

June , 1995

**DRAFT**

Patrick Sharpe, Esquire  
Premerger Notification Office  
Federal Trade Commission  
Washington, D.C. 20580

Dear Mr. Sharpe:

This letter confirms our discussions over the last two weeks in which I outlined for you the following facts and you concurred in the following conclusions on the applicability to those facts of the Hart-Scott-Rodino Antitrust Improvements Act as summarized below.

1. Corporation A owns 100% of the common stock of Corporation B; B owns 100% of the common stock of Corporation C; C owns 100% of the common stock of D; D owns 100% of the common stock of E. A and its above-listed subsidiaries contemplate two related transactions with other corporations -- F, G and one of G's wholly-owned subsidiaries, H -- as described herein.

2. Transaction I will entail F's acquisition of 20% of the common stock of B for a purchase price of \$14,975,000 payable in cash. B does not at present anticipate any additional capital contribution from F or any additional issuance of common stock. F has agreed, however, to be subject to the possibility of a future capital call that might thereupon result in F having contributed altogether capital in excess of \$15,000,000. F's Board of Directors has determined that the fair market value of the 20% of B's stock being acquired is less than \$15,000,000.

*Exempt under  
802.20*

*not  
needed  
RS*

*What are they?  
within control of holder  
RS*

3. Transaction II will entail G's acquisition of a 15% interest in C, in the form of newly-issued preferred stock that is nonvoting upon its issuance but that is subject to conversion into voting securities upon various contingencies and in all events no later than two years after initial issuance. The consideration for this 15% interest in C will be G's conveyance to C (or alternatively to D, E or a newly-formed wholly-owned subsidiary of C, D or E) of 100% of the common stock of G's wholly-owned subsidiary, H (or alternatively the principal asset of H as described in the next sentence). The principal asset held by H is undeveloped land; the only other assets held by H are assets related to that land (such as easements for utilities, access and

*may be  
reportable  
at a later  
date upon  
conversion*

✓

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gress; governmental licenses, permits and approvals, such as "site plan" approval; and demolition work in process). H is one of several land-holding subsidiaries of G, whose principal business is the purchase, sale and development of real estate. Concurrent with the acquisition, G and B will enter into a shareholders' agreement subject to the terms of which B, as majority shareholder of C, will elect as directors of C two of G's nominees to the Board. There will be between nine and twelve directors on C's Board, including the two directors nominated by G. G's Board nominees will have no special approval rights regarding Board matters.

4. The result of these transactions would be (a) A's ownership of 80% of B, F's ownership of the other 20%; (b) B's ownership of 85% of C, G's ownership of the remaining 15%; (c) C's ownership of all of D, E and H; (d) F's indirect ownership of 17% of C, D, E and H (as a result of its 20% ownership of B). The business purpose of these transactions is to provide financing and land with which A, F and G will jointly construct and operate a public entertainment facility.

5. For purposes of this hypothetical, we asked you to assume that the size-of-persons test is met in connection with both Transaction I and Transaction II.

On the basis of the above-assumed facts, you concurred in the following conclusions:

wrong.  
Exempt  
Under  
602.20

1. Transaction I requires no HSR filing since the value of securities being transferred is under \$15 million and the size-of-transaction test is thus not met. *It crosses the 15% threshold*

OK

2. The fact that a subsequent capital call may cause F's total capital contribution to exceed \$15 million would not make either Transaction I or the subsequent capital contribution reportable. If there is, however, a subsequent transaction between F and B involving the issuance of additional shares to F and, as a result of that transaction, F holds common stock valued at more than \$15 million, F and A will be required to make an HSR filing at the time of that subsequent transaction.

OK

3. Transaction II requires no HSR filing for the following two reasons. First, G is acquiring nonvoting securities. The right to effect the election of two directors is not an attribute of the securities being acquired, but rather a contractual arrangement between the parties. The fact that subsequent conversion to voting status is contemplated does not make it subject to a filing in connection with the initial acquisition of

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the nonvoting preferred stock; a filing will, however, be required in advance of the subsequent conversion. The shareholders' agreement does not confer control of C to G, as just two out of nine to twelve directors will be elected as G's nominees. Second, C's acquisition of the stock of H involves in essence the transfer of undeveloped land in the ordinary course of G's business and is accordingly exempt from filing under 16 C.F.R. § 802.1.

Thank you for your assistance in this regard.

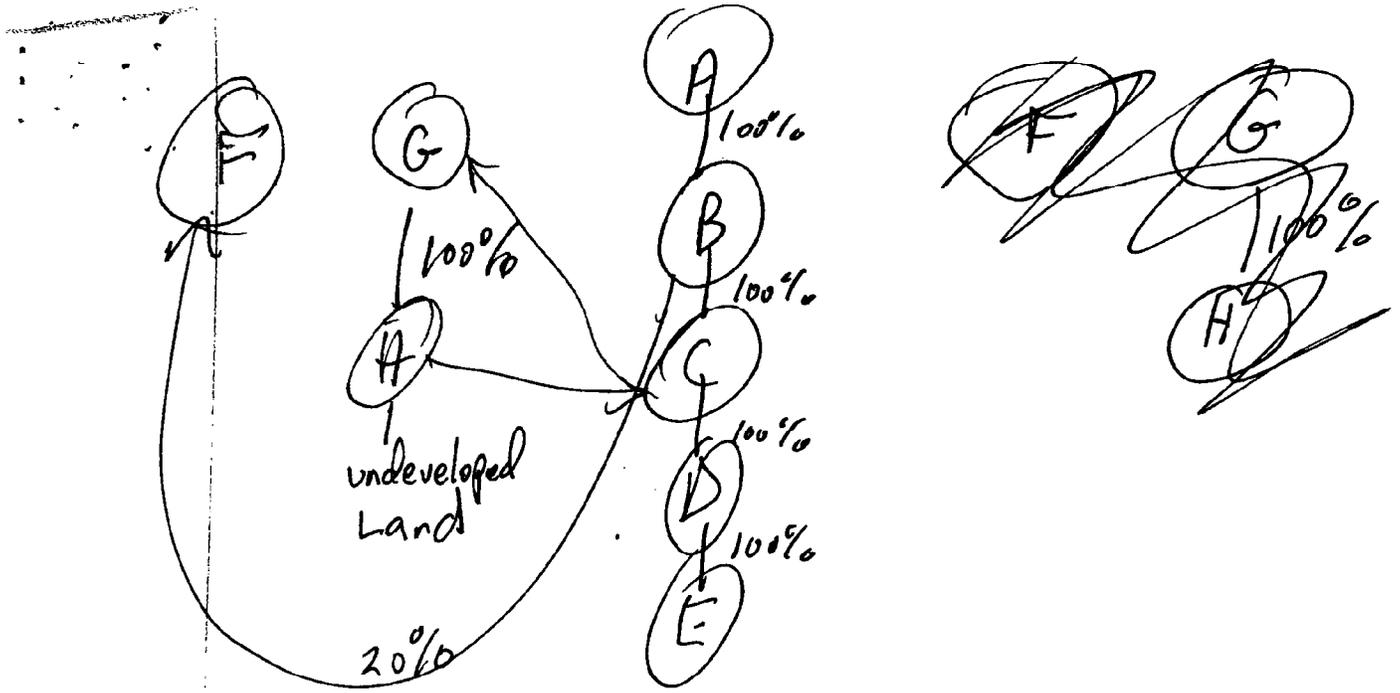
Sincerely,

[REDACTED SIGNATURE]

called [REDACTED] 6-21-95  
left voice mail. "I concur with conclusions"

called again 6-26-95  
Revised letter rec'd 6-27-95  
Left voice mail. I concur with conclusions. Except #1 on page 2 is in error. exception is noted in margin.

BS



Trans. I (F) 20% of (B) \$14.9 mm

Trans. II (G) 15% (non 1/3) of (C)  
 (A) 80% of (C)