

November 16, 1988

This material may be subject to the confidentiality provisions of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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

Re: Applicability of Hart-Scott-Rodino Act to Proposed Transaction  
Size-of-the-Person Test

RECEIVED  
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FEDERAL TRADE COMMISSION

Dear Mr. Sharpe:

In connection with our recent telephone conversation, this letter will serve to confirm my understanding of the Federal Trade Commission staff's view regarding the application of the "size-of-the-person" test under the referenced Act to a proposed transaction involving the following facts.

We represent an Oklahoma limited partnership engaged in oil and gas exploration and development, a portion of whose assets (oil and gas producing properties) will be acquired by a Delaware corporation. The percentage of assets to be acquired is in excess of 15% and the consideration to be paid therefor will be in excess of \$15 million in value. The acquired person is its own ultimate parent entity, and it is not engaged in manufacturing.



The partnership does not have annual net sales of \$100 million or more nor assets of \$10 million or more. The partnership's last regularly prepared balance sheet for the period ending September 30, 1988 reflects total assets on an unaudited basis of \$4,339,354. Its audited financial statements for the year ending December 31, 1987 reflects total assets of \$3,525,667. Obviously, as is apparent from the size of the transaction, the balance sheets do not reflect the fair market value of the oil and gas properties. As you acknowledged, this is not uncommon in the oil and gas industry.

The acquiring person has annual net sales and assets in excess of \$100 million.

We have concluded that under Section 7(A)(a)(2)(B) of the Act, the acquired person fails to meet the threshold level for the size-of-the-person test inasmuch as it does not have \$10 million or more in assets and is not engaged in manufacturing. Similarly, it also fails to meet the alternate test under Section 7(A)(a)(2)(C) in that the acquired person does not have \$100 million or more in annual net sales.

Accordingly, we have concluded, based upon the above facts, that the jurisdictional test for the acquired person is not satisfied, and, therefore, this transaction is not reportable under the Act notwithstanding the size of the transaction which involves an acquisition of oil and gas assets valued in excess of \$15 million. In our conversation, you expressed agreement with this conclusion.

If you need additional facts, or if you disagree with our conclusion, please notify us within 10 days of the date of this letter.



I concur with this letter  
called 11-22-88  
P.S.