

802.63



May 16, 1991

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

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PRE-MERGER
NOTIFICATION
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VIA FACSIMILE

Dear Mr. Sharpe:

Pursuant to our recent telephone conversation, I am writing this letter to acquaint you with the following facts in an effort to determine whether the transaction in question would be reportable under the Hart-Scott-Rodino Act.

A number of individuals (the "Original Partners") formed a limited partnership (the "Partnership") to develop a regional shopping center (the "Shopping Center") on land owned by the Partnership. One of the Original Partners was the sole general partner (the "General Partner") and owned more than 50% of all partnership interests. All the rest of the Original Partners were limited partners.

After the Shopping Center was completed and opened to the public for business (although not then fully leased), a group of institutional investors consisting of pension plans and government employee retirement systems (collectively, the "Institutional Investors") entered into two simultaneous transactions with respect to the Shopping Center:

The Partnership Interest Acquisition

The Institutional Investors formed a general partnership among themselves (the "Equity Partnership") which purchased a 50% limited partnership interest in the Partnership from the Original Partners. For your information, the purchase price of such interest was in excess of \$15,000,000.

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act



Handwritten notes:
See page 2 for...
re: [unclear]

Handwritten initials: MJC

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the confidentiality provision of
Section 7A (b) of the Glasson Act
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Freedom of Information Act

*correct not
contracted
retained*

The Loan

The Institutional Investors formed a "mirror-image" second partnership among themselves (the "Lending Partnership") which made a loan in excess of [redacted] (the "Loan") to the Partnership. The Loan, which was secured by a first mortgage encumbering the Shopping Center as well as by a cash escrow in the sum of \$3,500,000, provided for monthly payments of interest only, payable over a 15 year term.

The General Partner personally guaranteed to the Lending Partnership:

- (a) the payment of all leasing costs incurred for space which had never been leased in the Shopping Center; and
- (b) all interest payments to the Lending Partnership until such time as the Shopping Center is leased to a stabilized level (it was anticipated by all parties concerned that prior to the full lease-up of the Shopping Center, the General Partner would have to subsidize the interest payments to the Lending Partnership).

At a point in time after the simultaneous closing of the two transactions, the General Partner defaulted in its obligation to provide the Partnership with sufficient out-of-pocket funds to make the interest payments on the Loan. As a consequence, the Loan went into default.

After the Loan went into default, the Institutional Investors met with the General Partner and negotiated a work-out of the problem. The terms of the work-out were that in exchange for the Lending Partnership's agreement to release the General Partner under his guarantee, the General Partner would cause the Partnership to deliver a deed in lieu of foreclosure to the Lending Partnership and also to assign to the Lending Partnership 100% of the \$3,500,000 in the cash escrow. Had this agreement not been reached, the Lending Partnership would have foreclosed its mortgage. The work-out transactions described in this paragraph are expected to be consummated imminently.

Section 802.63 (a) of the Regulations provides that "an acquisition . . . in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business."

[Redacted]

Emergency

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It is our belief that the work-out transaction described in this letter falls within the scope of Section 802.63 (a) and should be exempt from any reporting requirement. However, because of the comparative complexity of the transaction, I wanted to run it by the Department just to be sure.

I would appreciate hearing from you after you have had a chance to review this letter.

Thank you very much.

Very truly yours,

[Redacted signature]

RS

... interested may be subject to the confidentiality provision of Section 12 (b) of the Clayton Act which prohibits release under the Freedom of Information Act

called [Redacted] 5-17-91-letter has some problems
basically agree this is exempt under 802.63
confirmed "minor" image partnership is
its own UPE (no one upstream that
is a competitor). *(RS)*

(RS) concurs