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ATTORNEYS AT LAW

REFER TO:

December 7, 1987  
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AIRBORNE EXPRESS

Mr. Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Bureau of Competition, Room 303  
Federal Trade Commission  
6th Street and Pennsylvania Ave., N.W.  
Washington, D. C. 20580

RE: Confirmation of Informal Interpretation

Dear Mr. Sharpe:

This letter will confirm our recent telephone conversations to the effect that no filing under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR") is required in connection with the transaction described below.

Our client, an individual person, is the ultimate parent entity of the acquiring person in connection with a proposed acquisition of assets of the acquired person. We have been advised that the acquired person has annual net sales or total assets in excess of \$100,000,000, that the purchase price for the assets to be acquired is approximately \$20,000,000, that no voting securities are involved in the proposed transaction and that there have been no previous transactions between the acquiring person and the acquired person. The proposed transaction must close on or before January 31, 1988.

In order to determine whether the acquiring person meets the "size of parties" test under HSR, the acquiring person's accountants, in accordance with Rule § 801.11(b), have made certain recomputations to consolidate the total assets and annual net sales of the acquiring person (the acquiring person has no net sales, per se, but does have other revenues).

The recomputed balance sheet indicates that as at October 31, 1987 the total assets for the acquiring person were less than \$10,000,000. The acquiring person advises that there have been no

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Pursuant to our conversations with you and in accordance with Rule § 801.11(b) and (c), due to the fact that there is presently no regularly prepared annual statement of income and expense for the partnerships (and since even if the closing occurred after the partnerships' December 31st fiscal year end but before the January 31st deadline for the transaction there would be no such regularly prepared annual statement at that time) and the fact that there is no requirement under HSR to incorporate revenues for the partnerships in determining (by recomputation or otherwise) the total revenues of the acquiring person if such revenues are not reflected on a regularly prepared annual statement, our conclusion was that no revenues of the partnerships are required to be aggregated with those of the other entities forming a part of the acquiring person. Accordingly, since the annual net sales (revenues), excluding those of the partnerships, and the total assets, including those of the partnerships but excluding amounts borrowed for the transaction but not reflected on a regularly prepared balance sheet, of the acquiring person are each less than \$10,000,000, the size of the parties test of HSR has not been met and, therefore, no HSR filing is required in connection with the proposed transaction.

It is our understanding that you concur in our analysis as an informal interpretation under Rule § 803.30. Should you, after reading this, have any other thoughts concerning the matter, we respectfully request that you communicate with us as soon as possible because our client must consummate the transaction soon and does not contemplate filing under HSR unless, of course, the Commission prefers that a filing should be made.

We greatly appreciate your time and courteous assistance in the foregoing analysis. Please acknowledge receipt of this letter by signing or stamping the enclosed copy hereof and returning it to the undersigned in the enclosed self-addressed envelope.

Very truly yours,



~~is~~ is incorrect. If you do not have any financials for some entities within, you must calculate and aggregate net sales and total assets of all entities within the P/E. The person in the scenario, as stated in the letter, has over \$10 million in net sales. called ~~12-22-87~~ 12-22-87