

[REDACTED]

(18)

[REDACTED]

October 31, 1986

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PRE-MERGER  
NOTIFICATION  
OFFICE

Mr. Patrick Sharpe, Compliance Officer  
Federal Trade Commission  
Premerger Notification Office  
Room 303  
6th Street and Pennsylvania Avenue,  
Washington, DC 20580

(This material may be subject  
to the provisions of the  
Act of the Clayton Act  
1914 and the  
Act of 1936 under the  
Act)

Dear Mr. Sharpe:

This is to confirm our telephone conversation of October 29, 1986 regarding the Federal Trade Commission's position with respect to partnerships and the "size of persons" test under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

As explained, [REDACTED] is currently negotiating a sale of assets to a [REDACTED] limited partnership (the "Buyer") involving certain real property in various states (the "Properties"). The purchase price for the Properties is in excess of \$15 million.

[REDACTED] has assets in excess of \$100 million and is thus a "person" with total assets or annual net sales in excess of \$100 million as defined in Rule 801.1(a)(1) under the Act. The Buyer is a limited partnership newly formed for the acquisition and has assets of less than \$10 million. The Buyer has two individual general partners, one or both of whom has personal assets in excess of \$10 million.

Under the facts as stated, we asked (1) whether the Federal Trade Commission is continuing to take the position that a partnership entity is its own "ultimate parent entity" for purposes of determining whether the "size of persons" threshold under the Act is satisfied, i.e., whether the assets of the individual limited partners or general partners are attributed to the limited partnership for purposes of considering whether the partnership has assets of \$10 million or more under the Act, and (2) whether moneys borrowed by the Buyer or raised as equity which are in either event used in the purchase of the Properties are considered part of the assets of the Buyer for purposes of considering whether the Buyer has assets of \$10 million or more under the Act.

[REDACTED]

We understand that your response to our first question was that the Buyer is its own "ultimate parent entity" for purposes of determining the relevant "person" under the Act, i.e., for purposes of determining whether the "size of persons" threshold is satisfied, reference need only be made to the total assets or annual net sales of the Buyer and not to those of its partners.

It is our further understanding that your response to our second question was that (a) funds borrowed or raised as equity and (b) used to acquire the Properties are not considered by the Federal Trade Commission as part of the assets of the Buyer for purposes of determining whether the "size of persons" threshold is satisfied under the Act.

*unless  
financials  
exist then  
you would go  
by them.*

We also understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the Federal Trade Commission's advice on such matters. In accordance with your instructions, if we do not hear from you to the contrary within two weeks of the date of this letter, we shall be entitled to rely on your oral advice as confirmed by this letter as the Federal Trade Commission's position on the questions presented.

Sincerely,

[Redacted signature]

called [Redacted] 11-4-86

[Redacted]

I concur