

801.13

[REDACTED]
Attorneys at Law

[REDACTED]
August 12, 2004

VIA E-MAIL & REGULAR MAIL

Michael B. Verne, Esq.
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Hart-Scott-Rodino

Dear Mr. Verne:

This letter is to confirm the substance of our telephone conversation yesterday regarding the application of the Hart-Scott-Rodino Act and Rules to the following fact pattern:

- An acquiring person has entered into four distinct contracts to acquire assets from four entities controlled by the same acquired person.
 - Three of the contracts relate to the acquisition of distinct businesses from three separate corporate entities. These businesses are franchised operations involving different franchisors, though the generic product is the same. In all, there are seven "brands" and five franchisors. In addition, there is a third-party minority shareholder in two of these corporate entities and two minority shareholders in the third. We did not note this in our conversation, but these businesses have been "owned and operated" by these three corporate entities for some time, and in any event long before this transaction arose.
 - The fourth contract relates to the conveyance by the fourth entity of related real property associated with the businesses being conveyed pursuant to the other three contracts.
 - The four contracts are subject to a different set of conditions. Each franchisor must consent to the conveyance of the business associated with its brand or brands. In addition, the sale of each business is subject to its own separate approval by the same state licensing authority. However, the consummation of each of these agreements is conditioned on the consummation of the others, and so the transactions are expected to close at the same time.
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- The relevant contracts were structured and signed months ago, without regard to whether HSR would apply. Given the various third party interests involved (e.g., the individual franchisors), there are legitimate business reasons to convey the assets associated with these businesses pursuant to separate agreements.

You indicated that these purchases should be treated as multiple asset acquisitions (as opposed to a single, unitary acquisition) that would be aggregated for purposes of the Act's size-of-transaction threshold only if such aggregation were required by § 801.13(b)(ii) of the HSR Rules. You indicated that this multi-acquisition conclusion would not be changed in these circumstances by the fact that the agreements are cross-conditioned on each other. Since all the agreements to purchase assets were executed before the consummation of any of these acquisitions (i.e., there is no asset purchase agreement executed within 180 days after the consummation of an asset acquisition from the same acquired person), § 801.13(b)(ii) would not require aggregation.

Please advise the undersigned promptly if this letter does not comport with your understanding of our conversation. Thank you for your attention to this matter.

Very truly yours,
[REDACTED]
[REDACTED]

cc: J [REDACTED]