



March 22, 1991

**VIA TELECOPY AND
FEDERAL EXPRESS**

Dick Smith, Esq.
Federal Trade Commission
Bureau of Competition
Premerger Notification Office
Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, D. C. 20580

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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Re: Request for Informal Interpretation Under
the Hart-Scott-Rodino Antitrust Improvements
Act of 1976 and the Regulations Thereunder

Dear Mr. Smith:

Pursuant to § 803.30 of the regulations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), we make the following request for informal interpretation. Set forth in this letter are all facts that the undersigned believes to be material to the request, the reasons why the requirements of the Act are or may be applicable, and the questions that the undersigned wish resolved.

The transaction in question involves a [redacted] currently being leased under a long-term lease by Entity A, which was formed for the purposes of constructing and operating a [redacted]

[redacted] Our client will sublease the [redacted] from Entity A under a [redacted] (the "Sublease"), which has an initial term of twenty years, with two ten-year extensions. Entity A has filed a joint petition for reorganization under Chapter 11 of the United States Bankruptcy Code and the Sublease is subject to confirmation by the United States Bankruptcy Court. The Sublease may be

terminated by our client if, among other things, legislation authorizing the conduct of [REDACTED] is not enacted.¹

In the event the Sublease would otherwise be a reportable transaction, we request an interpretation that our client is not required to file a notification because neither our client nor Entity A meets the size thresholds of the HSR Act.

In its financial statement for the period ending September 30, 1990, Entity A showed total assets of [REDACTED] and net sales of [REDACTED] for the nine-month period ending September 30, 1990. An income statement for 1990 shows annual net sales of [REDACTED]. A copy of these financial statements, which are the most recently prepared financial statement of Entity A, is attached. Complete financial statements for the period ending December 31, 1990 have not been prepared, but we believe that the income statement may be helpful.

The ultimate parent entity of our client, as defined in 16 C.F.R. § 801.1(a)(3) (the "Ultimate Parent"), controls [REDACTED]. The Ultimate parent has total assets of less than \$100,000,000, as shown on the attached financial statements for the Ultimate Parent and [REDACTED] for the period ending December 31, 1990, which are the most recent regularly prepared financial statements for the Ultimate Parent and [REDACTED]. Our client, which is the entity that will sublease the [REDACTED] is a newly incorporated entity whose assets and net sales are not reflected in the financial statements of the Ultimate Parent. Our client's net sales and assets are substantially zero because it has not engaged in any business activities and has no assets except the intangible rights, if any, it has acquired in the sublease and related transactions.

The Ultimate Parent has annual net sales of more than \$10,000,000, but less than \$100,000,000, as shown on the attached financial statement. The Ultimate Parent has annual net sales in excess of \$100,000,000 only if the entire [REDACTED] is deemed to be "net sales." We believe that "net sales" includes only the "take out," or amount deducted from [REDACTED]. First, the regularly prepared financial statements for [REDACTED] treat only the "take out" as gross sales or revenues. [REDACTED] is not treated as gross revenues of [REDACTED]. Second, the

¹ We believe that there are several grounds for maintaining that the Sublease is not a reportable transaction, or is not reportable until authorizing legislation has been enacted and certain other contingencies removed. We reserve discussion of those other grounds because we believe that the transaction is not reportable for the reasons discussed herein.

[REDACTED]

statutes authorizing [REDACTED]

[REDACTED] Only the take out, less taxes and fees, is available to the operator to pay [REDACTED] operating expenses or for any other purpose.

We would appreciate your confirmation that our interpretation is correct and that no filing is required, assuming the correctness of the facts set forth herein.

A hearing on the confirmation of Entity A's Modified Plan of Reorganization is scheduled before the Bankruptcy Court on [REDACTED]. We would greatly appreciate a response before [REDACTED] in order to avoid delay in confirmation if compliance with the HSR Act is raised at the confirmation hearing. It is important to the sublease transactions that the order confirming the Modified Plan of Reorganization be entered before the 1991 regular session of the [REDACTED] legislature convenes on [REDACTED]. To facilitate your prompt review, this letter is being telecopied to you. The financial statements and an original of the letter will follow by Federal Express.

As we understand it, this information and the attached financial statements are confidential and exempt from the Freedom of Information Act, and that no such information may be made public, except as may be relevant to any administrative or judicial proceeding. If this is not the case, we would respectfully request that such materials be returned to us at your convenience.

If you need to review the Sublease or other documents, or if you need additional information, please call me.

We very much appreciate your attention to this matter and look forward to your response.

[REDACTED]