

in the formation of a partnership the acquisition of partnership interests in return for assets or voting stock is not reportable under a partnership to be rather a voting interest "is deemed security over an asset."

2 FR 20061 (May 29, 1987) The fact that 50% of Company C's

conclusion. voting stock is held by a third person does not alter this

April 12, 1993

VIA MESSENGER

Mr. Victor Cohen
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Premerger Notification Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

Dear Mr. Cohen:

This letter confirms our telephone conversation of April 6, 1993, during which you advised me that the transaction described below would not be subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

As you recall, our client proposes to enter into the following transaction:

Company A and Company B propose to form Partnership A.
In connection with the formation of Partnership A, Company A and Company B will each cause controlled entities to contribute various joint venture partnership interests and voting securities of third parties to Partnership A, in exchange for which Company A and Company B will each receive a 50% partnership interest in Partnership A. Specifically, Company A will cause controlled entities of Company A to contribute to Partnership A, 50% of the voting securities of Company C, a company whose voting securities are currently owned 50% by controlled entities of Company A and 50% by Company D. Company D, in turn, is controlled by an individual (the "Individual"). Companies A, B, C and D each meet the

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size of person test; Company C has net sales or total assets in excess of \$25 million.

As we discussed, you agreed that this transaction is merely the formation of a partnership. As we discussed, the Act does not govern the formation of partnerships. See e.g., American Bar Association, Premerger Notification Practice Manual No. 47 (1991); Axinn et. al., Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act § 3.04 et. seq. (1991); 16 C.F.R. § 801.40 (1992). Accordingly, in this case, assets, partnership interests or voting securities contributed to Partnership A in connection with its formation (i.e., in exchange for partnership interests) should not be subject to the reporting requirements of the Act. This is the case even though Company A will cause controlled entities to contribute to Partnership A, 50% of the voting securities of Company C.

Further, you agreed that the contribution by Company A of the voting securities of Company C through Company A's controlled entities should not result in a reportable transaction between the Individual and Company B because Company B is not "acquiring" voting securities of Company C in this transaction; the voting securities of Company C are being contributed by controlled entities of Company A to Partnership A in connection with Partnership A's formation.

* * *

As always, thank you for your assistance. If I misunderstood our telephone conversation regarding the non-reportability of this transaction, please notify me at your earliest convenience so that we may begin to prepare the necessary Premerger Notification and Report Forms. If you have any other questions or comments, please contact us. My direct number is listed above.

Very truly yours,

Enclosure