

(15)

[REDACTED]

9, 1985

FEDERAL EXPRESS

John Sipple
Bureau of Competition
1200 Pennsylvania Avenue
Room 301, Federal Trade Commission
Washington, D.C. 20580

This material may be subject to
the provisions of the provision of
Section 7A (a) of the Clayton Act
which restricts release under the
Freedom of Information Act

Dear Mr. Sipple:

Pursuant to the telephone conversation between [REDACTED] myself,
and other members of our office on May 7, 1985, and our conversation
on May 9, 1985, I am writing to request an informal interpretation,
based upon the following fact situation, of the obligations of [REDACTED]
[REDACTED], to file a notification under the
Anti-Scott-Rodino Act of 1976 (Act). For purposes of this request we
would like you to assume that the transaction described below
involving [REDACTED] satisfies the so-called "Commerce Test,"
"Size of the Parties Test," and "Size of Transaction Test" set forth
in the Act and the accompanying regulations.

[REDACTED] (Buyer), proposes to purchase
instantly all the operating assets of [REDACTED]

[REDACTED]

all of which are

are directly or indirectly controlled by

[REDACTED]

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[REDACTED] No individual
[REDACTED] presently owns 50% or more of the voting shares of [REDACTED]
[REDACTED] has been determined under the present ownership structure
[REDACTED] is the ultimate parent entity, as
[REDACTED] in the Act, of these acquired persons *entities*

Simultaneous or nearly contemporaneous (within 20 days) with the
acquisition of the Sellers' assets by the Buyer, several transactions
involving stock of [REDACTED] and corporate Sellers and partnership
interests of partnership Sellers will take place. ★

Share transactions will be initiated by shareholders of [REDACTED]
and corporate Sellers and partners of partnership Sellers
pursuing plans of complete liquidation and dissolution of the
active entities. Certain shareholders of [REDACTED] which also
own equity interest in [REDACTED], will then make capital
contributions of their stock of [REDACTED] and corporate Sellers and
partnership interest in partnership Sellers to [REDACTED]
[REDACTED] will in turn contribute the stock and
partnership interests to a subsidiary created for this transaction.
The new subsidiary will thereafter purchase additional stock of [REDACTED]
and certain corporate Sellers from other shareholders subject to
the same or nearly the same terms as those other shareholders would
have received after the sale of the assets of Sellers to Buyer and
liquidation and dissolution of Sellers.

As a result of the capital contribution of shares and partnership
interest by [REDACTED] to its subsidiary and the subsequent
purchase of shares by the new subsidiary, the new subsidiary of
[REDACTED] will hold directly or indirectly more than 50% of
stock of [REDACTED] and other corporate Sellers but only 40% of
partnership interests of the partnership Sellers at the closing of
the sale of assets of Sellers to Buyer. At closing, Sellers will
receive cash and a note which is not secured by assets of Sellers but
which is subject to the terms of one or more standby letters of credit
from Buyer defaults under the note. After closing, [REDACTED] and
Sellers will be liquidated and dissolved and their shareholders and
partners, including the subsidiary of [REDACTED] will hold
the cash and their proportionate interest in the note and any rights
set forth in the standby letter(s) of credit.

Section 15(d)(2)(B) of the Act provides that the Federal Trade
Commission may exempt from the requirements of the Act, classes of
acquisitions, transfers, or transactions which are not likely
to violate the antitrust laws. 15 U.S.C. § 18a(d)(2)(B). Pursuant to
its authority to promulgate rules, the Federal Trade Commission has

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mulgated Regulation 803.30 to provide informal and formal interpretations of obligations under the Act and the rules for any type to an acquisition. 16 C.F.R. § 803.30. While there appears to be no specific exemption set forth in the Act or the regulations which addresses our unique fact situation, paragraph (d)(2)(B) appears to provide template exemptions for companies like [REDACTED] in the foregoing fact situation.

In addition, it is our understanding that the purpose of the Act is to enable the government to analyze a proposed transaction before it is consummated in light of the various antitrust laws, including § 7 of the Clayton Act. Based upon the foregoing facts, it is our belief that no antitrust issues will arise from the acquisition by a subsidiary of [REDACTED] of stock of [REDACTED] and other separate Sellers nearly contemporaneous with the acquisition of the assets of Sellers by Buyer. The subsidiary of [REDACTED] will receive operating assets of Sellers. After closing of the acquisition by Buyer, the Sellers, and in turn [REDACTED] after liquidation of Sellers, will hold only cash and notes from Buyer. On the facts outlined above, we believe notification filings by [REDACTED] will provide the Antitrust Division with the requisite information to review this acquisition under the Act.

The proposed date of closing of the foregoing transaction is July 15, 1985. To enable us to close on the proposed closing date, we respectfully request an interpretation by May 15, 1985, of [REDACTED] obligation, if any, to file a notification under the Act. Would you conclude the Act does contemplate a filing by [REDACTED]? We respectfully request a determination by May 15, 1985, as to whether [REDACTED] may be exempted from filing a notification under paragraph (d)(2)(B) of the Act or the regulations promulgated under the Act.

In anticipation of a determination that [REDACTED] will not be required to file a notification, we intend to treat the foregoing transaction as an acquisition of assets of Sellers by Buyer. [REDACTED] and Buyer have, on or before the date of this letter, filed a notification as the acquired company and acquiring company, respectively.

We understand that the Federal Trade Commission may have ultimate authority to review this request. We therefore would like you to direct our request to the appropriate parties as soon as possible.

[REDACTED]

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re contact us upon receipt of this letter to determine the next appropriate step for our request.

[REDACTED]

No note was made on this letter at the time it was received. Upon later review it appears that no special treatment can be given to any transaction or transactions merely because of overall lack of antitrust concern. This office does not grant any exemptions from the filing requirements not contained in or implicit in the rules. Note added 3/9/87 W.E.K.