

801.40; 801.11 (e)

[REDACTED]

[REDACTED]

December 26, 1996

Mr. Richard B. Smith  
Premerger Notification Office  
H-301  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Premerger Notification

Dear Mr. Smith:

I am writing to confirm our understanding that a premerger notification and report form filing under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") need not be made in connection with the transaction discussed below.

Our client ("Buyer") is a newly formed Delaware limited liability company that is its own ultimate parent entity. Buyer is owned by several persons and entities, but no person or entity holds 50% or more of its outstanding voting interests and no person or entity has (i) the right to 50% or more of its profits, (ii) the right to 50% or more of its assets in the event of dissolution, or (iii) the contractual power presently to designate 50% or more of its directors or individuals exercising similar functions. At the time of formation, Buyer had no assets and no agreement with any person or entity contributing to its formation regarding the transfer or other obtaining of assets or extending or guaranteeing of credit or any obligation of Buyer. Buyer does not have any regularly prepared balance sheet.

Buyer has entered into an Acquisition Agreement, dated November 26, 1996, pursuant to which it will acquire assets and assume liabilities of a selling corporation that satisfies the \$100 million size of person test. The assets to be acquired and the liabilities to be assumed create a total transaction value of approximately \$125 million. Prior to closing, Buyer intends to make debt and equity offerings, the entire proceeds of which will be used to pay the purchase price and related expenses. Buyer also intends to enter into a letter of credit agreement with certain lending institutions

[REDACTED]

✓



under which it can borrow to fund the operation of the business following the closing of the transaction.

We believe that no HSR Act filing was required in connection with the formation of Buyer. If Buyer is deemed to be a corporation for HSR Act purposes, the elements of 16 CFR § 801.40 are not satisfied because no acquiring person has annual net sales or total assets of \$100 million and Buyer does not have total assets of \$10 million or more. And, if Buyer is deemed to be a partnership for HSR Act purposes, the formation of a partnership is not a reportable transaction.

Similarly, we believe no HSR Act filing is required in connection with Buyer's acquisition of assets. The only assets Buyer will have at the closing of the transaction will be the funds used to make the purchase of the assets. Accordingly, Buyer does not and will not satisfy the \$10 million size of person test.

If you disagree with the conclusions set forth above or have any questions or need additional information about the transaction described, I would appreciate your contacting me at the telephone number set forth above.

Very truly yours,



BY TELECOPIER

12/26/96 - Writer confirms that LLC partners are making no contributions to LLC at time of its formation. Equity offerings by LLC will not result in any person gaining control of Buyer then will enter into credit agreements with banks for other lending institutions that usual market rates for such transactions. No monies will be borrowed by Buyer until after the acquisition. Agreed that no filing need be made for formation of LLC (whether viewed as partnership (not reportable) or for the subsequent acquisition (not reportable under 801.40 requirements)) or for the subsequent purchase under the provisions of 801.11 (4).  
P.R. Smith.