

801.1(c)
(Hold)
C-4

VIA FACSIMILE

March 9, 1989

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

Dear Mr. Sharpe:

As I advised you in our telephone conversation the other day, [REDACTED] in its capacity as real estate investment advisor to corporate pension plans and government employee retirement systems (collectively "Retirement Funds"), desires to cause a group trust (the "Trust") to be formed at this time. The Trust is being formed for the purpose of acquiring title to a shopping center (the "Shopping Center") in the name of the Trust. The purchase price for the Shopping Center, which will be unencumbered by any mortgages, is in excess of \$15,000,000.

The sole beneficiaries of the Trust will be two Retirement Funds described as follows:

1. One of such Retirement Funds is a State Employees Retirement System (the "Retirement System"). The Retirement System will own approximately two-thirds of the beneficial interest in the Trust. The Retirement System was created by the statutes of its State and most State employees are mandatorily required to participate in it. The State Treasurer acts as fund custodian for the Retirement System. Ten of the eleven members of the Board of Trustees of the Retirement System are State Senators, Representatives and Cabinet Members. The Attorney General of that State is required to approve contracts to which the Retirement System is a party.
2. The other Retirement Fund is an existing group trust (the [REDACTED] Trust), some of whose beneficiaries are governed by the Employees Retirement Income and Security Act. The [REDACTED] Fund will own the remaining approximately one-third of the beneficial interests in the Trust.

Under the terms of the agreement creating and governing the Trust, the concurrence of all beneficiaries of the Trust is required for any decisions of the Trust. In other words, neither beneficiary will be able to control decisions in the event of a dispute between the Retirement System and the [REDACTED] Trust.

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At the time of closing, the land and buildings comprising the Shopping Center will be owned by two inter-related limited partnerships and an individual who is a general partner in each of those partnerships. Neither of the Retirement Funds with beneficial interests in the Trust are related in any way to the partnerships which presently own the Shopping Center, the partners in those partnerships or any of the tenants in the Shopping Center.

For the purposes of this letter, you may assume that the "commerce", "size of the parties" and "size of the transaction" tests under the Hart-Scott-Rodino Act has been met. However, it is my understanding from you, although neither of the beneficiaries of the Trust will have the unilateral control of the decisions of the Trust, that because the substantial majority of the beneficial interests in the Trust which is acquiring title to the Shopping Center will be owned by a State public employees retirement system, the transaction is exempt from the pre-merger notification requirements of Hart-Scott-Rodino pursuant to Section C (4) of the Clayton Act.

I would appreciate your telephoning me after your receipt of this letter to confirm verbally that my conclusions as stated in this letter are correct and that this letter will be placed in your business files.

Thank you very much.

Very truly yours,

called [redacted]
3-10-89 and conveyed
the information below.

It was determined that this trust is
a revocable trust.

The focus on this issue is ~~whom~~ controls
the trust not who the beneficiaries are. Since
this is a revocable trust you go back to - the
settlers of the trust (in this case they are also the
beneficiaries). Regardless of economic interests,
both retirement funds control the trust (see 801).
The full amount of the asset purchase is
attributed to both controlling persons. Once
UPE is exempt under C-4, the other is repara