

file

[REDACTED]

[REDACTED]

[REDACTED]

December 31, 1985

BY HAND

Dana Abrahamsen, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Abrahamsen:

At your suggestion, I am writing to provide information about the anticipated restructuring of the [REDACTED] and [REDACTED]. As I mentioned to you on the telephone yesterday, the transaction is essentially an intraperson transaction, although it may be reportable under informal FTC interpretations of the premerger notification rules. We are willing to provide whatever information would assist the government in assessing this transaction for antitrust consequences, including a Report and Notification Form if required. It is our view, however, that the very structure of the transaction demonstrates the lack of antitrust significance, and that a full premerger filing would yield only information-gathering burdens to [REDACTED] with no corresponding analytic benefits to the government. The premerger notification rules may, in our view, be interpreted with sufficient flexibility to allow an informal determination that no filing is required for this transaction.

[REDACTED]

[REDACTED] partnership created pursuant to that Act, id. § 3937. By statute, [REDACTED] must be the sole general partner of [REDACTED] has approximately [REDACTED] limited partners, who are also all of the shareholders of [REDACTED]. Each limited partner's interest in [REDACTED] is proportional to that limited partner's holding of common stock in [REDACTED]. No single limited

1/ A list of the stockholders may be found in [REDACTED] and [REDACTED] Report [REDACTED] which we could furnish to you if desirable.

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partner/shareholder has a 5% or greater interest in [REDACTED]. The combined equity interest of the limited partners in [REDACTED] exceeds the equity interest of [REDACTED] (the general partner) in [REDACTED].

The restructuring will consist of two simultaneous steps. The first step is a Merger. In the Merger [REDACTED] will create a wholly owned shell subsidiary corporation [REDACTED]. [REDACTED] in turn, will have its own wholly owned shell subsidiary corporation [REDACTED]. [REDACTED] will merge with [REDACTED] and the surviving corporation will be [REDACTED] now a wholly owned subsidiary of [REDACTED] stock in [REDACTED] will be canceled.

As consideration for the Merger, each of the approximately 270 present shareholders of [REDACTED] who are also the limited partners of [REDACTED] will elect to take either cash or shares in [REDACTED]. If every present shareholder elects to take shares of [REDACTED] the present shareholders together will own 208,000 shares of [REDACTED]. All limited partnership interests in [REDACTED] will be surrendered as part of the Merger, and [REDACTED] will become the sole limited partner of [REDACTED]. Thus, [REDACTED] a [REDACTED] subsidiary, will be the sole general partner and [REDACTED] itself the sole limited partner in [REDACTED]. This part of the transaction, however, will have introduced no new "owners" to [REDACTED]. Instead, some or all of the same "persons" will hold their interests in [REDACTED] through a different structure.

Simultaneously with the Merger, four new investors would purchase 208,000 shares of [REDACTED] for \$36 million, with investments of \$12 million, \$12 million, \$8 million, and \$4 million. If all old [REDACTED] shareholders elect to take [REDACTED] shares in the Merger, then the four new investors would own 50% of [REDACTED]; if some old [REDACTED] shareholders take cash, then the four new investors together would own more than 50%. The new investors are unrelated to one another, and no one investor will have the contractual power to designate a majority of the board of directors of [REDACTED].

It seems clear that all steps of the Merger itself, except those relating to [REDACTED] are intraperson transactions exempt from reporting under 16 C.F.R. § 802.30 (1985). It seems equally clear that the simultaneous infusion of capital into [REDACTED] consists of four transactions exempt from reporting under the minimum dollar value exemption, 16 C.F.R. § 802.20 (1985). The more difficult question is the reportability of the acquisition by [REDACTED] of the limited partnership interests in [REDACTED] formerly held directly by [REDACTED] shareholders.

As I understand the informal FTC interpretation known as the "partnership rule," [REDACTED] would ordinarily be considered its own ultimate parent entity no matter what interests the partners in [REDACTED] held, and therefore a transfer of partnership interests in [REDACTED] would be nonreportable. You have informed me, however, that when a single "person" holds all of the interests in a partnership as a result of an acquisition, then a different informal interpretation comes into play: that "person" is deemed to have acquired all of the assets of the partnership, and the transaction is reportable as an assets transaction if it otherwise meets the Hart-Scott-Rodino jurisdictional requirements. Under this interpretation, I am told, [REDACTED] would be deemed to have acquired the assets of [REDACTED] for Hart-Scott-Rodino purposes, and there would seem to be a reportable transaction.

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Whatever the merits of that informal interpretation in other circumstances, it seems inappropriate to apply it in such a way as to require reporting in this case, where shareholders of a corporation [REDACTED] who are also limited partners in a partnership [REDACTED] have merely transferred their limited partnership interests to a holding company newly formed as a parent of the corporation. Other than the four new investors (whose share purchases fall below the Hart-Scott-Rodino jurisdictional amounts), no one owns anything that he did not own before; only the form of ownership is different.

If the Premerger Office's position is that a filing is required in these circumstances, then I will need to begin gathering information in the near future. Therefore, I am grateful for your offer to circulate this letter within the Office and get back to me on Friday. I look forward to hearing from you.

Sincerely,

[REDACTED]

*Need to file: treated as an acquisition of
100% of the assets of [REDACTED] by [REDACTED]*