

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

September 24, 1984

BY HAND

Dana Abrahamsen, Esq.
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Abrahamsen:

This letter confirms the substance of the informal advice you have rendered during our telephone conversations over the last several days. During those conversations, I posed the following factual hypothetical:

Hypothetical:

Assume that A, B and C, each a person with assets valued in excess of \$100 million, currently are partners in "P", a partnership with assets valued in excess of \$100 million. A, B and C now propose to form a new corporation ("Newco") and transfer P's operations to it. Accordingly, in connection with the formation of Newco, A, B and C each have agreed to contribute their respective interests in P to the new corporation in exchange for Newco voting securities. Through this exchange, A, B and C each shall acquire an equal number of Newco shares valued in excess of \$15 million. The parties also have agreed to contribute further capital (in excess of \$10

Dana Abrahamsen, Esq.

-2-

September 24, 1984

million) to Newco, if Newco's net worth falls below a stated sum or if Newco is in default on certain obligations.

Issues:

1. Must A, B and C file Hart-Scott-Rodino forms prior to their respective acquisitions of Newco's voting securities?

2. Must Newco file under the Hart-Scott-Rodino Act prior to acquiring the partnership interests from A, B, and C?

Informal Advice:

1. The acquisition of Newco's voting securities by A, B and C is reportable. First, the size of person test will be satisfied. A, B and C each are \$100 million persons. Newco will be a \$10 million person. Under the special size of person test set forth in Rule 801.40, the value of the partnership interests which A, B and C have agreed to transfer to Newco must be considered as Newco's assets. The value of these interests is equal to the value of P's assets. The additional funds A, B and C have agreed to contribute to Newco, albeit conditionally, also must be considered as Newco's assets under Rule 801.40(c). Hence, Newco will have assets valued in excess of \$10 million and the size of person test will be satisfied. The size of transaction test also will be satisfied since A, B and C will each acquire Newco voting securities valued in excess of \$15 million. Accordingly, A, B and C must file under the Hart-Scott-Rodino Act prior to acquiring their Newco shares. Newco, however, is exempt from the reporting requirements of the Act pursuant to the Rule 802.41.

2. Newco will be "acquiring" the partnership interests of A, B and C. However, at the time Newco acquires these interests, it will not satisfy the size of person test and therefore, no filings under the Hart-Scott-Rodino Act are required. For purposes of this analysis, neither the agreement

* A partnership interest generally is considered to be neither an asset nor a voting security. However, if one person acquires the partnership interests from all the partners in a partnership, that acquisition is treated as an acquisition of the assets of that partnership. Accordingly, the agreement among A, B and C to transfer their respective partnership interests to Newco is considered to be an agreement to transfer the assets of P to Newco.

[REDACTED]

Dana Abrahamsen, Esq.

-3-

September 24, 1984

among A, B and C to contribute their partnership interests to Newco nor their agreement to infuse further capital in Newco upon the occurrence of certain events is considered in determining Newco's assets. Such agreements only are considered in determining a new corporation's assets under Rule 801.40 when the new corporation's voting securities are being acquired in connection with its formation. When the agreements among A, B and C are ignored in this non - 801.40 context, Newco will have assets valued at less than \$10 million and hence, Newco will not satisfy the size of person test. Accordingly, no filing is required with respect to Newco's acquisition of the partnership interests from A, B and C.

I believe this accurately reflects the substance of our telephone conversations. If it does not, please contact me as soon as possible.

Sincerely,

[REDACTED]

[REDACTED]