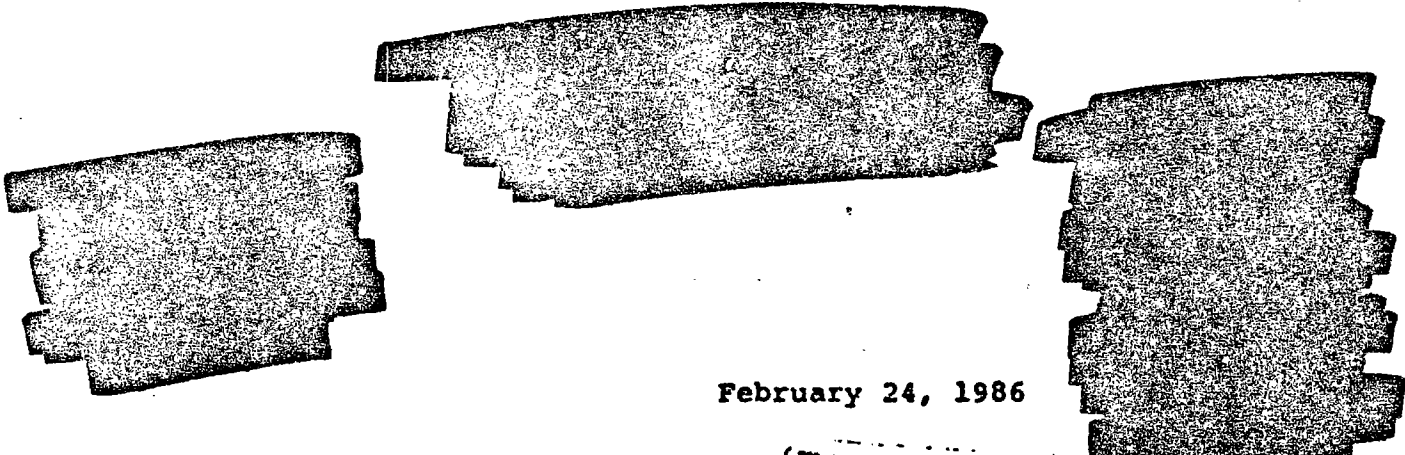


86-5-1157



February 24, 1986

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Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

Dear Pat:

This letter will confirm the substance of our conversations of last Friday and today regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR") to newly formed entities.

? We hypothesized a situation where a natural person ("NP") holding investment assets worth less than \$10 million becomes one of two contributors to a newly formed corporate entity ("NFE") which holds less than \$10 million in assets pursuant to 16 C.F.R. § 801.40(c). NP controls the NFE through a contractual power presently to designate a majority of its directors. Both contributors to the NFE agree at the time of its formation that the NFE eventually will be used to make a particular acquisition; however, while the proposed acquisition cannot be made until the NFE receives substantial additional capital infusions, neither the identity of other contributors nor the amounts to be contributed have been determined.

Missing info
However, you do not have at least to \$10 million per § 801.40 cannot apply, it do not meet si. of person te.

Wrong I disagree

We agreed that because the sources and amounts of the eventual post-formation contributions to the NFE were not agreed upon at the time the NFE was formed, 16 C.F.R. § 801.40 has no applicability to such subsequent contributions. Rather, the general HSR jurisdictional standards (e.g., 16 C.F.R. §§ 801.11, 801.1(h), and 802.20) apply to capital contributions agreed upon and made subsequent to initial formation of the NFE. You expressed the view that such transactions and the described reporting treatment are quite common.



If the agreement indicates future contributions they must be included in determining the size of the I and are applicable to § 801.40.

We then discussed whether the NFE's total assets are to be included in the determination of NP's "size of person" (see 16 C.F.R. §§ 801.1(a) and (b), 801.11) for purposes of establishing whether NP has an obligation to report the NFE's proposed acquisition of another person. We agreed that the staff's informal "new entity" rule, that the assets of a newly formed entity contributed for purposes of making an acquisition should be "netted out" of that entity's "size of person", does not apply when the newly formed entity is controlled by another entity. See 50 Fed. Reg. 38742 at 38744, 38749-50 (1985). Therefore, all of the NFE's assets are to be included in determining NP's "size of person" under the situation hypothesized. A different result would obtain; however, if the NFE were formed and then made its acquisition in a single instance (i.e., at one time in one room); such an occurrence would be treated as a single transaction analogous to a "step transaction" (cf. 16 C.F.R. § 801.90, Ex. 1) and the determination of NP's "size of person" prior to the transaction accordingly would not include the assets to be contributed to the NFE.

I agree

I disagree you look at the UFE Financial for size person

I believe that this correctly states the substance of our conversations. I would, of course, appreciate hearing from you as soon as possible if you disagree with any part of the analysis as I have described it.

Best regards.

I'm quite confused by your letter.

Very truly yours,
[Redacted Signature]

your getting onto a different subject any transaction can be subject to 801.90

[Redacted]

I cannot give a specific answer to a vague question. Please send another letter giving specific details such as dollar amounts specifics about the structure of the deal. Perhaps your letter is premature. If so, please write to us when you have more facts.

called [Redacted] 2-25-86, (the day letter rec'd) He was out of town.