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M E M O R A N D U M

VIA FACSIMILE - (202) 325-2050

TO: Hy Rubenstein
Federal Trade Commission
Pre-Merger Notification Section

FROM: [REDACTED]

DATE: January 19, 1994

RE: Application of Size of Person Test to Individuals
Holding Real Estate As Tenants-In-Common

We talked earlier today about whether individuals that own real estate as tenants-in-common are treated as a single "person" when applying the size of person test. Following is a brief sketch of the relevant facts that we discussed:

1. The transaction is an asset sale. Some of the assets are owned by a Corporation, and others by its Shareholders.
2. The assets to be sold by the Corporation are a [REDACTED] and certain [REDACTED]
3. The Shareholders are selling [REDACTED] (different from the Corporation's [REDACTED]) that they hold as tenants-in-common. Each of the Shareholders is a natural person.
4. The value of the [REDACTED] to be sold by the Shareholders exceeds \$100 million, but the interest of each Shareholder in that [REDACTED] is valued at less than \$100 million.

Assuming, that the Buyer and the Corporation are each \$10 million dollar persons but that neither is a \$100 million dollar person, the question whether an H-S-R is filing is required seems to boil down to whether each Shareholder is treated as a separate "person," or whether all Shareholders are treated together as a single "person." I understand that you will confer with other staff members, and then call me to explain the FTC's position on the correct treatment for the Shareholders. I hope to hear from you by Monday, January 24. Thank you.

12/24 weekly told: Shareholders are a "GROUP" and group is not an entity.

See SPB 48-FR 34428 July 83