

Acquisitions that are theoretically reportable
into instant letter in which 3rd person (Corp C)
will file for [REDACTED] acquisition
need not be filed [REDACTED] for by A + B notes

801.1(c)

[REDACTED]

[REDACTED]

[REDACTED]

October 28, 1992

[REDACTED]

[REDACTED]

VIA FACSIMILE

Victor Cohen, Esq.
Premerger Office
Federal Trade Commission
Washington, D.C. 20580

OCT 28 4 36 PM '92
FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OF ACQ.

Dear Mr. Cohen:

Enclosed is a summary description of the
transaction that [REDACTED] discussed with you today. As
you will note, the basic transaction is clearly reportable.
It is the various maneuvers required for the bankruptcy
reorganization among other reasons that are at issue.

We will be giving you a call around 4 PM tomorrow.
Thanks very much for your help.

Very truly yours,

[REDACTED]

Enclosure

applicability of "Continuum Theory" since
acquisitions are part of same transaction; they will
occur simultaneously; they must occur due to
contract + bankruptcy court approval + Corp C
(3rd person) in L.O. re the acquisition.

The following is a brief description of the transaction concerning which we are seeking advice from the Premerger Office as to reporting requirements.

By this transaction, a partnership named AB Partners, which, through other entities, is 50% owned by Corp. A and 50% owned by Corp. B, will divest (for nominal consideration) its 100% voting share-interest in X Corp. and related companies ("X") which is to be reorganized in bankruptcy. (The current ownership structure is shown on the attached chart.) (Corp. A and Corp. B's acquisition of X was the subject of H-S-R filings several years ago.) The acquirer of Corp. A's and Corp. B's interests in X is Corp. C. This transaction is subject to H-S-R reporting requirements, although, due to X's financial condition, the purchase price will be less than \$15 million.

Because of the complex debt reorganization which the bankruptcy involves, a series of steps must be accomplished (all on the same "effective date") to bring about the actual transfer of X to Corp. C. In a first step debtholders will exchange currently outstanding debentures for new debt instruments with reduced principal amounts. The second step (and the first to which this inquiry is directed) will be the collapsing of AB Partners itself, with the reorganized X Corp. acquiring its 100% "parent" AB Partners from Corp. A and Corp. B. In this step Corp. A's and Corp. B's 50% each-interest in AB Partners will be

we do it same time

2/20/92

[REDACTED]

transferred to X Corp. in return for 100% of the voting securities (again split 50-50% between Corp. A and Corp. B) of X Corp. A secondary result of this step will also be to collapse the downstream entity X₁ Partnership into X Corp. Although in this step Corp. A and Corp. B retain their current 50%-50% interest in X, there could theoretically be two reportable transactions involved: the "purchase" by X Corp. of its "parent" AB Partners and the acquisition by Corp. A and Corp. B of 50% each of the stock of X Corp., now owned by AB Partners.

*Corp X 100%
to C-3
report
knows,
theoretically
reportable
purchase of
50% from
AB
C-3*

In an additional step before the reportable transaction (the transfer of X to Corp. C) takes place on the effective date, certain real property and operating equipment must be transferred in a transaction involving Corp. A and X. This is because at the time Corp. A (along with Corp. B) acquired X, Corp. A began running X in conjunction with its own division in the same line of business. The assets in question were leased for operating purposes from one to the other, and title never formally passed. Now that X is being sold, the formality of title transfers must take place, although this involves no substantial change in the assets now actually held by X. In other words, real estate and equipment currently part of X will remain where they are, but legal title will be rearranged to conform to the current business operations.

It should be noted that acquisitions of such real estate and equipment are all part of the normal business of A and X, as

Have to report by B purchase of A's assets

*also: regarding assets from A mess
[scribbles]
that we're in trouble!*

Handwritten notes:
Have the
yes

would be the case with any company in the same business.
Nevertheless, as in the second step described above, these
asset transfers could theoretically be considered two
additional reportable transactions between Corp. A and Corp.

B.

Although C's acquisition of X involves additional complex reorganization steps by which the holders of X debt will acquire, in return for that debt, equity in both X Corp. and Corp. C, no reporting requirements are anticipated thereby since no single debt holder will acquire a significant percentage of voting securities.

As noted above, the Corp. C acquisition of the X Corp. voting securities from Corp. A and Corp. B is clearly reportable and Hart-Scott-Rodino filings by the entities involved will be made in due course.

It is only the technical reorganization steps involving the collapsing of AB Partners and the passage of title on the assets -- described above -- which is the subject of this inquiry to the Premerger Office.