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File

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PREMERGER
NOTIFICATION
OFFICE
January 24, 1986

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BY HAND

Andrew Scanlon, Esq.
Premerger Notification Office
Room 301
Federal Trade Commission
6th & Penn. Ave., N.W.
Washington, D.C. 20580

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PREMERGER
NOTIFICATION
OFFICE

Dear Mr. Scanlon:

The following is intended to summarize the telephone conversations we had yesterday afternoon in which I requested your advice as to whether a premerger notification filing under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") would be required in connection with a proposed purchase by our client, ABC Co. ("ABC") of stock of X Co., ("X"), a wholly-owned subsidiary of XYZ Co. ("XYZ"). Your conclusion, based on the facts we discussed on the telephone as set forth below, is that such a filing would not be required.

ABC is a foreign real estate development and investment subsidiary of a foreign company. XYZ is a foreign real estate developer with substantial United States real estate holdings. Most of XYZ's U.S. properties are held, directly or indirectly, by X, which is a wholly-owned domestic subsidiary of XYZ. Properties held indirectly by X are held by direct or indirect subsidiaries of X or by partnerships in which X has a direct or indirect interest. The assets of X, its subsidiaries, and the partnerships in which X has an interest consist solely of real estate and assets incidental thereto. These include office buildings, incidental retail space and buildings under development for which X is acting or will act in a developer/landlord capacity.

XYZ intends to sell a majority of its U.S. properties to ABC or a United States subsidiary of ABC.

This material may be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

Andrew Scanlon, Esq.
January 24, 1986
Page Two

It is currently anticipated that the sale will be structured as a sale of 100% of the stock of X for a sum well in excess of \$15 million. Prior to the sale, however, XYZ intends to cause to be transferred out of X certain substantial real properties and related assets which XYZ will retain after the sale is consummated (the "Retained U.S. Properties"). XYZ will retain the management staff of X relating to the Retained U.S. Properties and will remain in the real estate development, investment, and management business in the United States. XYZ's foreign real estate development and investment activities, which represent a substantial majority of its total business and of its total real estate portfolio, will be unaffected by the X transaction.

It is our understanding that the proposed transaction would meet the Act's jurisdictional tests, and thus a premerger notification filing would be required unless an exemption is available. Based on our discussions today, you agreed that one exemption in particular appears to be applicable to the proposed transaction. That exemption, as set forth in Section 7A(c)(1) of the Act, 15 U.S.C. §18a(C)(1) (1976), provides in pertinent part:

"The following classes of transactions are exempt from the requirements of this section:

(a) acquisitions of goods or realty in the ordinary course of business..."

It is our belief (with which you agreed) that the proposed transaction involves an acquisition of "realty" in the "ordinary course of business."

First, we have been advised that, in XYZ's view, the assets of X and its subsidiaries, taken together, consist or will consist solely of real estate or assets incidental thereto (which include interests in corporations and partnerships that own only such assets). As you know, stock of subsidiaries and partnership interests are treated as realty where the subsidiaries and partnerships own only realty, assets incidental to realty, and similar stock and interests. Thus, an acquisi-

Andrew Scanlon, Esq.
January 24, 1986
Page Three

tion of the stock of X is tantamount to an acquisition of realty.

Second, XYZ is in the real estate development and investment business. We have been advised that property it holds may be developed for its sale potential, for its income potential, or for both. We have also been advised that the real property it owns is "always for sale," and that when a buyer comes along willing to pay an adequate price, a sale is made. We also understand that, since 1979, XYZ has carried out a number of very large real estate transactions involving multiple properties, which, in a number of cases, more than doubled, or substantially reduced, the size of XYZ's real estate portfolio. Further, XYZ is not, we understand, going out of the real estate development, investment and management business in the United States, nor substantially reducing its capabilities in these areas in this country. Of course, XYZ's larger foreign activities will be unaffected by the proposed transaction. It is our understanding that XYZ intends to continue to develop, manage and invest in real estate, including the majority of its total real estate investments and its development capabilities. The staff being transferred to ABC in the proposed transaction will consist primarily, if not entirely, of property management personnel associated with the properties being transferred. Thus, looking to the business of XYZ, the contemplated transaction falls squarely within the concept of "ordinary course of business."

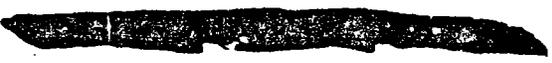
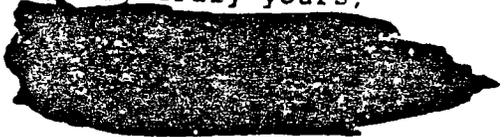
In addition, ABC is involved in real estate development and investment in a very substantial way in both foreign countries and the United States. As such the proposed transaction is similar to other transactions ABC has been involved in or would expect to be involved in its capacity as a real estate investor and developer. Thus, looking to the business of ABC, the contemplated transaction also satisfies the "ordinary course of business" requirement.

After you have had an opportunity to review this letter, I would appreciate hearing from you to confirm your preliminary conclusion as to the inapplicability of the Act to the proposed transaction.

Andrew Scanlon, Esq.
January 24, 1986
Page Four

Thank you for your assistance in this matter.

Very truly yours,



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OK - This little fairly
- prints on conversation
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