

File

DA



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

July 9, 1985

Jul 9 1 55 PM '85

BY HAND

Federal Trade Commission
Premerger Notification Office
Room 301
Sixth and Pennsylvania Avenues, N.W.
Washington, D.C. 20580

Attention: Dana Abramson, Esq.

Re: [Redacted]
Acquisition of [Redacted]

Dear Mr. Abramson:

We represent the [Redacted] in connection with its contemplated acquisition of all the outstanding shares of the [Redacted]. This acquisition was authorized by the New Jersey legislature. We understand that the acquisition is exempt from premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act because it is a transfer to a State or political subdivision thereof. 15 U.S.C.A. § 18a (c)(4). — *exempt*

[Redacted] is a body politic and corporate constituting an instrumentality of the State of New Jersey. Its enabling statute is the [Redacted] as amended, [Redacted] owns and operates the [Redacted]. [Redacted] is a publicly held corporation, owns and operates the [Redacted] as its principal business.

July 9, 1985

To accomplish the acquisition, the [redacted] will temporarily create a wholly-owned business corporation, [redacted], which will be merged with and into [redacted] with the latter being the surviving corporation and becoming a wholly-owned subsidiary of the [redacted]. Following the merger, the surviving corporation will be immediately dissolved and all its assets and liabilities will become the assets and liabilities of [redacted]. The transaction is scheduled to close in mid-August.

[redacted] is purely a creature of its enabling legislation, which closely defines its purpose and the scope of its activities. [redacted] has no stockholders or equity holders, and all bond proceeds, revenues or other cash received must be applied for specific purposes in accordance with the legislative mandate and related bond resolutions. [redacted] is required by its enabling legislation to distribute excess revenues to the State of New Jersey. Three officers of [redacted]

[redacted] sit on the [redacted] governing Board of Members. The other six Members are appointed by the Governor with the advice and consent of the Senate. Unless directly approved by the Governor, the minutes of meetings of the Board of Members must lie before the Governor, subject to his disapproval, for 15 days before any action taken becomes effective. [redacted] racing activities are also tightly regulated by the New Jersey Racing Commission. The New Jersey Supreme Court has held that "the Authority is established as an instrumentality of the State exercising public and essential governmental functions."

In its 1984 amendments to the [redacted] enabling statute, the legislature authorized the [redacted] to . . . acquire, own, operate . . . projects consisting of [redacted] within the State of New Jersey but outside the [redacted]

The minutes including the [redacted] Board resolution authorizing the acquisition were approved by [redacted] in [redacted] right to conduct [redacted] at [redacted] (after the acquisition) is subject to obtaining from [redacted]. In short, [redacted] acquisition of [redacted] which is the product of legislative and executive action of the State of New Jersey, should be deemed a transfer to a State or political subdivision thereof within the meaning of the Hart-Scott-Rodino exemption.

In addition, this acquisition falls within the policy, if not the exact wording, of the statutory exemption from pre-merger

July 9, 1985

notification for "transactions specifically exempted from the antitrust laws by Federal statute." 15 U.S.C. § 18a(c)(5). This acquisition is squarely within the "state action" exemption from the antitrust laws. Although the state action exemption was developed by case law, not statute, the acquisition is no less exempt. Because the acquisition is exempt, premerger notification would not advance the statutory purpose of allowing the FTC opportunity to block a potentially objectionable merger. Moreover, it would make an unnecessary imposition on the revenues of an instrumentality of the State of New Jersey.

If you have any further questions, please feel free to call me at [REDACTED]. I know that your office is accustomed to working with the time pressures generated by the need to close financial transactions of great magnitude. In this case, the costs of any delay would ultimately fall on the State of New Jersey.

Very truly yours,

[REDACTED]

reviewed 3/10/87 -
Concur [initials]