

802.5

MEMORANDUM

TO: Nancy Ovuka (FTC Premerger Notification Office)
CC: [REDACTED]
FROM: [REDACTED]
DATE: February 7, 2003
RE: **Hart-Scott-Rodino Analysis**

I spoke this morning with Melea Greenfeld, who I understand no longer works in the Federal Trade Commission's Premerger Notification Office. Despite that, she and I discussed briefly a transaction in which our client proposes to engage. Because the structure of our client's ownership interest in various entities is quite complex, Ms. Greenfeld suggested that I send you a summary of the transaction by facsimile and request at least a preliminary assessment as to the reportability of this transaction.

Our client is comprised of five entities, three limited liability companies and two Subchapter S corporations. Each of the entities owns and operates one self-storage facility (*i.e.*, facilities where individuals rent space in which to store their personal belongings).

The ownership structure of each of the three limited liability companies is set forth below.

- A 48% membership interest in each LLC is held by the revocable trust of Person A ("Person A's Revocable Trust"). Person A is the sole grantor, settlor, trustee and beneficiary of Person A's Revocable Trust (with full reversionary interest).
- A 48% membership interest in each LLC is held by the revocable trust of Person B ("Person B's Revocable Trust"). Person B is the sole grantor, settlor, trustee and beneficiary of Person B's Revocable Trust (with full reversionary interest).
- A 2% membership interest in each LLC is held by Person A's Family Limited Partnership. The ownership of Person A's Family Limited Partnership is as follows: the general partner is comprised of Person A's Revocable Trust (47%), Person A's mother's trust (42%), and Person A's wife (11%). The limited partners are other members of Person A's family.
- A 2% membership interest in each LLC is held by Person B's Family Limited Partnership. The ownership of Person B's Family Limited Partnership is as follows: 100% of the general partnership interest is held by Person B. The limited partners are other members of Person B's family.

The ownership structure of the two Subchapter S corporations is set forth below.

- Person B's Revocable Trust owns a 65% ownership interest.
- Person A's Revocable Trust owns a 35% ownership interest.

These five entities will be acquired by, and will merge into, the wholly-owned subsidiary of a publicly traded corporation ("Corporation X") in exchange for three million shares of Corporation X's common stock (currently valued at approximately \$30 per share). I do not know how the consideration will break out among the five entities.

I have a few questions regarding the potential reportability of this transaction. First, is the transaction exempt under 16 C.F.R. §802.5 (Acquisitions of Investment Rental Property Assets)? If the self-storage facilities are "investment rental property assets," then most or all of the assets being acquired will be exempt, and the value of the non-exempt assets (if any) should be less than \$50 million.

If the transaction is not exempt under §802.5, do we have to aggregate any of the transactions by individual entities? It appears that Person B controls the two Subchapter S corporations. Therefore, if the value of Corporation X's common stock that Person B acquires in exchange for the two facilities owned by the Subchapter S corporations exceeds \$50 million, that transaction might be reportable. I am not sure, though, how to handle transactions involving facilities operated by the three LLCs. I am not sure whether any is controlled by either Person A or Person B, so I don't know how to analyze these transactions (or whether they should be aggregated or each should be analyzed as a separate transaction).

I will appreciate any assistance you can provide in analyzing this transaction. You can reach me by phone (at [redacted]) or fax (at [redacted]). As always, thanks for your help.

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Advised writer that not enough information is provided to ascertain control of LLCs. In any case, transaction is exempt under 802.5.

hmo
MV CONCURS