(File)

Wayne, This looks fine to me / I would appreciate your views as well. DH

assume that the P. isn't used to avoid the rules.

[redacted]

July 17, 1986

Dana Abrahamson, Esq.
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Re: Hart-Scott-Rodino Premerger Notification Requirements

Dear Dana:

This will confirm our telephone conversations earlier this week, in which we discussed the applicability of the Premerger Notification Rules, 16 C.F.R. § § 801, et seq., to the following hypothetical facts:

Our client and four other United States corporations wish to participate in certain joint ventures overseas with foreign investors. Several of the five corporations have total assets or annual net sales in excess of $100 million. The overseas joint ventures will be organized under foreign law, will operate only outside the United States, will not own assets in the United States, and will not produce sales to the United States as a result of operations located abroad.

To facilitate creation of the joint ventures overseas, four of the five firms have created a joint venture in corporate form, called CORP. CORP is a United States corporation. The voting securities of CORP are divided equally among the four firms, who will together contribute to CORP total capitalization of $750,000.

For the same purpose, the five firms plan to create a second joint venture in the form of a limited partnership, called LP. LP will be organized under United States law, and will receive $75 million in capital. Although five firms will be limited partners in LP, they will not contribute capital equally. For example, one company will contribute approximately 48% of LP's capitalization ($36.2 million). The remaining firms will contribute lesser amounts. CORP will contribute $750,000 in capital and will serve as the general partner responsible for managing the affairs of LP.

[redacted]

LP, in turn, will participate as a 50% partner in the overseas joint ventures with foreign investors. These joint ventures may be in corporate or non-corporate form. In either case, they will be organized under foreign law.

Creation of the multi-layered organization described above gives rise to three transactions that are potentially reportable under the premerger notification rules. The first is the creation of CORP. This is potentially reportable under Rule 801.40, which covers the creation of a joint venture. CORP, as the "acquired person" for purposes of the transaction will not have total assets of $10 million or more. Because CORP does not meet the "size-of-person" test, the transaction need not be reported.

The second potentially reportable transaction is the creation of LP. Here the "size-of-person" test of Rule 801.40 is clearly met, since the "acquiring persons" meet the "size-of-person" test, and the "acquired person" (LP) will have net sales or total assets in excess of $10 million. Because the Federal Trade Commission staff has interpreted Rule 801.40 to require reporting only with respect to the formation of a joint venture in corporate form, the creation of LP, and the various firms' acquisition of interests therein, need not be reported. You confirmed that this interpretation of Rule 801.40 is correct and still in effect.

Third, the creation of various overseas joint ventures between LP and foreign investors may be reportable, if the foreign investors and the joint ventures themselves are of sufficient size to meet the "size-of-person" tests under Rule 801.40. Even so, however, the creation of any joint ventures need not be reported, if the venture is established in non-corporate form like LP, due to the FTC staff's interpretation of Rule 801.40. Alternatively, if any joint venture is in corporate form, it would be exempt under Rule 802.50(b) if it holds assets in the United States having an aggregate book value of less than $15 million and does not sell in United States commerce. Under the assumptions described above (at p. 1), the Rule 802.50(b) exemption should apply.

It is possible that the relative ownership of LP may change over time, as the five firms increase or decrease their respective interests in LP. Under the FTC staff's interpretation of the premerger notification rules, the acquisition of an interest in a limited partnership is not reportable as an acquisition of voting securities or assets. An exception exists where, as the result of the acquisition, one person (as defined by the rules) controls 100% of the limited partnership. The acquisition would then be deemed one

of "assets" within the meaning of the rules, and reportable if the "size-of-person" and "size-of-transaction" tests were met.

If any of the above is inconsistent with your analysis or your understanding of the facts, please contact me. Thanks for your time and assistance in this matter.

Very truly yours,

[redacted]

[redacted]

OK upon later review
WEK 3/27/87

[redacted]