

801.10; 802.20; 802.1

June 4, 1998

BY TELECOPY

Richard B. Smith, Esquire
Federal Trade Commission
Premerger Notification Office
Room 303
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Our May 13, 1998 Telephone Conversation

Dear Dick:

I am writing to you now to confirm my understanding of our telephone conversation on May 13, 1998 concerning the appropriate Hart-Scott-Rodino ("HSR") analysis of a specific transaction. Specifically, we discussed the following transaction.

[REDACTED] each hold 50% of the interests in [REDACTED] LLC (hereafter "LLC") and A and B are each entitled to one-half of the profits or assets of LLC. LLC is operated like a partnership in that officers or employees of A or B operate it on a daily basis and, to the extent LLC has a governing board, only officers or employees of A or B sit on that board. LLC generates accounts receivable and sells a 50% interest in its accounts receivable to A and a 50% interest in the same accounts receivable to B.

A is planning to purchase B's 50% interest in LLC for \$13 million. The purchase price primarily reflects B's investment in LLC and the losses B has incurred through LLC. I understand from our telephone conversation that this

[REDACTED] is an indirect, wholly-owned subsidiary of [REDACTED] and is not affiliated with [REDACTED]

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transaction would be analyzed as A's acquisition of 100% of the assets of LLC. I also understand that it is conceivable that the fair market value of 100% of the assets of LLC could be below \$15 million despite the fact that A is paying \$11 million for a 50% interest in LLC. The board of directors of A's ultimate parent entity (or its designee) would have to make a good faith determination of the fair market value of 100% of the assets of LLC without regard to the liabilities attached to the assets of LLC. If the board of A's ultimate parent entity or its designee determines in good faith that the fair market value of 100% of the assets of LLC is less than \$15 million, A's acquisition of B's 50% interest in LLC would not be reportable. See 16 C.F.R. § 802.20.

In addition to purchasing B's 50% interest in LLC, however, A is also planning to purchase for \$70 million B's 50% interest in the accounts receivable that LLC had sold to B. I understand from our telephone conversation that so long as these accounts receivable do not constitute substantially all of B's accounts receivable, the acquisition would be exempt. See 16 C.F.R. § 802.1. I also understand that it does not matter if the accounts receivable A would acquire from B accounted for 100% of B's automobile (for example) accounts receivable so long as the accounts receivable did not account for substantially all of B's accounts receivable in general.

Please call me if you disagree with my understanding of our conversation and the appropriate HSR analysis of the transaction described above. Again, and as always, thanks for your help.

Sincerely,

[REDACTED]

6/5/98 Left phone mail message for writer that this transaction does not raise an HSR reportable. There is no acquisition price for the total assets of the LLC (since only the 50% LLC partnership interest is being acquired) and, thus, the board of the acquiring person (or its designee) must make a good faith fair market value determination, excluding any liabilities attached to such assets.
RBS