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VC
Under 602.1
(not C-1)

[REDACTED]

This document is subject to the provisions of the Freedom of Information Act.

June 9, 1989

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

JUN 9 9 59 AM '89
PREMERGER NOTIFICATION
OFFICE

Dear Mr. Cohen:

We spoke on Wednesday about the need for filing a premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") in connection with the proposed purchase of an office building and an adjacent parking garage by a partnership managed by one of our clients. In order to confirm in writing the matters we discussed in our telephone conversation, I will outline the proposed transaction and my understanding of the Premerger Notification Office's interpretation.

Description of Transaction

The proposed transaction involves the sale of assets consisting of an office building and a parking garage in downtown [REDACTED] by Company A to a newly formed partnership which is controlled (within the meaning of § 801.1(b) of the rules adopted pursuant to the Act) by Company B. The total sale price will be in excess of \$15 million but less than \$25 million.

Company A is a large [REDACTED] company with numerous direct investments in real estate and Company B is a [REDACTED] subsidiary of a diversified conglomerate. Both companies are regularly involved in the purchase and sale of office buildings for investment purposes.

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For purposes of this discussion we will assume that the parties meet the "commerce test" and the "size of the parties test" imposed by the Act.

The office building does contain some retail office space, but its value is less than \$15 million. I understand from our conversation that the current staff interpretation is that a parking lot or garage does not constitute retail office space for purposes of determining whether a filing is required under the Act.

Hart-Scott-Rodino Analysis

It is my understanding after our telephone conversation that no notification is required under the Act for the proposed transaction described above. This is because the Premerger Notification Office currently takes the position that the "Ordinary Course of Business Exemption," 15 U.S.C. § 18a(c)(1), applies to the sale of office buildings between parties regularly engaged in the ownership of such properties which contain less than \$15 million in value of retail space.

Given the facts as outlined above and our telephone conversation in this regard, we have concluded that no filing is necessary. We would appreciate confirmation from you of this conclusion. If you need further information, please call the undersigned at [REDACTED]

Thank you for your assistance in this matter.

Sincerely,

[REDACTED]