

BY HAND

Linda A. Heban, Esq.
Office of Premerger
Notification
Room 312
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Ms. Heban:

This is to follow up on our conversation earlier yesterday.

My client sought to transfer title to certain assets ("the subject assets") to a subsidiary of

the waiting period in connection with this transaction (Filing No. 87-0677), Charitable Foundation A decided not to consummate the transaction. My client, the

similar transaction involving transfer of title to the subject assets to a subsidiary of Charitable Foundation B. At the time of transfer, Charitable Foundation B had less than \$10 million in annual net sales or total assets. Accordingly, there were no Hart-Scott-Rodino filings in connection with the sale of the subject assets to the subsidiary of Charitable Foundation B.

In general, the banks deem it preferable for a

bank's concern is that in the event of the bankruptcy



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The purpose and structure of the second transaction were the same as that described in the above-referenced HSR filing: A subsidiary of Charitable

purchase price of \$450 million to my client. The bank loan has a seven-year term. My client has the option to repurchase the stock of this subsidiary of Charitable Foundation B after the financing is repaid. A series of agreements were entered into by my client and the subsidiary of Charitable Foundation B which provided for the management and operation of the subject assets by my client.

The lending bank has determined that they wish to have the ultimate parent of the borrower be a more substantially-sized charitable foundation. Accordingly, my client has consented to the sale by Charitable Foundation B of its stock in the grandparent of the subsidiary which owns the subject assets to Charitable Foundation C for consideration of \$1,000.

Charitable Foundation B. My client will continue to retain, as an operating fee, 90% of the amount by which operating revenues associated with the subject assets exceed loan repayment and operating costs.²

In our view, C's acquisition of the stock of B's subsidiary does not meet the "safe harbor" test

of the HSR Act for the stock of Charitable Foundation B.

Foundation C's subsidiary.

² The remaining 10% will be retained by the borrower until exercise of the option to repurchase by my client.

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I would appreciate hearing from you by the end of
this week, if at all possible. The parties wish to

Thank you for your prompt consideration.

Sincerely,


Parties advised (by Wayne Kaplan) 1/30/87 that
letter contains insufficient info for us to make
a determination.

Linda Heban 2/2/87