801.1(e)
801.10
801.11

[redacted]

Alerted [redacted] that I am not an attorney

February 8, 1999

VIA FEDERAL EXPRESS

Patrick Sharp, Esquire
Premerger Notification Office
Room 301
Bureau of Competition
Federal Trade Commission
6 Pennsylvania Avenue NW
Washington, DC 20580

Dear Mr. Sharp:

This firm represents several limited liability companies and individuals in three (3) proposed acquisitions of certain restaurant assets located in the Commonwealth of Virginia. This letter follows and confirms our conversation on Monday, February 8, 1999, concerning these acquisitions. In our conversation, you advised us that, based upon the facts presented to you, premerger notification was not required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

In our conversation, we advised you that:

1. The parties to the transaction are engaged in commerce;

2. The transaction involves the purchase of assets. These assets include realty, buildings, equipment and/or fixtures, goodwill and franchises;

3. The sellers of these assets are several corporations (hereinafter "Seller"). One of these corporations may be a wholly-owned subsidiary of the other(s) and, collectively, the Seller (and any "ultimate parent entities" thereof) has net sales and/or assets in excess of $100 million;

4. Three limited liability companies are to purchase the assets described above (hereinafter "Purchasers ## 1, 2, and 3");

[redacted]

5. Purchaser #1 has no sales at present. Its total assets will be valued at less than $1 million immediately prior to the time of the acquisitions at issue.

6. Purchaser #1 is to be owned by five (5) individuals and a limited liability company/corporation (the "special purpose entity"). Each of these individuals/entities has an ownership interest in Purchaser #1 of less than 21%.

7. None of the individuals or the "special purpose entity" has the power to appoint 50% or more of the managers of Purchaser #1 or the special purpose entity. In addition, none is entitled to 50% or more of its profits or assets on dissolution;

8. None of these individuals owning interests in Purchaser #1 or the "special purpose entity" are spouses or minor children of each other;

9. Purchaser #2 also has no sales. Its total assets will be valued at less than $1 million immediately prior to the time of the acquisitions at issue;

10. Purchaser #2 is owned by nine (9) individuals. Each of these individuals has an ownership interest in Purchaser #2 of less than 13%;

11. None of these individuals has the power to appoint 50% or more of its managers of Purchaser #2. In addition, none is entitled to 50% or more of its profits or assets on dissolution;

12. None of these individuals with an interest in Purchaser #2 is spouse or minor child of any other;

13. As a result of the transaction, Purchaser #1 may acquire assets valued in excess of $15 million;

14. As a result of the transaction, Purchaser #2 will acquire assets valued at less than $10 million;

15. Purchasers ## 1 and 2 are newly formed entities with no regularly prepared balance sheets.

We further have been advised by our clients that some of the assets will be acquired by Purchaser #3 as a requirement of the Lender. In this event, Purchaser #3 would acquire assets valued at less than $10 million.

Purchaser #3 has assets in excess of $10 million and previously acquired similar assets from the same Seller but more than 180 days before the signing of any letter of intent concerning the acquisitions at issue here.

Our analysis of these facts, which we discussed, is set out below:

1. Premerger notification is not required when Purchasers ## 1 and 2 acquire certain assets from Seller because the "size-of-person" test is not satisfied as to either acquisition. Purchasers ##1 and 2 each do not have sales or assets in excess of $10 million. OK

2. Premerger notification also is not required when Purchaser #2 acquires certain assets of Seller, because the "size-of-transaction" test is not satisfied. Purchaser #2 is not acquiring assets valued at $15 million or more. OK

3. Purchasers ##1 and 2 are their own "ultimate parent entities" because no person or entity has an interest in or owns 50% or more of the stock of either. In addition, no one is entitled to appoint 50% or more or the directors of Purchasers ## 1 and 2, or to 50% or more of their profits or assets on dissolution. OK

4. When Purchaser #3 acquires certain assets valued at less than $6 million, the "size-of-the transaction also will not be satisfied, and premerger notification will not be required. Prior acquisitions by Purchaser #3 will not be aggregated with the instant acquisition(s) if such assets were acquired more than 180 days before the signing of any letter of intent or agreement concerning the assets at issue here. OK

[redacted]

Please advise us immediately if we are in error in any way. We may be contacted at (205) 458-5311. Thank you for your attention to this matter.

Very truly yours,

[redacted]

[redacted]

I concur.
called [redacted] 2/9/99

[redacted]