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FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
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August 4, 1992

BY HAND

Hy Rubenstein, Esquire
Premerger Notification Office
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Acquisition of Undivided Interests of Unrelated Tenants in Common (Premerger Notification Practice Manual Interpretations No. 1 and No. 83)

Dear Mr. Rubenstein:

The purpose of this letter is to confirm our telephone discussion yesterday afternoon regarding the applicability of the Hart-Scott-Rodino (HSR) act and regulations to the purchase of assets that are owned by unrelated tenants in common. Consistent with interpretations No. 1 and No. 83 in the 1991 edition of the American Bar Association Premerger Notification Practice Manual, we confirmed that the undivided interest of each unrelated tenant in common should be treated as a separate acquisition and that the purchase price should be allocated between the tenants based on their respective percentage interests. Thus, if two tenants in common hold equal interests in assets that are being purchased for $20 million, the transaction should be analyzed as two separate $10 million asset acquisitions. On those facts, neither of the two acquisitions would give rise to an HSR reporting obligation.

As I described in our conversation, the transaction in question involves the acquisition of [redacted] from two owners who are tenants in common and are unrelated to one another. The [redacted] consist of both [redacted] and [redacted] being treated as assets consistent with other interpretations set forth in the ABA manual. I under-

stand (and we have assumed for purposes of this inquiry) that under the applicable state law, tenants in common hold undivided interests in these assets.

Under these circumstances, interpretations No. 1 and No. 83 require that each undivided interest be treated as a separate asset and that the interests not be aggregated for purposes of analyzing the HSR reporting obligation. If the tenants have equal ownership interests, the price being paid for the asset should be allocated equally between them. Assuming that the total acquisition price for all the assets is $20 million, the transaction thus would involve acquisitions of $10 million in assets from each of the two tenants in common. As such, there would no reportable transaction on these facts.

As I also mentioned, the two tenants in common are unrelated, so that there is no basis for re-aggregating their undivided interests. Looking specifically to a potential issue raised by interpretation No. 1, I understand (and have assumed) that the tenancy in common does not constitute a partnership under applicable state law.

I appreciate your assistance in confirming our HSR analysis of this transaction and the conclusion that, on these facts, it does not give rise to a reporting obligation.

Sincerely,