

801-70 (non-reportable partnership)

[REDACTED]

[REDACTED]

[REDACTED]

September 25, 1998

BY HAND

Richard Smith
General Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 323
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Re: Formation of a Partnership

Dear Mr. Smith:

This letter confirms our conversation today concerning the following situation. Company A (which has assets and sales in excess of \$100 million) and company B (which has assets and sales in excess of \$100 million) form a limited partnership (or a limited liability company that, we assume for purposes of the question, is treated as a partnership under the Hart-Scott-Rodino Act) in which each company will hold a 50 percent interest. At the time of formation, partner A contributes assets to the partnership with a fair market value of \$100 million, and partner B contributes \$50 million in cash to the partnership and, for tax reasons, pays \$25 million directly to partner A.

We understand that the formation of a partnership between two or more companies with an initial contribution of capital is generally not reportable. The Premerger Office views the event as the acquisition of less than 100 percent of the interests of a partnership, which is not an acquisition of assets or voting securities. We further understand that the Premerger Office has taken the position that the presence of cash equalization payments does not alter this result. Our analysis is that it makes no difference whether the cash equalization payment is made directly from one partner to another or indirectly through the partnership. You

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confirmed that our analysis is correct and that the situation described above does not trigger a filing requirement.

If this letter does is not consistent with your understanding of our conversation, please let me know immediately.

Thank you for your help in this matter.

Sincerely,

[Redacted signature]

9/28/98 Left voice mail message for writer that this transaction is viewed by the Service as a partnership liquidation and that the cash equalization payment made by one partner directly to the other does not impact its non-resident status and is necessary for a 50/50% partnership split between the contributing parties.

R. B. Smith