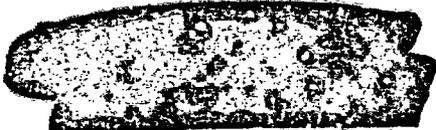


  
September 8, 1986  
  
VIA TELECOPY

Linda Heban, Esquire  
Federal Trade Commission  
Pre-Merger Notification Office  
6th and Pennsylvania Avenue N. W.  
Washington, D. C. 20580

Re: Application of Hart-Scott-Rodino Section 7A.(b)(1)  
Exemption to Certain Transactions

Dear Ms. Heban:

In accordance with our prior telephone conversations, we are writing this letter to respectfully bring to the Federal Trade Commission's attention a transaction which we believe will not require a filing under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"). The hypothetical transaction which we would like you to consider is as follows:

Transaction Description:

Company A ("Seller") owns and operates a hotel located on an 80 acre tract of land, the majority of which is vacant and undeveloped. Seller desires to transfer and convey to Company B ("Buyer") all of the real property comprising such tract. Seller and Buyer are both in the business of owning and operating hotels. Under the terms of the conveyance agreement, Seller will retain all ownership and control of the hotel and the related improvements on the real property. Simultaneous with the transfer of the real property, Seller will retain and reserve title to the hotel and related improvements and Buyer will execute a ground lease with Seller, leasing only the land underlying the hotel to Seller (this transaction will not be a sale and leaseback of the hotel). The term of the ground lease will be for a one-year period and such ground lease will further provide that at the end of the one-year term, Seller will demolish the hotel and all related improvements. Buyer will at no time have any participation in or control of the operation of Seller's hotel. In this transaction, Buyer will acquire no improvements or other assets which relate to Seller's hotel or the operation thereof.

The real property to be transferred from Seller to Buyer is also subject to a Gas Station lease. Such lease is on a very small part of the transferred acreage and will expire by its own terms soon after the conveyance of the real property from Seller to Buyer. Prior to the transfer of the real property, Seller will be the lessor under the Gas Station lease. After such transfer, the Gas Station lease will have been assigned to Buyer and Buyer will be the lessor thereunder. If the Gas Station lease transaction were viewed separately, its value would be less than 0.5% of the total transaction amount, far below the "Size-of-the-Transaction" jurisdictional requirement under the Act.

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[REDACTED]

Linda Heben, Esquire  
September 9, 1986  
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The ultimate parent entity of Seller is an estate. The ordinary course of business for this estate is to distribute assets of the estate to beneficiaries and, when circumstances require, to liquidate certain assets. Valid estate circumstances exist which would cause Seller's ultimate parent to require Seller to sell the hotel.

Discussion:

It is our view that the above-described transaction would fall within the Section 7A(c)(1) "acquisitions of goods or realty transferred in the ordinary course of business" exemption in that:

- A. Seller will not be transferring nor will Buyer be acquiring the existing or ongoing business of the hotel. Buyer will at no time (not even for an instant) have any ownership in the hotel property or the business conducted therein.
- B. The sale of the real property is in the ordinary course of business of Seller's ultimate parent entity.
- C. The Gas Station lease transaction should have no bearing on whether the Section 7A(c)(1) exemption applies since the transaction itself is de minimis; there are no antitrust implications regarding the transaction; and it is commonplace for real property which is transferred subject to a leasehold interest to be exempted under Section 7A(c)(1). Additionally, Buyer will not be acquiring the business of the Gas Station, rather, the Gas Station will continue to be operated by the current lessee thereof.

We appreciate the prompt attention which you have given this matter and will be calling you shortly to discuss the transaction further.

Very truly yours,

[REDACTED SIGNATURE]

[REDACTED]

9/10/86

Transaction would be scrutinized carefully by PMN office because structure of transaction lends itself easily to evasion of reporting requirement and it may occur in cases where there could be significant <sup>anti-</sup>competitive impact.

Putting aside gas station transaction, if indeed transaction is not a disguised sale and leaseback so that only land passes to buyer and seller retains ownership of hotel, and ② if is bonafide intent in good faith to demolish hotel at expiration of lease, then appears transaction probably exempt under ordinary course. If, at end of lease, hotel not demolished but, for instance, is abandoned by seller, then would be treated as acquisition. Of course, if it is a sale and leaseback of building, transaction not exempt.

Separately analyze gas station - If structure accounts for more than \$15 MM of value of property, then acquisition is reportable. Here, parties have estimated value between \$25,000 - \$50,000, but in any case will be below \$15 MM. Therefore, appears to be non-reportable. Parties must also include value of any land appurtenant to gas station necessary for its operation, in determining value of gas station.