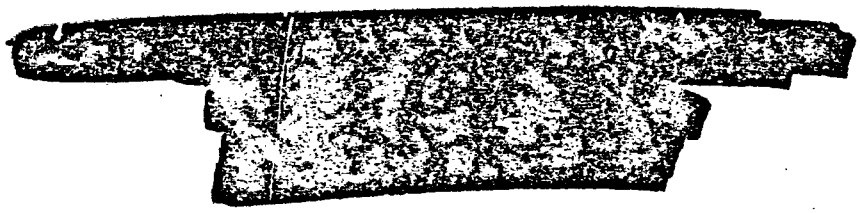

December 24, 1986

VIA TELECOPY

Joe Price, Esq.
Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D. C.

Dear Mr. Price:

The undersigned represents several parties who are currently finalizing the structure of a proposed transaction scheduled to close on December 30, 1986, necessitated by the loss of certain tax benefits after that date. We are seeking confirmation from you that there is an available exemption from pre-transaction notification and waiting period requirements under the Hart Scott Rodino Antitrust Improvements Act in connection with this transaction.

Three parties are joining together to form a new corporation, Newco. Each will be contributing stock or assets in return for voting securities in Newco. Party A is a corporation that has both net sales and total assets in excess of $100 million. Party B is a partnership with total assets of $35 million and net sales of under $2 million. Party C is a foreign corporation with total assets in excess of $100 million and net sales in excess of $100 million. Upon formation Newco will have total assets of approximately $90 million and net sales of approximately $5 million, and a net market value very close to $25 million. The assets of Newco are principally real estate assets.

We believe that Section 802.20 exempts both the three forming entities and Newco from the notification and waiting period requirements, due to not meeting the size of the transaction test, as provided in that exemption.

We believe that the "size of the transaction" test as modified by the "minimum dollar value" rule of 16 C.F.R. Section 802.20 (1982), should result in the transaction being exempt (although the transaction results in two of the acquiring persons owning more than 15% of the voting securities of Newco), because none of the three acquiring persons holds "(b) Voting securities which confer control of an issuer which, together with all

entities which it controls, has annual net sales or total assets of $25 million or more." Id. As pointed out by Earl Kintner, Federal Antitrust Law, Volume V, Chapter 41.11 (1984), page 262, "An acquisition of voting securities, valued at $15 million or less, is reported only if the acquiring person will hold a controlling interest and the issuer of the voting securities has annual net sales or total assets of $25 million or more. An acquisition of more than $15 million of voting securities, however, meets the Act's size of transaction test and would not be affected by the minimum dollar value rule."

"Section 802.20 applies to joint ventures in the same way as to other acquisitions. However, where the venture is being formed by more than two persons, it is possible that all of the acquiring persons would be exempt, providing none acquired more than $15 million in voting securities or obtained control of the venture." Kintner, Section 41.16 at page 266.

First we would like confirmation that the value of voting securities can be calculated based solely upon purchase price in the case of preferred stock. Party A will be receiving preferred stock with a liquidation preference of $15 million, which will bear a dividend of no more than 10%. Assets with a value of $15 million will be exchanged for this preferred stock. Is it necessary for a small amount of assets to be removed from the exchange transaction so that the purchase price of the preferred stock and the liquidation preference are below $15 million? } no

Second we would like confirmation that the voting arrangements for all of the capital stock, both preferred and common, of Newco are structured in a manner so that none of A, B or C will be in "control" of Newco. Newco will have a six member board of directors, subject to contraction or expansion after 1988. Two of the six board members may be elected only by Party A as preferred stockholder. The remaining four members may only be elected by a majority of the common stockholders, B and C, provided however that there is a shareholders agreement between B and C so that until at least 1989 one of those four seats must be filled by the individual who controls Party B, who has no affiliation with Party C and who shall be Chairman of the Board of Newco. The remaining three board seats (exactly 50% of the board) may only be filled by Party C. Without the shareholders' agreement, Party C (owning approximately 85% of the common stock) could elect all four of these board members. We would like confirmation of the fact that one of the four board seats to be filled by Party C would not be viewed as being "controlled" by Party C, since there is a binding requirement that this board seat be filled by Party B's principal.

On all other matters Party A (holding preferred stock) votes together with the common stockholders (Parties B and C). Party A will have 44% of the outstanding vote on all matters other than election of directors, Party B will have 10% of the vote on all other matters, and Party C will have 46% of such vote. These voting provisions may not be amended without super-majority approval by the shareholders, both preferred and common.

Under Section 801.1(b) "one person controls an entity when (1) it "holds" [meaning beneficial ownership] 50 percent or more of its outstanding voting securities or (2) it has the contractual power presently to designate a majority of its directors." Kintner, Section 41.5 at page 254. We believe in the proposed transaction that the two requirements of Section 801.1(b) should not interrelate. Although Party C can elect exactly 50% of the board he does not hold "50% or more of voting securities" of Newco (voting percentage is 45%). The inability of A, B or C to elect a majority of the directors, means that none of the three owners of Newco "controls" Newco (i.e. they can elect only 50%, which is not a majority).

Sincerely yours,

[redacted]

[redacted]

upon later review it appears that this is a questionable interpretation in that C can elect 50% of the board or more through holding of voting securities. Perhaps C should have been advised to file. More facts are needed to determine that result.

W E K. 3/10/87