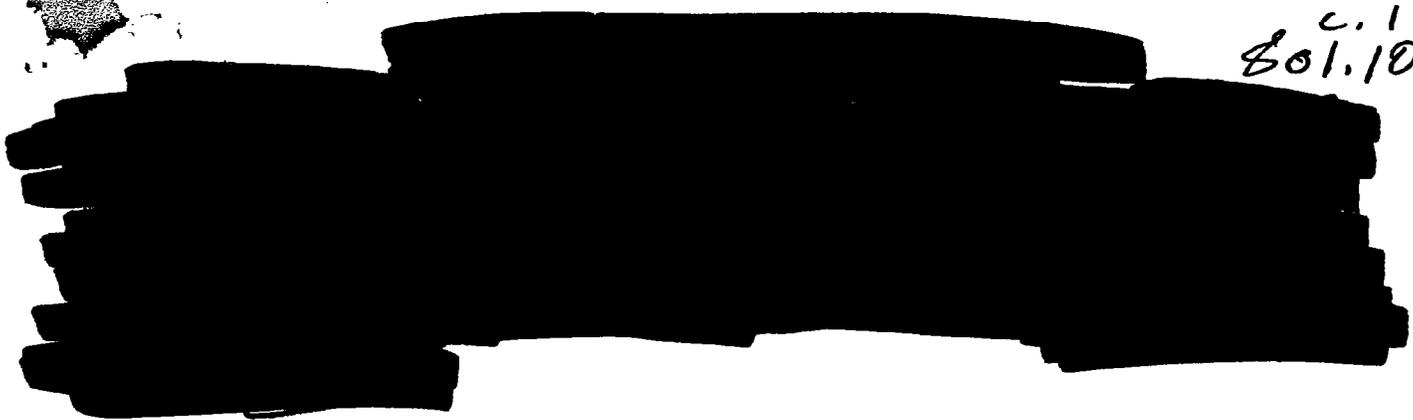


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March 4, 1996

VIA HAND-DELIVERY

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Room H-303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D.C. 20580

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RECEIVED
COMPLIANCE
PREMERGER

Re: Confirmation of Telephone Discussion
Regarding "Non-reportability" of Proposed Transaction

Dear Mr. Sharpe:

This is to confirm the substance of our telephone discussion on February 13, 1996 regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, to the following proposed transaction.

The salient facts are as follows: Company A is building a luxury townhouse development on raw land. The development is presently under construction. Ultimately, 21 townhouses will be built. Company A proposes to sell the land and the townhomes under construction to Company B. Company B will pay \$1,500,000 cash for the land and townhomes, and has agreed to make a deferred payment equal to 12 1/2% of the value of which the townhomes will ultimately be sold. Company B estimates that the townhomes, once it completes construction, will be sold for approximately \$41,000,000. Thus, Company B estimates that it will make a deferred payment to Company A in the amount of \$5,125,000, bringing the total purchase price (including the \$1.5 million up front cash payment) to approximately \$6,625,000.^{1/}

^{1/} For the purpose of this analysis, we have assumed that A and B are each their own ultimate parent entities and that they each have total sales or net assets sufficient to satisfy the "size of person" test under 15 U.S.C. § 7A(a)(2).





Mr. Patrick Sharpe

March 4, 1996

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You have advised me that the staff of the Premerger Notification Office would view the proposed transaction as exempt from HSR as an acquisition of assets in the ordinary course of business. 15 U.S.C. § 7A(c)(1); 16 C.F.R. § 802.1 (1995).

Even if the proposed acquisition were not exempt, however, no HSR filing would be required because the "size of transaction test" would not be met. Pursuant to Rule 16 C.F.R. § 801.10, the value of assets held as a result of an acquisition is equal to the greater of the purchase price, if determined, or the fair market value.

As described above, the acquiring person, Company B, may estimate in good faith that its total payment to Company A for the assets being acquired will be approximately \$6,625,000. Company B is not assuming any debt encumbering the property, and it has no reason to believe that the fair market value of the assets that it is acquiring is any greater than the purchase price. See 16 C.F.R. § 801.10(c)(3). Company B will not have purchased any assets from Company A during the 180-day period preceding the closing of this transaction. See 16 C.F.R. § 801.13(b)(2)(ii). Therefore, the acquisition fails to meet the size of transaction test set forth in 15 U.S.C. § 7A(a)(3), as modified by 16 C.F.R. § 802.20.

Should you disagree with the foregoing analysis or believe that I have misunderstood the position of the Staff of the Premerger Notification Office, please give me a call as soon as possible. Thank you for your assistance in reviewing this matter.

Sincerely,

