



File



December 19, 1986

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

This document may be subject to... under the...

DEC 19 8 37 AM '86
FEDERAL TRADE COMMISSION
NOTIFICATION OFFICE
PREMERGER

Dear Mr. Scanlon:

We spoke yesterday about the need for filing a premerger notification under the Hart-Scott-Rodino Act in connection with a transaction proposed by one of our clients. In order to confirm our telephone conversation, I will outline the proposed transaction and my understanding of the application of the Federal Trade Commission's "Pass Through" interpretation as we discussed.

Description of Transaction

The proposed transaction involves a leveraged buy out of one or more subsidiaries (the "Subs") of a corporation (the "Acquired Person") by certain members of the Subs' management and a few unaffiliated outside investors (collectively referred to as "Investors"). The Investors will form a new corporation ("Newco") to acquire the Subs.

Initially at least 3 and eventually, upon completion of the proposed acquisition, over 25 individuals will own the voting shares of Newco and one investor will own Newco warrants. No person will "control" Newco; it will be its own Ultimate Parent Entity. 1/ Newco will be capitalized

1/ That is, in accordance with 16 C.F.R. § 801.1(b), no person will (a) hold 50 percent or more of the
(Footnote Continued)

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with up to \$25 million in cash and will obtain loans amounting to approximately \$225 million. The sole purpose of Newco is to acquire the Subs and Newco will use all, or substantially all of its funds to acquire the Subs. 2/

The Acquired Person has annual net sales and total assets in excess of \$100 million. The Subs will be acquired by Newco for approximately \$210 - \$250 million.

Hart-Scott-Rodino Analysis

It is my understanding that no notification is required under the Hart-Scott-Rodino Act for the proposed transaction described above. This is because under the Federal Trade Commission's "Pass-Through" interpretation a transaction by a newly formed corporation is not reportable so long as the new company is its own Ultimate Parent Entity and uses its assets solely to make the acquisition of the acquired entities. Therefore, because of the Pass-Through interpretation, no notification is required at the time Newco is formed, and no notification is required when Newco acquires the Subs.

I would appreciate confirmation of my understanding as it applies to the proposed transaction. You can contact me at [REDACTED]

Thank you for your assistance in this matter.

Sincerely,
[REDACTED]

OK
advised
by phone 12/19/86
[Signature]

(Footnote Continued)

outstanding voting securities of Newco; or (b) have the contractual power presently to designate a majority of the directors of Newco.

2/ There will be little or no cash remaining in Newco after the acquisition, certainly well under \$10 million.