

802.2(e)  
802.5

October 7, 1996

**VIA HAND DELIVERY**

Mr. Patrick Sharpe  
Compliance Specialist  
Pre-Merger Notification Office  
Federal Trade Commission  
Room 301  
6th Street and Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Patrick:

This letter will confirm that the following transactions will not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act ("H-S-R Act"):

Company C, a REIT, is the ultimate parent entity of two companies: (1) Company B, which owns a hotel and is the lessor under a lease of the hotel's gambling equipment and operations; and (2) Company D, which is the lessee of the gambling equipment and operations and operates the gambling operations.<sup>1</sup> Company A proposes acquiring from Company B the hotel and lessor interest in the lease of the hotel's gambling operations, for total consideration of approximately \$23 million. As the landlord of Company D, following the acquisition of the hotel and leasehold from Company B, Company A will receive rental payments in an amount which would be typical for such a lease. Company A may, as a separate and non-contingent transaction, subsequently purchase from Company D the gambling equipment and operations, which are valued at approximately \$3 million. However, the purchase of the gambling operations would require the prior approval of the state gaming authorities and would most likely not occur in less than 18 months, if ever.

Separate agreement has been signed.

<sup>1</sup>For purposes of this letter, please assume that the size-of-the-parties test is met.

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Is it  
exempt?

As we discussed in a telephone conversation, the purchase of the hotel, including the leasehold, would be exempt under 16 C.F.R. §§ 802.2(e)(1) and 802.5. Since the purchase of the gambling operations would be a separate and non-contingent transaction, which is unlikely to occur in less than 18 months after the purchase of the hotel from Company B, if it ever occurs, such purchase of the gambling operations would be evaluated for H-S-R Act purposes separately from the hotel transaction and would not subject the hotel transaction to the limitation set forth in 16 C.F.R. § 802.2(e)(2). If Company A subsequently acquires the gambling operations from Company D for approximately \$3 million, then this second transaction would be exempt from the H-S-R Act reporting under 16 C.F.R. § 802.20.

\* \* \*


Please let me know as soon as possible if you disagree with the analysis stated for the above-described transactions. As always, I appreciate your assistance in this matter. Best regards.

Sincerely,

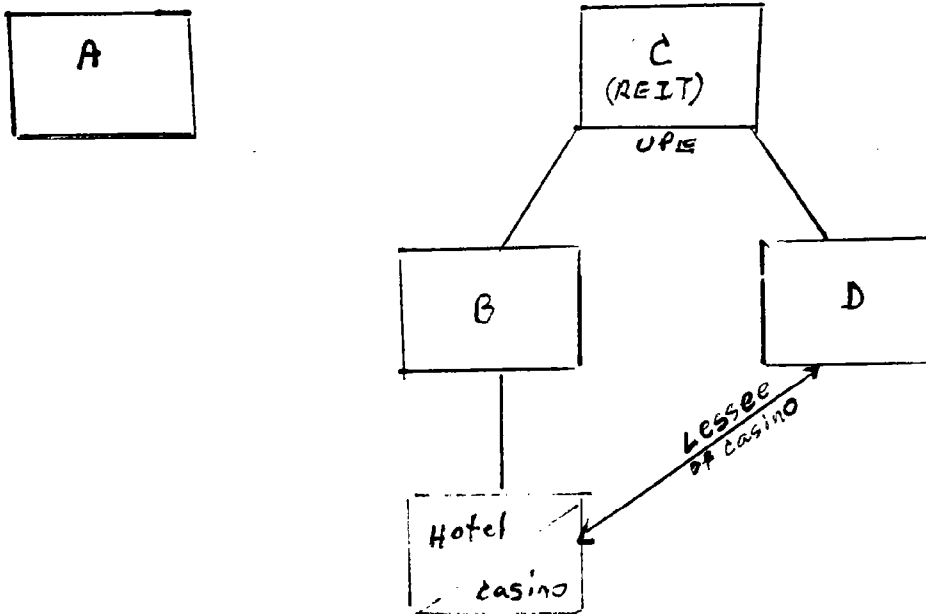


The "intent" is to buy and run a casino. A is not acquiring the building "solely" for the purpose of being a landlord. Its intent is to own and operate a casino. Consequently, 802.5 or 802.2(e) cannot apply.

per Staff consensus  
after much discussion

called  10/11/96  
This is not exempt

(95)



Trans. 1 A will acquire the hotel and lessor interest in casino owned by B from C for \$23 mm.

Trans. 2 A may acquire the gambling equipment and operations of D from C for \$3 mm 18 mos. or more after trans. 1.