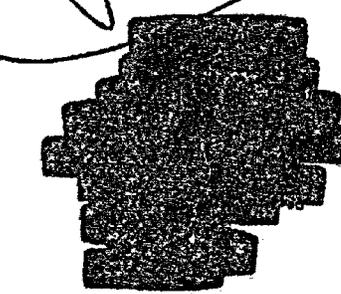


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February 24, 1987



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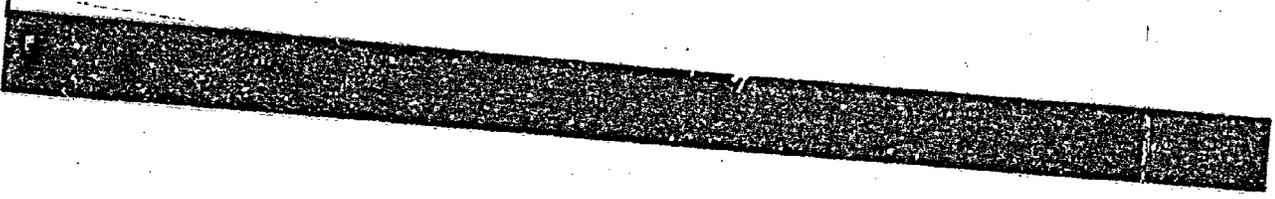
Mr. Andrew Scanlon  
Federal Trade Commission  
Bureau of Competition  
Pre-Merger Notification Section  
Room 303  
6th Street and Pennsylvania Ave. N.W.  
Washington D.C. 20580

Re: Application of Hart-Scott-Rodino Antitrust Improve-  
ments Act

Dear Mr. Scanlon:

On February 19, 1987, you and I discussed by telephone whether the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and regulations promulgated by the Federal Trade Commission for its implementation (the "Rules") were applicable to a series of transactions. This letter summarizes the proposed transactions and your comments regarding whether the Act and the rules would apply to each step.

In the first transaction, a newly formed limited partnership (the "Master Partnership") would purchase raw land (the "Property") from an unrelated entity. The Master Partnership would prepare the Property for development by having



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It zoned, dealing with other land use issues, and constructing certain improvements, such as streets and sewers.

You informed me that the Act is not applicable to the formation of a partnership. Although Rule 801.40 states that the Act is applicable to the formation of "joint ventures and other corporations," the FTC has taken the position that this Rule does not apply to formation of a partnership.

Further, you informed me that an acquisition by a newly formed partnership usually is not subject to the premerger notification requirement of the Act because the newly formed partnership does not meet the size of the person test. A newly formed partnership usually fails the size of the person test for one or both of two reasons. First, a partnership is treated as its own ultimate entity and, therefore, the assets of the partners are not aggregated with those of the partnership in order to determine whether the size of the person test is met. Second, if a new partnership has no regularly prepared financial statements and has engaged in no business activity, the property contributed to it by the partners to enable it to effect an acquisition will not be deemed assets of the partnership in determining whether it meets the size of the person test.

However, you informed me that a new partnership may meet the size of the person test if it has assets \$10 million or more in excess of the purchase price of the assets it intends to acquire. For example, if the Master Partnership were funded with \$150 million in cash and used \$125 million to acquire the Property, the Master Partnership would be deemed to have \$25 million in assets for the purpose of the size of the person test and would meet that test.

Further, you informed me that an acquisition of raw land in the ordinary course of business is exempt from the notification requirement pursuant to section 7A(c)(1) of the Act. Therefore, even if the size of the person and size of the transaction tests were met, the acquisition of the Property by the Master Partnership would be exempt from the notification requirement.

In the second transaction, a portion of the Property that was acquired by the Master Partnership would be assigned to one of the limited partners in the Master Partnership (the "First

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Developer\*), which would continue development of that portion of the Property, in liquidation of the First Developer's interest in the Master Partnership.

You informed me that the Master Partnership would not be required to file a premerger notification for the acquisition of the partnership interest. The FTC takes the position that an acquisition of partnership interests is not subject to the premerger notification requirement unless the acquiring person will hold 100% of the partnership interests after the transaction, in which case the transaction will be treated as an acquisition of all of the assets of the acquired person or persons. However, a premerger notification would be required for the First Developer's acquisition of a portion of the Property if the size of the person and size of the transaction tests are met.

In the third transaction, a portion of the Property would be sold by the Master Partnership to a newly formed partnership (the "Second Developer"), which will continue development of that portion of the Property. The analysis of this transaction is the same as the analysis of the acquisition of the Property by the Master Partnership except for the fact that, since the land would then be partially developed, the exception for an acquisition of real property in the ordinary course of business would not be applicable.

After you have had an opportunity to review this letter, please contact me if you feel that it does not accurately reflect the substance of our discussion. Thank you for your assistance in this matter.

Sincerely,

[Redacted signature]

[Redacted text]

2/24/87 J.C. Scanlon [Redacted]

I advised [Redacted] that the word  
Property used in the last sentence of the second  
complete paragraph of P2 was inaccurate  
and that all property did not qualify. Cash only  
passed through the newly formed entity is

[Redacted text]