

the above activity is being investigated and the following information is being furnished to you for your information (50)
the following information is being furnished to you for your information
Wednesday, March 27, 1991
Richard [redacted]

[Redacted]

[Redacted]

[Redacted]

March 27, 1991

FEDERAL EXPRESS

The amount of information which restricts release under Freedom of Information Act

RECEIVED
MAR 28 2 22 PM '91
FEDERAL TRADE COMMISSION
NOTIFICATION OFFICE

Victor Cohen, Esq.
c/o Premerger Office
Federal Trade Commission
Room 303
Washington, D.C. 20580


Re: Inquiry Concerning Filing Requirements
Under the Hart-Scott-Rodino Act

Dear Mr. Cohen:

This letter will confirm the substance of our conversation of March 26, 1991 in which I inquired as to whether a filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 would be required under the certain circumstances I described and you advised me that no filing would be required.

I explained at the outset that the contemplated transaction will involve the formation of a joint venture which, if it were to be organized in the corporate form, would undoubtedly require a filing since the participating entities and the resulting joint venture will each exceed the minimum size thresholds (set forth in § 801.40). However, the transaction contemplates forming a partnership joint venture.

[Redacted]



The specific transaction I described will proceed as follows:

Company A and Company B, each above the "size of person" threshold, will form a non-corporate joint venture ("JV") in which A and B will each own a 50% partnership interest. To form the joint venture, A will contribute \$25,000,000 in cash and B will contribute \$50,000,000 in non-cash assets. Immediately upon its formation, JV will borrow \$50,000,000 from a third-party banking institution, \$25,000,000 of which will go to B in order to equalize the contributions of the joint venture partners. The remaining \$25,000,000 will be used by JV for daily operations.

You advised me that no filing would be required in connection with the above-described transaction. Since the payment will be made in order to equalize the contributions of the partners to the joint venture to correspond to their respective ownership interests, the transaction must, for Hart-Scott-Rodino Act purposes, be considered as a whole and not fragmented into separate subtransactions. You emphasized the difference between the transaction such as the one I described and a transaction where one of the joint venture partners has a greatly disproportionate interest in the joint venture (90% being your illustration).

I understand that you will advise me promptly should my report of our discussion be mistaken in any way. Thank you for your courteous assistance in this matter.

Sincerely yours,

