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January 25, 1994

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FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580
JAN 26 3 10 PM '94

Mr. Hy David Rubinstein
Staff Attorney, Pre-Merger
Notification Section
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington D.C. 20580

JAN 26 3 10 PM '94
FEDERAL TRADE COMMISSION

Re: Treatment of Tenants-In-Common for Purposes of Size of Person Test

Dear Hy:

I am writing to confirm my understanding, based on our recent phone conversations, that persons holding real estate as tenants-in-common are treated as a "group," and that each of the persons comprising the group is therefore looked at separately when applying the size of person test. Our discussions were based on the following facts:

1. The transaction is an asset sale. Some of the assets are owned by a corporation, and others by its shareholders.
2. The assets to be sold by the corporation are a [REDACTED] and certain [REDACTED]
3. The shareholders are selling [REDACTED] (different from the corporation's [REDACTED] that they hold as tenants-in-common. Each of the shareholders is a natural person, a trust or a partnership.
4. The value of the [REDACTED] to be sold by the shareholders as tenants-in-common exceeds \$100 million, but the interest of each shareholder in that [REDACTED] is valued at less than \$100 million.
5. The buyer and the seller corporation are each \$10 million persons, but neither is a \$100 million person.

[REDACTED]

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I understand from you that in the above-described situation no Hart-Scott-Rodino filing is required because the selling shareholders are treated as a "group" within the meaning of 16 C.F.R. § 801.1(a)(2), as amended by 48 F.R. 34428 (July 29, 1983). I understand further that if the buyer is a \$100 million person, then we will have to prepare filings for the buyer, the selling corporation, and each shareholder that is a \$10 million person in its own right. Please let me know if my understanding is in any way incorrect.

Very truly yours,

