

802.20

December 6, 1996

DEC

**BY TELECOPIER**

Richard B. Smith, Esq.  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Sixth St. & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Dear Mr. Smith:

Following up on our conversation a few minutes ago, enclosed is a diagram showing the transaction parties and other relevant facts. The question is whether A Sub Two's acquisition of Company B's 1 percent partnership interest in Partnership One involves any H-S-R reportable transaction. My analysis is that there is no reportable transaction for the following reasons:

(1) As interpreted by PMN, a partnership interest is neither an "asset" nor a "voting security" within the meaning of the H-S-R Act (e.g., 52 Fed. Reg. 20061 (May 29, 1987)), although a person who acquires 100 percent of the partnership interests in an existing partnership is deemed to acquire the assets of the partnership.

(2) In this instance, while A Sub Two will, as a result of the acquisition of Company B's 1 percent partnership interest in Partnership One, hold all of the outstanding partnership interests in Partnership One, Partnership One owns nothing other than a partial partnership interest in Partnership Two. Because a partnership interest is not an "asset" within the meaning of the Act, Partnership One has no "assets" and A Sub Two's acquisition of the remaining 1 percent partnership interest in Partnership One is not a reportable transaction.

(3) Because the addition of Partnership One's partnership interest in Partnership Two to those already held by Company A will not result in Company A holding all of the partnership interests in Partnership Two, Company A will not be deemed to be acquiring Partnership Two's assets.



[Redacted]

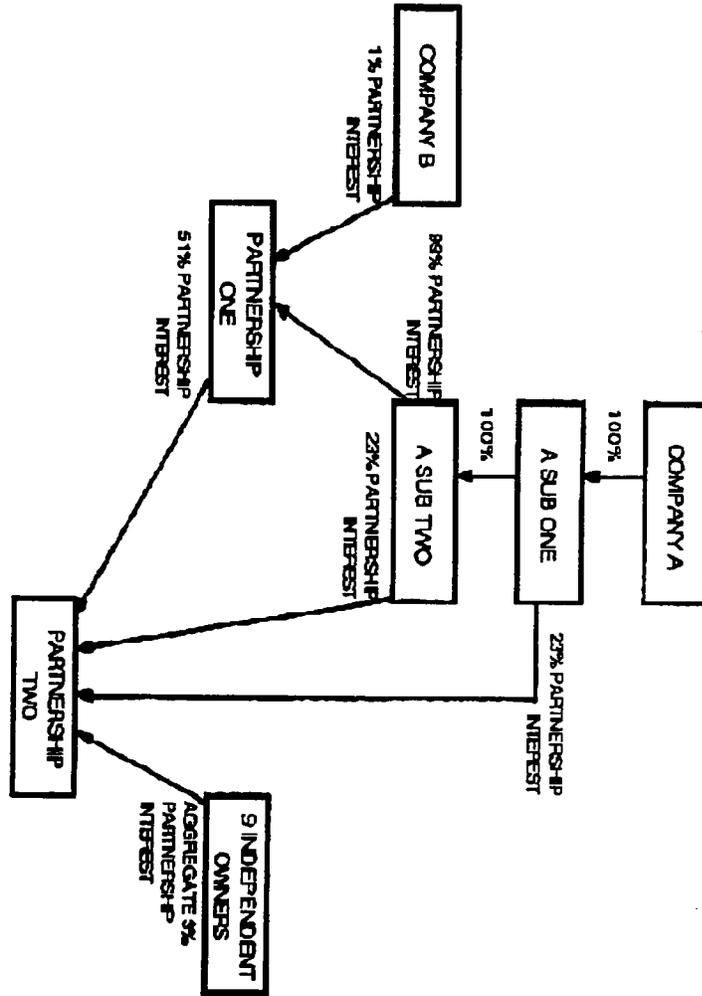
Richard B. Smith, Esq.  
December 6, 1996  
Page 2

I will greatly appreciate your reviewing this transaction and letting me know whether my conclusion is correct.

Very truly yours,

[Redacted Signature]

12/9/96 - Followed writer that I agreed with her conclusion. However, disagreed with sentence two in paragraph (2) above. The HSR Act says nothing about partnership interests. The 5/29/8 SBP at 20061 says the Remington staff's view is that when less than 100% of a partnership's interest will be held as a result of an acquisition of such partnership interests, the partnership interest is neither an asset or a voting security for purposes of the size-of-transaction. But certainly where one carries a minority partnership interest on its balance sheet, such partnership interest is an "asset" for size-of-person tests.  
R.B. Smith



- ADDITIONAL FACTS**
- 1) A SUB TWO DESIRES TO PURCHASE COMPANY B'S 1% PARTNERSHIP INTEREST IN PARTNERSHIP ONE.
  - 2) PARTNERSHIP ONE OWNS NOTHING OTHER THAN THE 51% PARTNERSHIP INTEREST IN PARTNERSHIP TWO.
  - 3) SIZE OF PERSON AND SIZE OF TRANSACTION TESTS ARE MET.