

801.11 (e)

March 22, 1993

Mr. Dick Smith  
Pre-Merger Notification Office  
Federal Trade Commission  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Proposed Acquisition

Dear Dick:

You previously discussed with me a proposed acquisition and whether it is required to be reported under Section 7A of the Clayton Act and the rules promulgated under the Hart-Scott-Rodino Antitrust Improvement Act. The proposed transaction is as follows. Corporation A, Corporation B and Natural Person C, together with certain other persons, propose to form a limited partnership. Corporation A, Corporation B and Natural Person C will act as the general partners. The limited partnership will have an as yet undetermined number of limited partners. The general partners will contribute a nominal amount of cash to the limited partnership. The limited partners will, in the aggregate, contribute substantially all of the equity capital, approximately [REDACTED] million, in cash to the limited partnership. No general or limited partners will be controlled by any other general or limited partner. No general or limited partner will have the right to 50% or more of the profits of the limited partnership or the right in the event of dissolution of the limited partnership to 50% or more of the assets of the limited partnership.

The limited partnership will purchase [REDACTED] located in the United States from Corporation X and from its parent, Corporation Z, which is a non-U.S. corporation. All the properties are owned by and are being purchased solely from the parent and its wholly-owned subsidiary. The purchase price for these working interests is approximately [REDACTED] million in cash. We do not know if Corporation Z is controlled by another entity. For purposes of this letter, we assume that any and every person that includes [REDACTED]

[REDACTED]

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Corporation Z, together with its Corporation X subsidiary (and other subsidiaries), has total assets, on a consolidated basis, as shown on its last regularly prepared balance sheet, in excess of \$100 million.

The limited partnership will be formed immediately prior to the proposed acquisition. In order to secure the funds necessary for the proposed acquisition, the limited partnership will borrow approximately [REDACTED] million in cash from one or more lenders to add to the equity capital. The limited partnership will hold, at the time of the acquisition, cash of approximately [REDACTED] million and no other assets, all ear-marked to fund the purchase. No financial statements will be prepared by or for the limited partnership except perhaps a proforma statement showing its anticipated financial condition following consummation of the proposed acquisition. The proposed acquisition will be effected pursuant to a single master purchase agreement and consummated in a single closing. Evidencing the transfer of ownership with respect to the acquired interests will, of course, require recording of numerous title documents and other necessary actions.

Based upon the foregoing, the limited partnership will be the sole acquiring person in the proposed acquisition. The acquired person(s) in the proposed acquisition are not definable based upon the foregoing. However, every acquired person in the proposed acquisition will be a person that includes Corporation Z and its subsidiary, Corporation X, and will hold all of the [REDACTED] properties which will be acquired by the limited partnership in the proposed acquisition. The proposed acquisition is a single acquisition.

As noted above, we assume that the acquired person(s) in the proposed acquisition will meet the size-of-person test under Section 7A. With respect to the acquiring person, the limited partnership will have no regularly prepared balance sheet. Therefore, its size is determined pursuant to Rule 801.11(e). Because each and every acquired person in the proposed transaction will include Corporation Z and its subsidiary, Corporation X, and will own all the [REDACTED] that will be acquired in the transaction in a single acquisition, the limited partnership will be able to deduct from the total of its assets all the cash used as consideration in the proposed acquisition, [REDACTED] million, in calculating its size pursuant to Rule 801.11(e) with respect to the proposed acquisition

[REDACTED]

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for each and every acquired person in the proposed acquisition. Accordingly, the limited partnership will have a size of \$-0- for purposes of the size-of-person test under Section 7A. Therefore, the proposed acquisition is not required to be reported.

Unless we are notified to the contrary in writing by Friday, March 26, 1993, we will assume that this letter correctly states the Federal Trade Commission policy with respect to the determination of the size of the limited partnership in the proposed acquisition.

Very truly yours,

[REDACTED]  
[REDACTED]

[REDACTED] 3/23/93 - advised [REDACTED] that, based on this fact scenario, in which the very same assets were to be purchased from (potentially) two or more acquired persons, 801.11(e) could be used to reduce the size of the newly formed partnership (which did not have a regularly prepared balance sheet) vis-a-vis each of the acquired persons.

P.B. Smith