

FEDERAL EXPRESS

John Sipple, Esquire  
 Chief of the Premerger Notification Office  
 Bureau of Competition  
 Room 303  
 Federal Trade Commission  
 Washington, D.C. 20580

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 June 19, 1989  
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 Section of Information /

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 NOTIFICATION  
 OFFICE

RE: Confirmation of Telephone Conversation

Dear Mr. Sipple:

Pursuant to our telephone conversation on Monday, June 12, 1989 among you, [REDACTED] and me, we are writing to request the concurrence of your office that based on the facts set forth in this letter, a [REDACTED] purchase of real estate by a general partnership whose majority partner is a State Agency (as defined below) will not subject that State Agency to the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act").

I. Background

Set forth below is a more detailed description of the transaction that we discussed. We represent an agency of a particular State, such agency having been created statutorily by the legislature of that particular State (the "State Agency") primarily for the purpose of investing the retirement funds of certain State employees. The State Agency is not a corporation.

The State Agency intends to be a limited partner of a limited partnership which is a general partner of a general partnership (the "Acquiring General Partnership"), the only ultimate parent entity of which is the State Agency. The general

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partner of the limited partnership in which the State Agency is a limited partner is a corporation (the "Investment Adviser"). The second general partner in the Acquiring General Partnership is a limited partnership consisting of three individuals as general partners and a number of corporations and individuals as the limited partners (the "Management Partnership"). For purposes of this discussion, the State Agency and the Investment Adviser each have total assets of more than \$100,000,000 and the Management Partnership has total assets of more than \$10,000,000. The State Agency has in excess of a 50% interest in the Acquiring General Partnership. The Acquiring General Partnership will be capitalized with \$ [REDACTED] (the purchase price for the assets it is acquiring) plus approximately \$ [REDACTED] for working capital purposes.

The Limited Partnership intends to acquire from an unrelated limited partnership assets which consist of industrial warehouses, the related real estate and vacant land for an aggregate purchase price of \$20,375,000 (the "Transaction").

## II. Discussion

Section 801.1(a)(2) of the rules and regulations promulgated under the HSR Act provides in pertinent part as follows:

[T]he term "entity" shall not include any foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce).

It is our understanding that the Federal Trade Commission takes the position with respect to the above quoted regulation that a state agency (which has in excess of \$100,000,000 in assets) that owns a majority interest in a general partnership that is acquiring assets in excess of \$15,000,000 from a person which has \$10,000,000 or more in assets is not subject to the requirements of the HSR Act. The rationale for this position, as we understand it, is that a state agency is not an entity for purposes of the HSR Act; therefore, it is not required to comply with the HSR Act.

Based on the FTC's position as stated in the prior paragraph, we believe that the State Agency will not be required to comply with the HSR Act with respect to the Transaction.

Separately, we understand that an analysis must be made whether the Acquiring General Partnership itself must file a Notification and Report Form pertaining to the Transaction.

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III. Conclusion

Based on the facts set forth in this letter as represented to us by the respective parties, we request the concurrence of your office with our view that the State Agency will not be subject to the requirements of the HSR Act in connection with the Transaction. The Transaction is scheduled to close on June 22, 1989.

If you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,

[REDACTED]  
[REDACTED]

[Handwritten signature]

[REDACTED]

cc:

[REDACTED]  
[REDACTED]