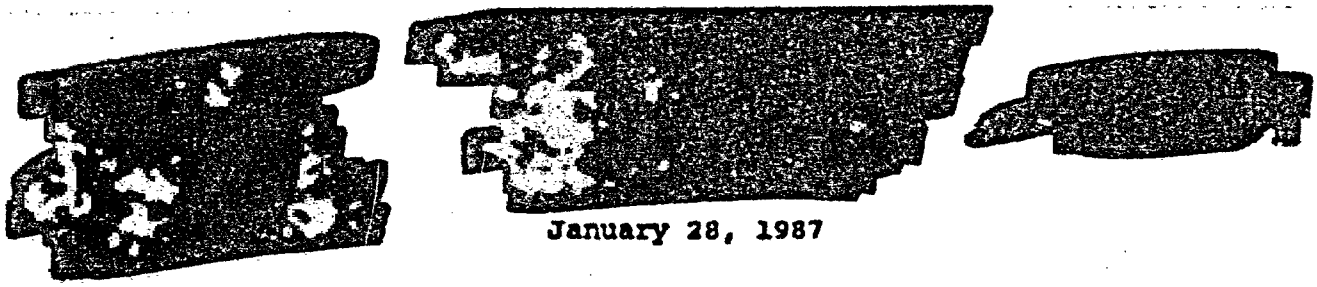

January 28, 1987

BY HAND

Linda A. Heban, Esq.
Office of Premerger
Notification
Room 312
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Ms. Heban:

This is to follow up on our conversation earlier yesterday.

My client sought to transfer title to certain assets ("the subject assets") to a subsidiary of Charitable Foundation A. This subsidiary was to finance the purchase of those assets by bank borrowing.[1]

Subsequent to the grant of early termination of the waiting period in connection with this transaction (Filing No. 87-0677), Charitable Foundation A decided not to consummate the transaction. My client, the acquired person in No. 87-0677, then entered into a similar transaction involving transfer of title to the subject assets to a subsidiary of Charitable Foundation B. At the time of transfer, Charitable Foundation B had less than $10 million in annual net sales or total assets. Accordingly, there were no Hart-Scott-Rodino filings in connection with the sale of the subject assets to the subsidiary of Charitable Foundation B.

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[1] In general, the banks deem it preferable for a charitable foundation to be the ultimate parent of the borrower, because a charitable foundation is less likely to become bankrupt than a business corporation. The banks' concern is that, in the event of the bankruptcy of the ultimate parent of the borrower, the parent's trustee in bankruptcy might try to reach the borrower's assets pledged to repay the bank loan.

The purpose and structure of the second transaction were the same as that described in the above-referenced HSR filing: A subsidiary of Charitable Foundation B financed the purchase of the subject assets by borrowing the consideration from banks. This subsidiary of Charitable Foundation B then paid the purchase price of $450 million to my client. The bank loan has a seven-year term. My client has the option to repurchase the stock of this subsidiary of Charitable Foundation B after the financing is repaid. A series of agreements were entered into by my client and the subsidiary of Charitable Foundation B which provided for the management and operation of the subject assets by my client. Reference is made to No. 87-0677 for a fuller description of the nature of the contractual arrangements. The subsidiary of Charitable Foundation B which holds the subject assets has not and cannot engage in any other business.

The financing banks have determined that they wish to have the ultimate parent of the borrower be a more substantially-sized charitable foundation. Accordingly, my client has consented to the sale by Charitable Foundation B of its stock in the grandparent of the subsidiary which owns the subject assets to Charitable Foundation C for consideration of $1,000. Charitable Foundation C will receive a fee in compensation for its participation in this transaction, as did Charitable Foundation B. My client will continue to retain, as an operating fee, 90% of the amount by which operating revenues associated with the subject assets exceed loan repayment and operating costs.[2]

In our view, C's acquisition of the stock of B's subsidiary does not meet the "size of transaction" test and no HSR filing is required by B, C, or my client. The fact that only $1,000 is to be paid by Charitable Foundation C for the stock of Charitable Foundation B's subsidiary is a recognition that the revenues derived from the subject assets will be used to repay the bank loan, with the excess accruing to my client, even though title to the subject assets will be held by Charitable Foundation C's subsidiary.

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[2] The remaining 10% will be retained by the borrower until exercise of the option to repurchase by my client.

[redacted]

I would appreciate hearing from you by the end of this week, if at all possible. The parties wish to consummate this transaction next week and will proceed on my advice that no HSR filings are necessary, unless, of course, we hear to the contrary from you.

Thank you for your prompt consideration.

Sincerely,

[redacted]

Parties advised (by Wayne Kaplan) 1/30/87 that letter contains insufficient info for us to make a determination.

Linda Heban 2/2/87