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July 24, 1986

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This [redacted] Freedom of Information Act

Jul 25 8:19 AM '86

VIA FEDERAL EXPRESS

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

Dear Mr. Abrahamsen:

On Friday, July 11, 1986, you and I discussed by telephone the question of whether pre-acquisition notification pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a (the "Act"), would be required with respect to an acquisition of voting securities involving the following facts:

1. The person whose securities will be acquired has approximately 30 shareholders, is engaged in interstate commerce and has total assets of more than $10,000,000;

2. The acquiring entity will be a newly incorporated subsidiary of a newly formed general partnership, the two partners of which will each have a 50% ownership interest;

3. Each of the two partners of the newly formed general partnership have total assets in excess of $100,000,000;

4. The purchase price for the securities of the acquired person is approximately $145,000.000;

5. At the time of the acquisition, the two partners of the newly formed general partnership will have caused the acquiring person (i.e., the general partnership and its subsidiary) to have total assets (funded through cash contributions and third-party debt) in an amount which exceeds the purchase price of the securities being acquired by less than $10,000,000; and

6. As a result of such acquisition, the acquiring person will hold more than 90% of the voting securities of the acquired person.

It is my understanding, based on our conversation, that under the aforementioned fact situation no pre-acquisition filing would be required because the acquiring person does not meet the Size-of-the-Person Test set forth in 15 U.S.C. § 18a(a)(2).

This conclusion results from my understanding, based on our conversation, that for purposes of the Size-of-the-Person Test:

A. In the opinion of the Federal Trade Commission staff, so long as a general partnership was not formed for the purpose of avoiding the obligation to comply with the requirements of the Act, such general partnership will be considered its own ultimate parent entity and will not be deemed to be controlled by any other entity or individual regardless of the terms of the partnership agreement. Thus, the size of the partners of the general partnership will have no effect in determining the size of the general partnership and the general partnership will be considered to be the acquiring person for purposes of the Act; and

B. Under Proposed Rule 801.11(e) and in the opinion of the Federal Trade Commission staff, the total assets of a newly-formed acquiring person equals the difference between (i) all assets held by such person at the time of the acquisition and (ii) all cash that will be used by such person as consideration in the acquisition of voting securities of the acquired person, including expenses related to such acquisition.

If I am incorrect in any of my above-mentioned understandings, I would appreciate it very much if you either would call me by telephone prior to August 1, 1986 or send me a letter by that date stating your position.

[redacted]



Please acknowledge receipt of this letter by date-stamping the enclosed copy of this letter and returning it to me in the enclosed, self-addressed, postage-paid envelope.

Thank you very much for your assistance.

Very truly yours,

[redacted]

OK upon later review. WEK. 3/27/87

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