

802.20 and 801.40

[REDACTED]

[REDACTED]

[REDACTED]

April 22, 1991

VIA TELECOPY

Mr. Dick Smith
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D.C. 20580

Re: Applicability of Hart-Scott-Rodino Act to
Proposed Transaction

Dear Mr. Smith:

Following up on our telephone conversations last week, we would like to outline for you a proposed real estate transaction (the "Transaction") in order to determine whether the Premerger Notification Office believes that the Transaction is exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The Transaction is comprised of the following events, which will be consummated at one sitting and will constitute one continuous closing:

1. Entity A, a general partnership which owns a 100% interest in Shopping Mall A and which in turn is owned 50% by Corporation X-1 and 50% by Corporation X-2, both of which are wholly-owned subsidiaries of Corporation X, will transfer a 70% undivided interest in Shopping Mall A to Entity B, a general partnership which owns a 100% interest in Shopping Mall B and which in turn is owned 83-1/3% by Corporation Y and 16-2/3% by Corporation Y-1, an affiliated corporation to Corporation Y. There is no overlapping ownership between Entity A, Corporations X, X-1 and Corporation X-2, on the one hand, and Entity B, Corporation Y and Corporation Y-1 on the other hand.

[REDACTED]

[REDACTED]

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2. In consideration for the transfer described in #1 above, Entity B will transfer to Entity A a 28% interest in the profits, losses, cash flow and liquidated proceeds of Entity B.

3. Entity B will then transfer its 70% undivided interest in Shopping Mall A to a newly-formed general partnership (the "Venture"), and Entity A will transfer its remaining 30% interest in Shopping Mall A to the Venture.

The net result of the Transaction is that Entity A will own a 30% interest in the Venture and Entity B will own a 70% interest in the Venture. The Venture will own all of the assets of Shopping Mall A. The Venture will be a bona fide unincorporated joint venture that will own and operate Shopping Mall A. The joint venture agreement between Entity A and Entity B is expected to contain restrictions on the transfer of the interests in the Venture that will effectively keep Entities A and B in the Venture for a significant duration after the closing.

The Transaction is the second transaction that we discussed last week, and is not related in any respect to the transaction that was discussed in our April 18 letter to you. We respectfully request that you review this letter upon receipt and kindly telephone the undersigned at [REDACTED] at your earliest convenience to share with us the Premerger Notification Office's analysis of the Transaction.

Thank you very much for your attention to this matter.

Very truly yours,

[REDACTED]

[REDACTED]

4/25/91 - advised [REDACTED] that transfer of 70% undivided interest in the shopping mall (assuming sale of assets and type of transaction to be met) is reportable as an asset acquisition. Thought it represents the first step in the formation of a non-reportable joint venture.

[REDACTED]