

Payment made to contributing person is an "equalization" 80%  
payment under facts present acquisition. Not also B has not made a reportable  
that if

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE

[Redacted]  
B acquires 20% partnership August 2, 1995 share it will need to file  
Aug 3 7 55 AM '95

Via UPS Next Day Air

Victor L. Cohen, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303  
6th and Pennsylvania Avenue  
Washington, DC 20580

for the P's assets

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

Dear Mr Cohen:

This letter will confirm our telephone conversations of today in which [Redacted] and I requested your advice concerning whether the transaction described below would be subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules adopted thereunder (the "Act"). For purposes of our discussion and your advice, we assumed that the size of each party exceeds \$ 100 million in assets and/or annual sales.

The transaction involves the following facts: Company A and Company B plan to set up a joint venture partnership ("JVP"), in which Company A and Company B will hold a 20% and an 80% partnership interest, respectively. Company A will contribute to JVP substantially all of the assets, liabilities and business of a subsidiary of Company A ("Sub"), with, for purposes of this analysis, an estimated fair market value of \$ 200 million. Excluded from the transaction would be certain cash and other joint venture relationships of Sub. Company B will contribute cash to JVP in the amount of \$ 160 million (assuming a \$200 million valuation). Thereafter, with a view to "equalizing" the contributions of each partner, JVP will make a cash payment of \$ 160 million to Company A. In order to protect the respective interests of the parties, the partnership agreement of JVP will contain provisions whereby Company A may "put" its 20% interest to Company B in certain circumstances and Company B may "call" Company A's 20% interest in other circumstances. It is not, however, the intention of the parties that the put and call provisions be exercised in the immediate aftermath of the closing, except if there is a bona fide reason therefor. Company B has a smaller presence than Company A in the geographical market of Company A. The management of Sub will continue to run the business once it is transferred to JVP, subject to ultimate control by Company B. The transaction is subject to certain State regulatory approvals.

Based upon the foregoing description, you advised us that, consistent with Interpretation 47 of the Premerger Notification Practice Manual, 1991 edition, the transaction, including the \$ 160 million "equalization payment" to Company A by JVP, would not be reportable under the Act.

RS agrees.

[Redacted]

[Redacted]

Victor L. Cohen, Esq.  
August 2, 1995

*Handwritten notes:*  
ms to  
Had  
facts

Specifically, you noted that your advice was based on the following facts: (1) the transaction is bona fide; (2) Company A will retain a substantial investment in JVP, equal to \$ 40 million (again, assuming a \$200 million valuation), and accordingly will be substantially at risk; (3) the put and call are intended for protection purposes and not with a present intent that they be exercised within a short period after the closing; and (4) the current management of Sub will continue to run the business. We hereby confirm the accuracy of such facts.

As we discussed [Redacted] and I would be grateful if you could confirm the aforementioned advice in writing. If you have any question or comment or if the above does not accurately reflect your advice, please do not hesitate to call me at [Redacted] at [Redacted]

Many thanks for your help.

[Large Redacted Block]

[Redacted]