

801.1(b)  
control

[REDACTED]

Information may be disclosed to  
personnel of the Commission  
7A (b) of the Freedom of  
Information Act

[REDACTED]

November 9, 1990

[REDACTED]

VIA HAND DELIVERY

Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
(Attn: Patrick Sharpe)  
6th & Pennsylvania Avenue, N.W.  
Room 303  
Washington, D.C. 20580

NOV 13 7 00 AM '90

Re: Request for an Informal Interpretation re  
16 C.F.R. § 801.1(a)(3) and § 801.1(b)

Dear Mr. Sharpe:

We wish to obtain an informal interpretation of the application of the concepts of "ultimate parent entity" and "control" under 16 C.F.R. § 801.1(a)(3) and § 801.1(b) of the Federal Trade Commission's ("FTC") premerger notification rules implementing Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR"), in the context of a general partnership. We understand, in follow-up to our phone conversation on this date, that we can obtain such an informal interpretation by providing to you a letter describing the hypothetical facts and stating our conclusions reached after conferring with you, and that you would circulate our letter throughout your office as you deem necessary and provide us a telephonic response confirming, clarifying or revising our conclusions.

Hypothetical Facts: The hypothetical factual situation is described as follows:

A. A general partnership has 81 general partners. One of the general partners holds a 20% ownership interest in the partnership ("Partner A").

B. The other eighty general partners (the "Remaining Partners") hold, in the aggregate, an 80% ownership interest in the partnership, each holding an 1% ownership interest in the partnership.

*we distinguish this to not  
be comparable to a board  
of directors*

C. A partnership agreement delegates the power to direct the day-to-day business affairs of the partnership to a Partner's Committee (the "Committee").

D. The Committee consists of five persons. Three persons are selected by Partner A. The other two persons are selected by the Remaining Partners.

E. A majority vote of all the partners is required for participation by the partnership in any business other than the business related to the purpose of the partnership, or for the sale of all or substantially all of the assets of the partnership.

Application of HSR. As defined in 16 C.F.R. § 801.1, the term "ultimate parent entity" means "an entity which is not controlled by any other entity".

The term "control" is defined, in pertinent part, as (1) either (i) "[h]olding 50 percent or more of the outstanding voting securities of an issuer," or (ii) "having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity"; or (2) "[h]aving the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions."

Application of the concept of "control" to a limited partnership is discussed in Example 2 of § 801.1(b). The example concludes that control of a partnership is determined by subparagraph (1)(ii) of § 801.1(b) and not by either subparagraph (1)(i) or (2) because partnership interests do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions."


Conclusion. Under the hypothetical facts set forth above neither Partner A nor any of the Remaining Partners, individually, is deemed to control the partnership because none has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the partnership. Consequently, the partnership is the ultimate parent entity.


With reference to the above hypothetical factual situation, please confirm whether our conclusion properly interprets the application of the concepts of "ultimate parent entity" and "control" to our hypothetical situation.

Federal Trade Commission  
November 9, 1990  
Page 3

Please contact the undersigned if you have any questions on the hypothetical facts or the informal interpretation being requested, and when the FTC has completed its review and you can discuss the FTC's interpretations. Thank you for your attention to this matter.

Very truly yours,  


  
See 801.1(b) control example 2. "Thus control of a partnership is not determined on the basis of either subparagraph (1)(i) or (2) of this paragraph." Thus, a partnership can only be controlled according to section 801.1(b)(1)(ii).

called  11-13-90  
and conveyed PMW office  
position.

(RS) concurs