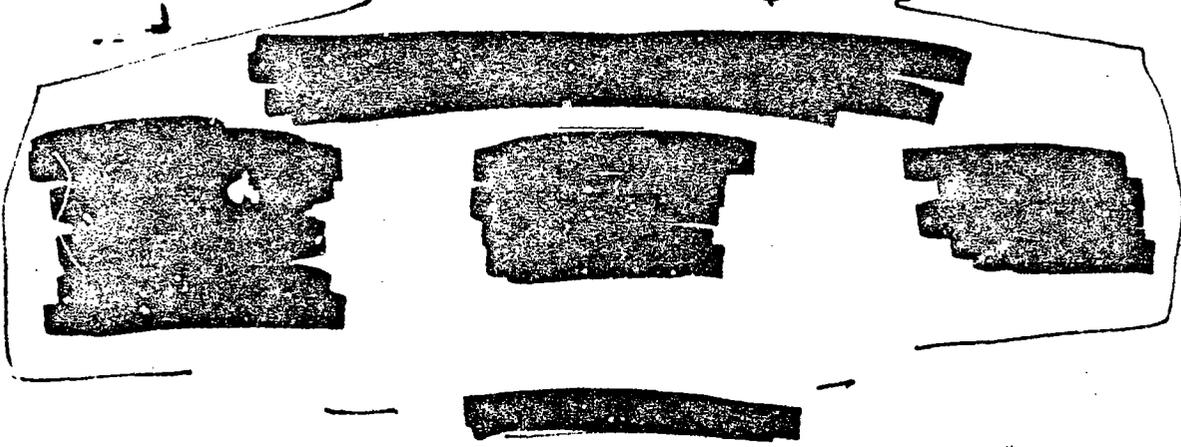


20



VIA TELECOPIER  
AND MAIL

This material may be subject to  
the confidentiality provision of  
Section 7A (b) of the Clayton Act  
which restricts disclosure of this

Dana Abrahamsen, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

RECEIVED  
FEB 10 1984  
FEDERAL TRADE COMMISSION

Re: February 6, 1984 Telephone  
Conversation

Dear Dana:

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

Partnership A, a partnership consisting of indi-  
vidual officers of Target ("Target"), will form Financing  
Partnership ("FP"), a partnership whose general partner is  
Partnership A, and whose limited partners will consist of  
various pension funds. FP will form and wholly-own Newco,  
a corporation.

Pursuant to a merger agreement, either FP or Newco  
will acquire all of Target's voting securities from Target's  
shareholders for a purchase price of approximately \$100 mil-  
lion. Of this total, \$45 million will be provided by Bank  
loans, \$45 million by the pension fund limited partners of  
FP, \$9.75 million from Target's working capital, and \$250,000  
from Partnership A. Neither FP nor Newco have a regularly  
prepared balance sheet, and neither FP nor Newco will have  
\$10 million in assets apart from assets borrowed or contributed  
to pay for Target's voting securities. The acquisition of  
Target's voting securities will be effected pursuant to a  
merger of Newco into Target, with Target as the surviving  
corporation. Target will then be liquidated and its assets  
held by Financing Partnership.

[REDACTED]  
Dana Abrahamsen, Esq.

-2- [REDACTED]

Issue

Is a Hart-Scott Premerger Notification and Report Form required to be filed in connection with the above transaction?

Discussion

You have advised that a filing is not required for the above-described transaction. The formation of a partnership, i.e. FP, is exempt from the Act; the formation of Newco by FP is exempt because FP controls Newco (the intra-person exemption, §802.30); and the acquisition of Target by FP or Newco is exempt because neither FP nor Newco meets the size of person test.

The size of person test is not met because, for purposes of the size of person test, the total assets of an acquiring person without a regularly prepared balance sheet do not include assets that are collected or borrowed solely for use as the consideration for an acquisition. Thus, neither FP nor Newco has total assets of \$10 million, and neither satisfies the jurisdictional size of person test.

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

Sincerely,  
[REDACTED]  
[REDACTED]  
[REDACTED]