

801.1(a)(2)

[REDACTED]

October 19, 2000

VIA FACSIMILE

Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
7th & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Dear Mike:

I am writing to confirm my understanding of a telephone conversation we had on Friday, October 13, 2000 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") of a proposed transaction discussed below.

Proposed transaction and parties to proposed transaction

Corporation A, a national bank, is selling its student loan portfolio, consisting of several hundred million dollars in loans, and certain related business operating assets to the State of X<sup>1</sup> Student Assistance Commission ("the Commission"). The Commission will then sell approximately fifty percent of the loan portfolio purchased from Corporation A to Corporation B, a non-profit corporation that acts as a secondary market for student loans.

The Commission has the following characteristics:

- (1) The Commission is created by a State of X statute, and all of its powers are statutory;
- (2) The Commission is created to provide and operate a guaranteed student loan program and other related student assistance programs in the State of X;

<sup>1</sup> The State of X is one of the fifty states which constitute the United States

[REDACTED]

October 19, 2000

Page 2

(3) The Commission is composed of ten members who are appointed by the Governor of the State of X;

(4) The Commission is not incorporated under any business corporation or non-profit corporation statute, or under any special purpose statute;

(5) The employees of the Commission are considered public employees of the State of X;

(6) The Commission is subject to the State of X procurement code;

(7) The Commission has the power to issue bonds which are exempt from federal income taxation;

(8) The Commission has the power to sue and be sued in its own name, and

(9) The United States Higher Education Act, 20 U.S.C. § 1001 et seq., provides that the guaranteeing of student loans under Title IV of that Act, one of the functions performed by the Commission, must be done by a state or a non-profit private institution or organization. The Commission is not "private," and may therefore be viewed as a state entity or an arm of the state at least for purposes of the Higher Education Act.

#### Conclusions

You concluded that the proposed purchase by the Commission from Corporation A, and the proposed sale by the Commission to Corporation B would not be subject to the notification and reporting requirements of the HSR Act.<sup>2</sup> As we discussed, the transactions are exempt under Section 7A(c)(4) of the Clayton Act, 15 U.S.C. § 18a(c)(4) which exempts "transfers to or from a Federal agency or a State or political subdivision thereof." Further, as we discussed, the transactions are exempt since the Commission is not an "entity" under Section 7A of the Clayton Act, 15 U.S.C. § 18a and its implementing regulation found in 16 C.F.R. § 801.1(a)(2) which provides that an "entity" does not include "the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce)."

<sup>2</sup> The transaction also may be structured so that the Commission buys only approximately half of the student loan portfolio, and related business operating assets, from Corporation A, and the Commission does not make any transfer to Corporation B. Although we did not discuss these particular facts, it is my understanding that the transaction would remain exempt under the HSR Act for the very same reasons discussed above.

TO: [REDACTED]

October 19, 2000

Page 3

7-822 P. 04/04 5-875

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Very truly yours,

[REDACTED]

Agree -  
B. [Signature]  
10/20/00

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