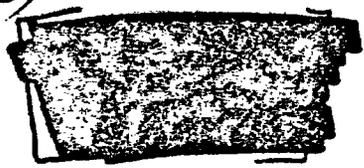


WIC

15



Aug 20 12 28 PM '84
FEDERAL TRADE COMMISSION
OFFICE

August 15, 1984

Mr. Wayne Kaplan
Federal Trade Commission
Evaluation Office, Bureau of Competition
17 Pennsylvania Avenue, N.W.
Washington, D.C. 20850

Dear Mr. Kaplan:

This is to confirm your telephone conversation of July 20, 1984 with [redacted] of this office regarding the Federal Trade Commission's position with respect to partnerships and the "size of persons" test under the Hart-Scott-Kodino Antitrust Improvements Act of 1976 (the "Act").

FACTS

As explained, we represent a [redacted] general partnership (hereinafter referred to as the "Buyer") which has executed a purchase agreement with a [redacted] joint venture (hereinafter referred to as the "Seller") for the purchase of a hotel [redacted]. The purchase price is in excess of \$15 million.

We assume that the Seller has assets in excess of \$100 million and is thus a "person" within the meaning of Rule 801.1(a)(1) under the Act with total assets or annual net sales in excess of \$100 million. The Buyer is a general partnership newly formed for the acquisition and has assets of less than \$10 million. The Buyer's general partnership consists of two individual general partners, one of whom has personal assets in excess of \$10 million.


Mr. Wayne Kaplan
August 15, 1984
Page Two

QUESTIONS PRESENTED

Under the facts as stated, we asked (1) whether the Federal Trade Commission is continuing to take the position that a partnership entity is its own "ultimate parent entity" for purposes of determining whether the "size of person" threshold under the Act is satisfied, i.e., whether the assets of the individual general partners are not attributed to the general partnership for purposes of considering whether the partnership has assets of \$10 million or more under the Act and (2) whether moneys borrowed by the Buyer or raised as equity which are in either event used in the purchase of the hotel are considered part of the assets of the Buyer for purposes of considering whether the Buyer has assets of \$10 million or more under the Act.

DISCUSSION

Your response to our first question was that the Buyer is its own "ultimate parent entity" for purposes of determining the relevant "person" under the Act, i.e., for purposes of determining whether the "size of person" threshold is satisfied, reference need only be made to the total assets or annual net sales of the Buyer and not to those of its partners.

Your response to our second question was that (a) funds borrowed or raised as equity and (b) used to acquire the hotel are not considered by the Federal Trade Commission as part of the assets of the Buyer for purposes of determining whether the "size of person" threshold is satisfied under the Act.

CONCLUSION

We also understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the Federal



Mr. Wayne Kaplan
August 15, 1984
Page Three

Trade Commission's advice on such matters. In accordance with your instructions, if we do not hear from you to the contrary within two weeks of the date of this letter, we shall be entitled to rely on your oral advice as confirmed by this letter as the Federal Trade Commission's position on the questions presented.

Very truly yours,

