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June 8, 1987

[REDACTED]

Victor L. Cohen, Esquire  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Cohen:

This will confirm the oral advice you provided today over the telephone concerning the Hart-Scott-Rodino regulations applicable to partnerships and the implications of new rule 16 C.F.R. §801.1(b)(1)(ii), which becomes effective on July 3, 1987. As we discussed, the new rule deems a partnership to be controlled by a person entitled to 50% or more of the partnership's profits, or by a person entitled, upon dissolution of the partnership, to 50% or more of the partnership's assets. Under the new rule, an acquisition by a partnership that is controlled by one or more of its partners would constitute an acquisition by each controlling partner as ultimate parent entity.

I asked whether new rule §801.1(b)(1)(ii) would affect existing rules and interpretations relating to formation of partnerships and acquisition of partnership interests. I raised the following three hypotheticals (all of which assume that any applicable size of person and size of transaction tests would be met):

1. X and Y form a partnership, each contributing assets and/or cash, and each acquiring a 50% interest in the partnership.
2. X and Y form a partnership. Initially X controls more than 50% of the partnership and Y less than 50%. Subsequent to the formation transaction, Y makes a cash contribution and increases its control of the partnership to 50%.

06-11 This is correct, V.C.

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3. X and Y each control 50% of a partnership.  
X then sells its 50% interest to Z.

You indicated that currently, and under new rule §801.1(b)(1)(ii), none of these three hypothetical transactions would be subject to Hart-Scott filing requirements. You indicated that §801.1(b)(1)(ii) will not change the present rule exempting both the formation of partnerships and the acquisition of partnership interests (including controlling interests of less than 100%).

We also discussed the effect of §801.1(b)(1)(ii) upon asset acquisitions from a partnership by a person controlling the partnership. You confirmed that such acquisitions will continue to be subject to filing requirements, as explained in the background statement to the new rule, 52 Fed Reg 20058, 20063 (May 29, 1987).

Thank you very much for your time and assistance.

Very truly yours,  
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