

April 7, 1986

Mr. Dana Abrahamsen
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Re: Structure of Proposed Asset Acquisition

Dear Dana:

I am writing to confirm my conversations with you over the past several months with respect to my analysis under the Hart Scott Rodino Antitrust Improvements Act of 1976 (the "Act") of a potential asset acquisition. I would like to again set forth the basic structure of the proposed acquisition for you, so that if seller's counsel elects they can call you to discuss any questions they may have prior to the consummation of the acquisition.

The purchase price for the acquisition is \$32,000,000, payable \$27,000,000 in cash at the closing and \$5,000,000 in a deferred seller's promissory note over a eleven year period. The seller is a domestic corporation with total assets in excess of \$100,000,000. The purchaser is a newly formed domestic corporation ("Newco").

Our analysis of the size of Newco concludes that it is insufficient to require reporting under the Act and the rules promulgated thereunder (the "Rules"). The capitalization of the company will be constituted as of the closing of the acquisition as follows:

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1. The Equity. The equity of Newco will be divided into common and preferred stock, both of which will be given full voting rights. The following is a breakdown of the common and preferred shareholders:

(a) Management Investors. Ten individual management investors will participate in the new company, for an aggregate total of 15% of the common stock and 15% of the preferred stock. The aggregate purchase price will not exceed \$300,000. No management investor constitutes a \$10,000,000 person under the Rules.

(b) Investment Limited Partnership. An investment limited partnership established under Delaware law will hold 40% of the common stock and 85% of the preferred stock of the new company. The total purchase price for the common and preferred will be approximately \$1,400,000. The size of the person for this investment partnership will not exceed \$1,600,000.

(c) Individual Institutional Investors. Five institutional investors will hold an aggregate of 45% of the common stock of the new company. The purchase price for this stock will be \$100,000.

2. Debt. The debt structure will consist of three levels:

(a) Senior debt of \$18,000,000 will be provided by a syndicate of banks ("Senior Lenders"). \$17,000,000 of this facility will be drawn down for payment of the purchase price and the remaining \$1,000,000 will be available for any purchase price adjustment and working capital needs.

(b) Subordinated Debt of \$10,500,000 will be provided by four institutional lenders. All of the subordinated debt will be utilized for payment of the purchase price.

3. The seller will finance \$5,000,000 of the purchase price in the form of an eleven year promissory note which will receive annual payments of current interest.

As we have discussed in previous telephone conversations, although the size of the investment limited partnership which exercises voting control of Newco through its ownership of common and preferred voting stock would be attributed to Newco, as will the working capital line of \$1,000,000 which is committed to by the Senior Lenders, the size of Newco will none




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theless be insufficient to meet the "size of the person" test so as to invoke the reporting requirements in respect of the asset acquisition under the Rules.

As we discussed, the formation of Newco as a joint venture also constitutes a transaction which is insufficient in size to invoke the reporting requirements under the Rules. As discussed above, the total equity of Newco will not exceed \$2,000,000. No entity meeting the "size of person" test for a joint venture corporation, as set out in § 801.40 of the Rules, will be acquiring securities in a transaction which meets the minimum reporting requirements under the Rules.

Please feel free to contact me if you wish to discuss any questions or comments with regard to this matter.

Sincerely yours,


