

PHN Facsimile Inter

June 1, 1999

Via Facsimile

Richard B. Smith, Esq.  
Federal Trade Commission  
Premerger Notification Office -  
Bureau of Competition - Room 303  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

16 JUN 1999 11:05 AM

Dear Mr. Smith:

I am writing to seek confirmation of the advice you provided in our telephone conversation of April 13, 1999, that the transactions described below<sup>1</sup> are not subject to the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the regulations promulgated thereunder (the "Rules").

1. Company A is a limited liability company that owns 100% of the membership interest in Subsidiary A, a limited liability company. Company A will purchase 37.5% of the aggregate partnership interests in a limited partnership ("Subsidiary B") from the limited partners of Subsidiary B for an aggregate purchase

<sup>1</sup> The following statement of the facts is somewhat more detailed than the one I provided to you in our telephone conversation but this should not affect the analysis of the proposed transactions for purposes of the Act and Rules.

[Redacted]

price of \$225 million, in two separate transactions. Following this purchase, the partners of Subsidiary B will then contribute their remaining partnership interests in Subsidiary B to a newly formed limited partnership ("Partnership B"), provided that 1% of the aggregate general partnership interests in Subsidiary B will be retained by the General Partner of Subsidiary B (the "General Partner").<sup>2</sup>

2. Company A and Partnership B will then form a limited liability company ("Newco"). In exchange for 50% of the membership interests in Newco, Company A will contribute 100% of its membership interests in Subsidiary A and 97.3% of its partnership interest in Subsidiary B, which shall represent 36.5% of the aggregate partnership interests of Subsidiary B. In exchange for 50% of the membership interests in Newco, Partnership B will contribute all of its partnership interests in Subsidiary B, which shall represent 61.5% of the aggregate partnership interests of Subsidiary B. Immediately following the contributions by Company A and Partnership B, Newco will distribute to each of Company A and Partnership B one-half of 1% of Subsidiary A (the "Distribution").

3. Therefore, following the consummation of the transactions, (i) Company A and Partnership B will each hold 50% of the membership interests in Newco, (ii) Newco will hold 99% of the membership interests in Subsidiary A and 98% of the partnership interests in Subsidiary B, (iii) Company A and the General Partner will each hold 1% of the partnership interests in Subsidiary B and (iv) Company A and Partnership B will each hold one-half of 1% of the membership interests in Subsidiary A. (See post closing structure diagram attached as Exhibit A.)

You advised me that the formation of Newco described above would not be subject to the requirements of the Act and Rules under Formal Interpretation Number 15<sup>4</sup> because Company A and Partnership B are not contributing assets or voting securities to Newco but, instead, in the case of Company A after taking into account the Distribution is contributing membership interests in a limited liability company representing less than 100% of the interest in such company and, in the case

<sup>2</sup> The purchase by Company A of a 37.5% partnership interest in Subsidiary B is not reportable under the Premerger Notification Office's interpretation that acquisitions of partnership interests that do not result in one person holding 100% of the interests in a partnership are not reportable. Likewise, the formation of Partnership B is exempt under the Premerger Notification Office's interpretation that the formation of a partnership is not reportable.

<sup>4</sup> 64 Fed. Reg. 24, 5808-5811, (effective March 1, 1999).

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of Partnership B, partnership interests representing less than 100% of the outstanding interests in such partnership.

Please note that even if the formation of Newco is analyzed immediately prior to the Distribution, and Company A is viewed as contributing 100% of the membership interest in Subsidiary A to Newco, the formation of Newco would not satisfy the requirements of Formal Interpretation Number 15 because only one "business" (i.e., the 100% interest in Subsidiary A) would be contributed to Newco.

I would be pleased to answer any questions you might have regarding this transaction or to discuss the matter further. Thank you in advance for your attention to this request.

Very truly yours,

[Redacted Signature]

Attachment

cc: [Redacted]

6/4/99 - Advised writer that neither of the persons forming Newco LLC has a reportable event since neither is deemed to hold 100% of the partnership or LLC interest being contributed to the LLC by the other. Since the holding of less than 100% of a partnership interest or an LLC interest is deemed to be neither the acquisition of a voting stock or an asset (the reportable events in the formation of a 50-50 LLC), there are no reportable events taking place here. (See 5/29/87 SBP at 2006) (MV agrees with conclusion.)

R.B. Smith

[Redacted]

Post-Closing Structure

