The size-of-person test is based on the last regularly prepared balance sheet 801.11
if not over 15 months old. VC

Facts of letter indicate ~~that~~ size tests are not met.

[redacted]

May 30, 1996

Victor Cohen
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Ave. N.W.
Washington, D.C. 20580

<u>HAND DELIVERY</u>

Dear Victor:

This letter is to confirm, based on my recent conversations with you and Dick Smith and on the following identified factual premises, that certain upcoming transactions will not be reportable under the Hart-Scott-Rodino law.

XYZ L.P. is a limited partnership which, together with its general partner, is engaged in a non-manufacturing business. Separate interests of 15% each are held in XYZ by four individuals, Child 1, Child 2, Child 3 and Dad. The children are all adult children of Dad. A 40% interest in XYZ is held by Corporation A. XYZ operates in many different states. Corporation A is the general partner in XYZ, and owns and operates the business in State B. Dad owns 100% of the stock of Corporation A.

Dad owns certain copyrights and other intellectual property that he has licensed to XYZ. In exchange for his personal services to XYZ and licensure to XYZ of the above rights, Dad has been entitled by contract to 90% of the net profits of XYZ. The remaining profits and losses of XYZ are shared by its partners in proportion to their ownership interests. Effective April 30th, 1996, the agreement entitling Dad to 90% of XYZ's net profits is being cancelled. Dad will have a 55% interest in XYZ's profits (40% through Corporation A and 15% as an individual limited partner) and each of the children will have a 15% interest.

In the next few weeks, Corporation A will transfer its business assets in State B to XYZ and in exchange will receive an additional interest in XYZ, bringing its total interest to 41.2%

 transaction test

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of XYZ. Dad's and the children's respective limited partnership interests will thereby be reduced to 14.7% each. The fair market value of the assets being transferred by Corporation A to XYZ are less than $10,000,000, and the fair market value of the increase in partnership interest held by Corporation A will also be less than $10,000,000. Dad will also transfer to XYZ the stock in Corporation B, wholly owned by him. Corporation B is a start-up shell company with $1,000 in assets.

Thereafter, Corporation A will donate its 41.2% interest in XYZ to a charitable support organization qualified under Section 501(c)(3) of the Internal Revenue Code ("the Foundation"). Following the donation, neither the Foundation, Dad nor anyone else will have a majority interest in XYZ. Dad will also donate to the Foundation the copyrighted materials he owns. Dad will, in addition, donate an undivided interest in a percentage of certain other intellectual property owned by him and used in the business of XYZ, while retaining the remaining interest in that intellectual property. Neither Dad nor any of the children controls the Foundation.

Subsequently, the Foundation, Child 1, Child 2, Child 3 and Dad will sell all their respective holdings and interests as identified above to Buyer. The net proceeds received by the Foundation will be devoted exclusively to charitable purposes.

The amounts paid to Child 1, Child 2, and Child 3 for their limited partnership interests would in each instance be less than $10,000,000. The total amount received by Dad from Buyer as part of the contemplated transaction will be less than $15,000,000, and the amount received by him for intellectual property (apart from his partnership interest) will be considerably less than $15,000,000. The amount received by the Foundation for the intellectual property and copyright interests it will be selling will be less than $15,000,000.

person test

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The most recent regularly prepared balance sheet (for the period ending March 31, 1996) for the XYZ partnership shows assets of approximately $5,150,000. The most recent balance sheet for Corporation A (for the period ending March 31, 1996) shows assets of approximately $1,660,000 (inclusive of Corporation A's interest in XYZ). No new regularly prepared balance sheet will be prepared, or is due to be prepared, for either XYZ or Corporation between now and the completion of the above transactions.

It is my understanding that all of the transactions are being structured in the manner described above for bona fide charitable and estate and income tax reasons. I have been advised that the amounts being paid to the respective sellers, and all allocations and valuations described above in relation to the transactions involved, are being determined on a good faith fair market basis.

Based on the foregoing premises, I am writing to confirm that the contemplated transactions are not reportable for the following reasons:

o The transfer of assets by Corporation A to XYZ will not satisfy the size of transaction test (even if a transfer of assets from one entity controlled by Dad to a partnership controlled by Dad could be reportable).

o The cancellation of the royalty agreement between Dad and the XYZ partnership is not a reportable transaction because it does not represent an acquisition of assets.

o The donations to the Foundation will be exempt from reporting as gifts under 16 C.F.R. § 802.71.

o Since, at the time of the sale to Buyer, neither the Foundation nor any other person or entity will have a majority interest in XYZ -- either in its profits or in its assets upon dissolution -- XYZ should be treated as its own ultimate parent entity with respect to the Sale to Buyer, and therefore as the acquired person. The sale by the Foundation, Dad and the children of their respective interests in XYZ will not be reportable because XYZ does not satisfy the size-of-person test, on the basis of a consolidation of its most recent regularly prepared balance sheet and the assets it is acquiring from Corporation A as reflected on Corporation A's most recent regularly prepared balance sheet.

o The sale by Dad to Buyer of his remaining intellectual property interests will not be reportable because it will not satisfy the size of transaction test (even if one included the amount paid for the minority partnership interest being transferred).

o The sales by the children of their minority partnership interests are not reportable transactions, both because they do not satisfy the size of transaction test and because, as I understand it, their sales of minority partnership interests would not in themselves be reportable in any event.

o The sale by the Foundation of its minority partnership interest in XYZ is not considered an acquisition of an asset for HSR purposes, and the sale by the Foundation of its intellectual property and copyright interests would not satisfy the size of transaction test.

Thank you for your cooperation in helping me work through the HSR implications of this series of transactions. If you have any concern about the soundness of my conclusions, please let me know as soon as possible. The parties anticipate closing the above transactions in early June.

Sincerely,

[redacted]