

UNCLASSIFIED
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July 11, 1988

BY HAND DELIVERY

Victor L. Cohen, Esq. Federal Trade Commission
Premerger Notification Office, Room 303
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Victor:

As we recently discussed on the telephone, I am requesting the Premerger Office's informal opinion on the reportability of the following transaction.

Our client, [REDACTED], an employee benefit plan, intends to acquire the [REDACTED] in Washington, D.C. for approximately \$35 million from [REDACTED] a partnership controlled by the [REDACTED]. The [REDACTED] is acquiring the hotel for investment purposes in the ordinary course of its business of buying and selling financial instruments and real estate properties for its investment portfolio. The [REDACTED] is regulated under [REDACTED] and makes investments solely for the purpose of preserving pension assets and funding pension obligations. [REDACTED], likewise, routinely buys and sells real estate properties, such as hotels, in the ordinary course of its business in managing its investment portfolio.

As we discussed, the relevant Hart-Scott materials include Section 7A(c)(1) of the Act, exempting "realty" acquisitions "in the ordinary course of business," and Proposed Rule § 802.2(b), 50 Fed. Reg. 38742, 38758 (1985), which I understand embodies the current informal interpretations used by the Staff. Proposed § 802.2(b) exempts certain acquisitions of "office buildings or residential properties" because, as explained in the Statement of Basis and Purpose:

[REDACTED]

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It is unlikely that acquisition of property named in proposed § 802.2 would have any significant potential to increase market power. The low risk of anticompetitive transactions is a result of the widely dispersed holding of these resources as well as the small size of typical transactions relative to the total amount of resources.

50 Fed. Reg. at 38756. It is submitted that similar policy considerations should apply here to the acquisition of a hotel by the [REDACTED] and that no Hart-Scott filing should be required.

I appreciate your time and attention. If I can provide you with any additional pertinent information, please give me a call.

Sincerely,

[REDACTED]

cc: [REDACTED]