

[REDACTED]

[REDACTED]

801.16)?
802.63?
purchase of a stream
of income

[REDACTED]

January 12, 1993

JAN 19 10 45 AM '93
FEDERAL TRADE COMMISSION
RECEIVED

VIA FEDERAL EXPRESS

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Attention of Ms. Nancy Ovuka

Re: Advice Concerning Hart-Scott-Rodino Antitrust
Improvements Act of 1976 ("Act")

Dear Ms. Ovuka:

This letter is to request advice concerning the position of the Federal Trade Commission ("FTC") with respect to a proposed acquisition of the [REDACTED] in a [REDACTED] established in connection with a sale-leaseback transaction.

Our client is the lessee ("Lessee") in a sale-leaseback transaction of a cogeneration facility ("Facility"). Title to the Facility is held by a trustee ("Trustee") in a trust ("Trust") for the benefit of a single institutional investor ("Beneficiary"). The Trust purchased the Facility from the Lessee as part of the original transaction. After payment of debt service by the Trust, the Beneficiary receives the income stream generated by the lease payments to the Trust. So long as the Lessee acts in compliance with the lease, the Lessee controls the Facility to the exclusion of the Trustee and the Beneficiary.

The terms of this transaction are typical of a sale-leaseback transaction. The Trustee holds title to the Facility and it performs certain essentially ministerial functions with respect to the Trust and has specified duties to the Beneficiary. The Trustee is not, however, responsible for operating the Facility and does not otherwise serve a policy-making function with respect to the Facility. In fact, the Lessee is the only party which has the requisite regulatory licenses which allow it to operate the Facility.

Lessee (or an affiliate of Lessee within the same ultimate parent group as Lessee) proposes to acquire the beneficial interest in the Trust. Such acquisition does not involve any change in competition as to the Facility.

Ms. Nancy Ovuka
January 15, 1993
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We understand that, in response to a request for advice dated December 10, 1991, addressed to you (and letters referred to therein dated December 1, 1990, and March 18, 1991, addressed to Mr. Patrick Sharp), the FTC took the position that the acquisition of a [REDACTED] in a trust would not be subject to the reporting requirements of the Act on the theory that the sale of a [REDACTED] in a typical sale-leaseback transaction is for purposes of the Act only the transfer of an income stream, which is neither a voting security nor asset under the Act.

We would appreciate hearing from you as to whether this remains the staff's opinion and whether the proposed acquisition need not be reported under the Act.

If you have any questions or if you need further information, please do not hesitate to call me at [REDACTED]

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

The Trust remains in existence and ^{continues to} hold title to the asset after the transaction. This is a purchase of a stream of income and not reportable.

(PS)

(R.S.) - concurs

called [REDACTED] 1-21-93 (PS)