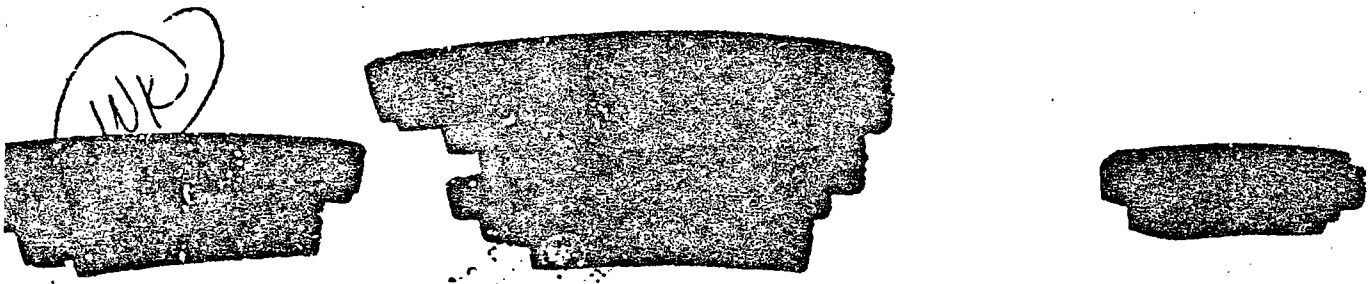


October 17, 1985

Wayne Kaplan, Esq.
Federal Trade Commission
Office of Premerger Notification
6th Street & Pennsylvania Avenue, N.W., Room 301
Washington, D.C. 20580

Dear Mr. Kaplan:

This letter is to follow up on our telephone conversation in which you and I discussed a transaction which we agreed would not necessitate the filing of a Premerger Notification and Report Form with your office. If, upon reconsideration of the following written summary of the facts of the proposed transaction, you no longer adhere to our position that there is no reporting obligation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"), please contact me before 3:00 p.m. on October 22, 1985 at 429-7420. If, prior to that time, I have not heard from you, I will conclude that you continue to agree that no Premerger Notification and Report Form need be filed by any party in connection with the proposed transaction.

Summary of the Facts

"A", a corporation with assets in excess of $100 million, has entered into a purchase and sale agreement with "B", a corporation, pursuant to which "A" agreed to sell certain of its assets, consisting of real estate and the improvements thereon, for approximately $400 million. The purchase and sale agreement is, by its terms, made assignable by "B", and "B" has assigned or will assign all of its right, title and interest in, to, and under the agreement to "C", a partnership formed solely for the purpose of enabling it to effect the acquisition. "C" will have had no previous existence, assets or operating history. At the closings contemplated by the agreement, other than as described below, the assets of "C" will consist entirely of funds contributed to or borrowed by "C" to enable it to accomplish the acquisition and the transactions related thereto.

For reasons related to state licensing requirements, certain of the assets proposed to be sold by "A" will not be retained by "C", but instead will be acquired by one or more corporations. It is anticipated that all but one of the corporations will be "controlled" by "C" or by one or more of the partnerships described in the following paragraph. The acquisition price of the assets to be acquired by the corporations will be significantly less than $15,000,000.

For reasons related to state licensing requirements, financing and preservation of the flexibility of a syndication of equity interests in the acquired assets, "C" may transfer certain of the assets acquired from "A" to one or more partnerships formed solely for the purpose of effecting those acquisitions. These partnerships will also have had no previous existence, assets or operating history, and at the closings on the acquisitions their assets will consist entirely of funds contributed to or borrowed by these partnerships to enable them to accomplish the acquisitions.

The purchase and sale agreement contemplates two closings with respect to the acquisition by "C" of the assets from "A". This closing schedule is primarily for the convenience of the parties inasmuch as the number of properties to be transferred and the number and variety of approvals which must be obtained make such seriatim closings more efficient. It cannot be determined precisely how much of the assets to be acquired will be transferred at the first closing and how much at the second, but it is anticipated that both closings will occur before year-end and may be quite proximate in time.

Analysis

It is our position that no Premerger Notification and Report Form must be filed in connection with the above-described transaction because of the following interpretive positions of your office:

(1) Subject to the provisions of 16 C.F.R. §801.90, "C" is deemed not to be "controlled" by any other person and to be its own "ultimate parent entity" for purposes of identifying the "acquiring person" and of applying the "size-of-person" criteria of the Act to such acquiring person;

(2) Subject again to 16 C.F.R. §801.90, the amount of assets contributed to or obtained by "C" solely for the purpose of enabling it to effect the acquisitions described above are "counted" only for purposes of the "size-of-transaction" criteria and not for the purposes of the "size-of-person" criteria of the Act; and

(3) The two closings called for by the purchase and sale agreement are treated as a single transaction. Thus, the fact that "C" may have certain assets at the time of the second closing which were not contributed to or obtained by it solely to affect the acquisition of assets at the second closing but were acquired at the first closing will neither cause the second closing to be viewed separately nor cause "C" to be deemed to have met the "size-of-person" test under the Act.

I understand that it is your position that if "C" has prepared quarterly interim financial statements during the period between the first and second closings, the interpretation set forth in (3) above disappears and each of the closings is viewed separately.

Please call me if you have any questions about the factual description or analysis above. If I have not heard from you by 3:00 p.m. on October 22nd, I will conclude that

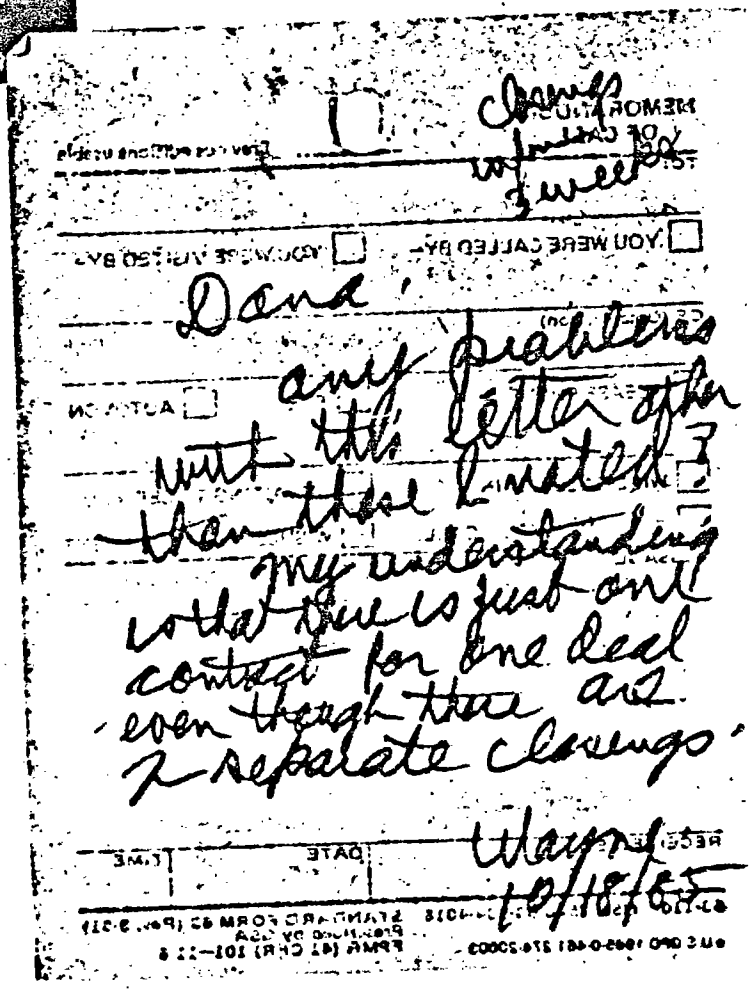
I left word on 10/22/85 at 12:00 that a filing may be required. We are still looking at it.

you concur with us that no party to the above transaction is obligated to file a Premerger Notification and Report Form with your office.

Very truly yours,

[redacted]

[redacted]



Dana,

any problems with this letter other than those I noted? My understanding is that this is just one contract for one deal even though there are 2 separate closings.

Thanks!
10/18/05

10/22/85

Answer to [redacted] letter (Copies w/ Ken)

Issue depends on whether the transaction involves one or more than one acquisition. If acquisition is not separable then 2 closings is unimportant and no filing required. Sued it falls w/in the pass through rule. If transaction is separable then a filing is required at least after the first closing since the assets acquired then must be included in the size of person at the time of the second acquisition. Of course we will accept a filing prior to the 1st step covering the second if time is of the essence.

Separability is a tenuous question and the factors are those as discussed in the [redacted] case and the office letter which it is premised upon.

The parties will have to decide at their peril as to whether it is separable or not although we will give our opinion & try to help them. I suggested they get more facts & call us back or write a supplemental letter.

W.E.K.