

[REDACTED] [REDACTED] [REDACTED] 230  
On 8/2/91  
10:40

August 2, 1991

VIA FACSIMILE

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

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

Re: Notification Requirement under the  
Hart-Scott-Rodino Antitrust  
Improvements Act of 1976 (the "Act")

Dear Ms. Ovuka:

This letter is to confirm the advice you gave the undersigned during a telephone conversation yesterday regarding the Federal Trade Commission's (the "FTC's") position under the Act, the regulations promulgated by the FTC thereunder (the "Regulations"), with respect to the following transaction:

Our client, Corporation C, owns a hotel including the real property underlying the hotel (the "Hotel"). The Hotel is valued at \$28 million and is subject to \$12 million in outstanding debts which are secured by the Hotel. Approximately 79% of the outstanding voting securities of Corporation C are owned by an individual, and this individual has total assets (including the assets held by Corporation C) in excess of \$10 million. Corporation C proposes to enter into a series of transactions with Trust T to transfer the Hotel to a new partnership comprised of Corporation C and Trust T. Trust T has total assets in excess of \$100 million.

To accomplish this transaction, Corporation C intends to sell a 1% fee interest in the Hotel (excluding personal property assets) to Trust T for a purchase price of \$80,000 in cash less the estimated value of 1% of the Hotel personal property assets. This transaction would not be reportable under the Act since as a result of the acquisition, Trust T would not hold 15% or more of the assets of Corporation C nor would Trust T hold an aggregate total amount of assets of Corporation C in excess of \$15 million.

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Corporation C and Trust T would then contribute their 99% and 1% interests in the Hotel real property and Corporation C would contribute 100% of all other Hotel assets to a newly formed Partnership P. Partnership P would also assume the \$12 million in outstanding debt associated with the Hotel. In return for these contributions, Corporation C would receive a 50% interest in Partnership P as a general partner and a 49% interest as a limited partner and Trust T would receive a 1% interest as a limited partner. Thus, following the formation of Partnership P, Corporation C would hold a 99% interest in Partnership P and Trust T would hold the remaining 1% interest. Over the telephone you confirmed to the undersigned that the FTC takes the position that the formation of a partnership is not a reportable event under the Act and that Regulation 801.40 does not apply to the formation since that Regulation applies only to the formation of corporations.

Following the formation of Partnership P as described above, Trust T will then purchase from Corporation C the 49% limited partnership interest in Partnership P for \$7,920,000 in cash plus the estimated value of 1% of the Hotel personal property assets. Following this purchase, the ownership interest in Partnership P will be 50% held by Corporation C as the general partner and 50% held by Trust T as the limited partner. Over the telephone you confirmed to the undersigned that the FTC takes the position that partnership interests are not "voting securities" within the meaning of Regulation 801.1(f)(1) under the Act. You further advised the undersigned that the FTC takes the position that the acquisition of less than 100% of the equity interest in a partnership is not the acquisition of an asset within the meaning of the Act and the Regulations. See 52 FR 20058, 20061 (May 29, 1987) ("Currently, the staff interpretation makes acquisition of less than a 100 percent interest in a partnership not reportable, because a partnership interest is deemed to be neither a voting security nor an asset.") Therefore you advised the undersigned that since Trust T will be acquiring less than 100% of the equity interest of Partnership P, neither Trust T nor Corporation C is required to file a Notification and Report Form under the Act for this acquisition nor are they required to file for the above acquisitions taken together.

We understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the FTC's advice on such matters.

Please know that, in reliance on your advice, the parties to the proposed transactions described above do not intend to file a Notification and Report Form with the FTC or the

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Justice Department in connection with the proposed transactions.

The parties would like to consummate the proposed transactions as soon as possible. Accordingly, if you are unable to concur with any part of the foregoing summary of your telephone conversation with the undersigned, or if you have any questions or further comments, we would appreciate it if you would contact the undersigned not later than Monday, August 5, 1991.

I am sending a hard copy of this letter by courier today. Please file-stamp the enclosed copy of this letter, and return it to me in the enclosed stamped, self-addressed envelope to serve as a record of your receipt of this letter. Thank you for your assistance.

Very truly yours,

[REDACTED]

cc: [REDACTED]

[REDACTED]