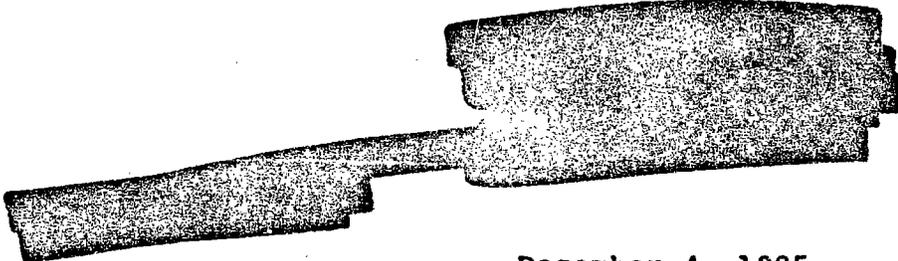


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File



December 4, 1985

BY HAND

Dana Abrahamsen, Esq.
Room 313
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

This document is subject to the provisions of the Antitrust Improvements Act of 1975.

REC'D
DEC 4 6 51 PM '85
FEDERAL TRADE COMMISSION
NOTICE OFFICE

Dear Mr. Abrahamsen:

The purpose of this letter is to describe a proposed acquisition by a newly-formed partnership and to request confirmation from your office that such acquisition will not be subject to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act ("H-S-R Act"). The parties presently intend to close this transaction on or about December 16, 1985.

The acquisition will be made by a partnership which will be formed on or about December 12, 1985. The acquisition is being made by a partnership, as opposed to another form of business organization, for tax and business reasons. The partnership will consist of two partners, one having a 75% interest in the partnership and the other having a 25% interest in the partnership. The "ultimate parent entity" of one partner has annual net sales and total assets exceeding \$100 million and the "ultimate parent entity" of the other partner has total assets exceeding \$10 million. Prior to the acquisition, the partnership will not have, nor will be required under generally accepted accounting principles to prepare, a regularly prepared balance sheet or income statement. The pro forma balance sheet to be prepared for the partnership is expected to show total assets of no more than \$5 million, exclusive of cash or cash equivalent assets to be used to complete the acquisition. The partnership intends to acquire assets, for a total consideration of approximately \$18 million, from a person having annual net sales and total assets exceeding \$100 million.

[REDACTED]

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We understand that under presently effective interpretations of the Federal Trade Commission staff, the transaction described above will not be subject to the H-S-R Act. This is because, under those staff interpretations:

(1) the partnership to be formed will be deemed the "acquiring person" to this transaction and (2) the partnership will not be deemed to have satisfied the "size of person" test because (a) it will not have a regularly prepared balance sheet or income statement prior to the acquisition and (b) the pro forma balance sheet to be prepared for the partnership will show total assets of less than \$10 million exclusive of cash or cash equivalent assets to be used to finance the acquisition. Accordingly, it is our understanding that neither the newly-formed partnership, either of its partners nor the person whose assets will be acquired will be required to file a Notification and Report Form or observe the waiting period applicable to certain acquisitions under the H-S-R Act.

It also may be of interest to note that this transaction would, we believe, be exempt from the H-S-R Act under the rulemaking proposals of the FTC staff, which were recently subject to public comment. Under those proposed rules, the acquisition will not satisfy the "size of transaction" test because neither of the two partners to the partnership would be deemed to be acquiring assets valued at more than \$15 million (see Proposed § 801.5(c)(2)) and the partnership would not be deemed to satisfy the "size of person" test (see Proposed § 801.11).

We understand that it is the practice of your office to orally advise parties concerning the applicability of the H-S-R Act to proposed transactions. Accordingly, we would appreciate your calling either me or [REDACTED] of this office to confirm our understanding of the application of the H-S-R Act to the transaction described above. Inasmuch as the parties intend to close the transaction on or about December 16, we would very much appreciate your calling us, if at all possible, by the end of this week.

Thank you for your assistance in this matter.

[REDACTED]