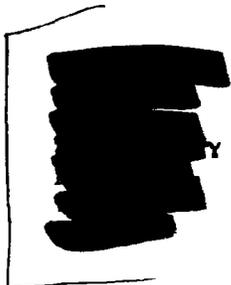
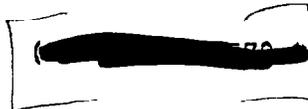


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February 13, 1995

VIA TELEFAX

Mr. Patrick Sharpe
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

This is Confidential and is subject to the
Antitrust Laws of the United States.
Section 5 of the FTC Act
Section 8 of the Clayton Act
Section 1 of the Sherman Act

Dear Mr. Sharpe:

As discussed in our telephone conversation on Friday, February 10, this letter outlines a proposed transaction and discusses certain issues raised under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). We would appreciate your consideration of whether the acquiring person in the proposed transaction has total assets or annual net sales of \$100,000,000 or more for purposes of 15 U.S.C. § 18A(a)(2). The facts are as follows:

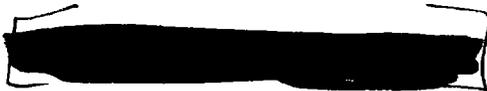
A limited liability company ("W") is considering purchasing the assets of X, a corporation not engaged in manufacturing. The purchase price for the assets will be in excess of \$15,000,000. The ultimate parent entity of X has total assets in excess of \$10,000,000.

The ultimate parent entity of W is an individual ("Z"). (He owns in excess of 50% of the equity in W). Z's principal asset is holdings of voting securities in a now publicly traded corporation (the "Company").

Does he control (ie) hold 50% of the v/s of W?

Other of Z's assets include his interests in his residential properties, as well as automobiles, boats and airplanes (collectively, the "Vehicles"). For liability and other reasons, the Vehicles are held by separate corporations in which Z is the only shareholder. The corporations then lease the Vehicles to Z (or another

yes



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corporation solely owned by Z) for his personal use. Occasionally, however, the airplanes are leased to third parties or used by Z for business purposes. (Unlike the boats which are exclusively personal and on which Z does not take depreciation or other deductions, Z does determine the business and non-business use of the airplanes, and consistent with proper accounting and tax practices depreciates a portion of the airplanes and deducts a portion of certain expenses related to the airplanes based on the ratio of business use to personal use. For 1994, the airplanes were used roughly 90% for Z's personal purposes and 10% for business use.

Z maintains at all times a current personal financial statement. The statement is kept "on line" in Z's computer system and (subject to security precautions) may be viewed and printed out at any time. The purpose of the financial statement is to provide Z with a convenient listing of his assets and liabilities. The financial statement is updated at the time of each major acquisition by Z and reflects all of his principal assets, including his personal residences and his interest in the Vehicle owning companies. D

Z's assets are carried in the computer and listed in the financial statement at book value (acquisition cost). This includes Z's holdings in the Company. Z was one of the original shareholders of a predecessor of the Company and acquired his stock in the Company for a low initial price.

As reflected in his personal financial statement, Z's total book assets, including the residential property and Vehicles, exceed \$100,000,000. If the residential property and Vehicles (and other solely personal property) are excluded, however, his total book assets are below \$100,000,000. Z's total sales, moreover, including all income earned from his stock and other investment assets and including all income received from leasing of the aircraft to third parties, are also substantially below \$100,000,000. airplanes?

Using his regular financial statement as the base of information, Z has prepared financial statements in connection with applications for loans. These financial statements differ from Z's regularly-prepared financial statements in that they show the then-fair market value of Z's stock holdings in the Company. Fair market values are — uses book value

[REDACTED]

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taken from the Wall Street Journal and inserted in lieu of historical cost for the Company shares. Tax costs of sale are also reflected. The current fair market value of Z's holdings in the Company, when coupled with Z's other assets, and after adjustment for tax costs of sale, would show Z's assets in excess of \$100,000,000, even if the residential property and Vehicles are excluded.

We would also note that Z had previously made an HSR Act filing, using financial statements based on the fair market value of his stock holdings, as a person with assets of \$100,000,000 or more. Z did so, however, at a time when he was deemed the ultimate parent entity of the Company, a fact that no longer is the case.

Based on these facts, we believe that Z should not satisfy the \$100,000,000 size of person test. Our reasoning is as follows:

1. Z's regularly prepared financial statements are the financial statements that Z prepares and maintains for his own benefit, which he updates at the time of each acquisition. The financial statements prepared at the time of the borrowing are not "regularly prepared" in that they are prepared for purposes of a specific transaction (namely borrowing money from the bank).

2. In determining the size of a natural person, the only assets to be included are "investment assets, voting securities and other income-producing property." 16 C.F.R. § 801.11(d). This would exclude Z's personal residence as well as his personal Vehicles. The fact that Z includes these personal non-income producing assets in his balance statement should not change the general rule that assets of such type are not to be included in determining a natural person's "size."

Moreover, the fact that Z chooses to hold these personal assets in a corporation (and thus, theoretically holds "voting securities") should not affect the principal characterization of the property as non-income producing. In addition, even if several of the airplanes are used to a limited extent for business purposes, no portion of such property should be classified as income producing for HSR Act purposes.

I'm troubled by this

[REDACTED]

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3. We do not believe that Z's prior HSR Act filing using a fair market valuation of his stock holdings in the Company should preclude use of Z's current regularly prepared balance sheet showing assets at book value in the current analysis.

We would appreciate an opportunity to discuss this matter further with you. Please call me at [REDACTED] at your convenience.

Very truly yours

[REDACTED SIGNATURE]

PMN Practice manual - #162 - size-of-person test - back out personal assets
#168 - Include the financials of "W" in Z's size (but eliminate duplication - that is the value of Z's 50% plus holdings in W.)

The SBP states, that a natural person exclude personal (non-income producing) property from his or her assets. The PMN office told [REDACTED] to include the 10% of the asset value of the planes used for business by Z. Use book value statements because they are regularly prepared - The fair market value statements are not.

called [REDACTED] (BS)
2-23-95

I bounced this off of the whole staff (RS) (VC) responded.

[REDACTED]