is a former employee of F, and the grantor and beneficiary of the trust in which T is the trustee is F's sister.

The following chart shows the participants prior to the transaction:



B. The Transaction

UPE and A will pay a total of [REDACTED] to B and the other shareholders of C and D, and at the same time, A will place 60 percent of its shares (issued in the names of the former shareholders of C and D) in escrow to be held by the escrow agent, E and voted by the proxy agent, T. T will have the voting rights of the shares of A while they remain in escrow. T will exercise completely independent judgment in the exercise of the voting rights of the A shares held in escrow.

In return, A will receive and hold 100 percent of the shares of C and D. UPE will receive the right (for two years) to purchase the shares of A held in escrow for a payment of [REDACTED] (or such lesser amount if any of the shares have been surrendered or applied in payment for any damages to which A is entitled under the Agreement) plus interest. B and the other former shareholders of C and D will be entitled to these funds two years after closing. These steps will occur simultaneously.

UPE will pay to Sellers [REDACTED] of the [REDACTED] purchase price for UPE's right to purchase the escrowed shares for \$5 million, because the escrowed shares represent 60% of the total voting shares of A.

A few other payments will be made in connection with the transaction. The letter of intent provides that A will agree that B will provide consulting services to C and D for a two-year period following the closing. The annual fee for these consulting services, which is to be paid by C and D, is expected to be about [REDACTED] per year. A will also pay F [REDACTED] for F's costs, fees and expenses, associated with developing and organizing this transaction and will issue F approximately 4% of A's shares, to be held in escrow on the same terms as the shares issued to B and the other sellers.

If UPE does not exercise its right to purchase the shares of A from the escrow within the two year period, the shares and the associated voting rights go to B and the other former shareholders of C and D. B and the other former shareholders of C and D then have the right (exercisable within thirty days after expiration of the two year period) to sell all of A's shares back to A for [REDACTED] (the "First Put") (reduced pro rata for any such Shares which have been previously surrendered or applied in payment for any damages to which A is entitled under the Agreement). A's obligation to purchase the shares pursuant to the Put will be guaranteed by a financial institution mutually acceptable to A and B.

If B does not exercise the First Put, B and the former shareholders of C and D have the right (the "Second Put") which can be exercised within thirty days after the fifth anniversary of the closing date, to sell all of A's shares back to A for [REDACTED] (reduced pro rata for any of such shares surrendered or applied in payment for damages to which A is entitled under the Agreement) plus interest. The Second Put is not guaranteed by any financial institution.

Despite all of the contingencies described above, it is expected that UPE will elect to exercise its option to purchase its shares within the first two years.

The purpose of the escrow of A's shares is two-fold: it creates a fund to satisfy the claims of A against B and the other sellers for damages, and it allows UPE to defer the point at which it must pay the final [REDACTED] in cash for the remaining indirect interest in C and D. If UPE exercises its option to purchase its shares from escrow within the two year period, however, the [REDACTED] in proceeds will remain in the escrow to be available for the payment of any damages to which A is entitled under the Agreement.

The result of this arrangement is that the UPE will hold only 40 percent of the voting securities of A after the closing of the agreement and will not have control of C and D. T, as proxy agent, will hold 60 percent of the voting securities of A and will control C and D. T will vote his 60 percent share of A independent of both UPE and

802.20(b): UPE is acquiring a 40 percent interest in C and D (less than control) for less than \$15 million.

* * *

Given the facts as outlined above, we would appreciate your advice on whether a HSR filing is required. We recognize that if the transaction is set out in a step fashion there are scenarios in which a HSR filing would be required. Our argument for non-filing hinges on the fact that all of the steps in the transaction occur simultaneously and that UPE will not have beneficial ownership of a majority of the voting shares of C and D until UPE exercises its option for the remaining 60% of its shares. We recognize that it is likely that UPE will have to make a HSR filing before UPE exercises its option to purchase 60 percent of its shares.

Please call me when you have had an opportunity to review the facts and consider the HSR issues. My phone number is [REDACTED]. Thank you for your assistance in this matter.

Very truly yours,

[REDACTED]