



August 17, 1983

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Section 20 (b)(3) of the Clayton Act
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Federal Trade Commission Act.

Dana Abrahamsen, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 22580

Re: August 16, 1983 Telephone Conversation

Dear Dana:

In a conversation today, I requested an informal opinion with respect to the following factual situation:

Companies A, B and C (each a \$100 million person) plan to form a Joint Venture (JV). A, B and C will each contribute \$14 million in cash and each will extend or guarantee a loan of \$10 million to JV. Each will receive 33-1/3% of JV's voting securities.

Question

Is the above transaction, i.e., the purchases of JV's voting securities by A, B and C, exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 pursuant to the minimum dollar value exemption (Rule 802.20)?

Discussion

You have advised me that, in calculating the value of the voting securities acquired by A, B and C to determine whether the size-of-transaction exceeds the \$15 million threshold, one should include not only their respective \$14 million contributions, but also the value of all additional consideration flowing from A, B or C to JV.

[REDACTED]

Dana Abrahamsen, Esq.

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You noted that one should not include the principal of the loan as consideration under 801.10(c)(2) in valuing the securities and added that if the loans, in fact, were arms-length transactions, made at current interest rates, with the expectation of being repaid, one should not ascribe any additional value to the securities by reason of the loans. However, if the loans were offered at favorable rates, or if no other party would be willing to extend the loan or guaranty, one must make a good faith assessment of the true value of the loans or guaranties to JV and add this figure to the cash contribution to calculate the full value of the voting securities being acquired.

I believe this accurately describes our conversation and the informal opinions which you rendered today. If it does not, please contact me as soon as possible.

Sincerely yours,

[REDACTED]

[REDACTED]