

March 6, 1989

BY HAND

John M. Sipple, Jr., Esq.,

PARTIO

Bureau of Competition - Room 301, Federal Trade Commission, Sixth and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Re: Applicability of Hart-Scott-Rodino Act to Acquisition of Partnership Interests

Dear Mr. Sipple:

On March 2, 1989, we spoke by telephone with Victor Cohen of your office, and discussed with him the applicability of the Hart-Scott-Rodino Act (the "H-S-R Act") to the transaction described below. Mr. Cohen suggested that we submit a letter describing the transaction so that we could obtain your views on whether an H-S-R filing is required.

The transaction involves the acquisition of 50%

(Partnerships X-1 through X-11) and a 24.75% interest in another partnership (Partnership X-12) suThetpartnership interests will be transferred if rom Company A on Which is the Section 7A (h) of the Clayton Act

which restricts release under the

Freedom of Information Act

ultimate parent entity of all 12 partnerships, to Company B. All of the partnerships will be reconstituted and

partnerships. With three exceptions (Partnerships X-8 through Y=10) each partnership currently has one or more

economic interests in them ranging from 1.6% to 51%.

The transaction is as follows:

- 1. Company A and Company B are both \$100 million persons in the H-S-R sense.
- 2. Primarily for tax reasons, Company A operates a portion of its business through 12 partnerships

 (Partnerships V-1 through V-12) the combined assets of

which constitute less than 10% of the total assets of Company A.

3. Partnerships X-1 through X-8 and X-12 are organized as New York and Connecticut general partnerships and have been in existence since 1984. Partnership R is a partner in all of these partnerships. Company & has a 25%

held by several unrelated third parties. As a result, these unrelated third parties have indirect interests in Partnerships X-1 through X-8 and X-12 ranging from 1.6% to 4.9%. In addition, another unrelated third party is a 50%

or less in that partnership on the part of Company A.

4. Partnerships X-9, X-10 and X-11 are organized as New York general partnerships and were formed in early 1988, early 1989 and early 1989, respectively. These

partnerships each have two partners, both of which are 100%-owned subsidiaries of Company A. These partnerships, however, collectively have total assets of approximately \$20 million.

- 5. Company A has agreed to sell to Company B a 50% partnership interest in Partnerships X-1 through X-11 and 49.5% of Partnership R's 50% interest in Partnership X-12 for a total of approximately \$140 million.* The purchase price will be paid to Company A by Company B: it.
- the partnership agreements of Partnerships X-1 through X-12 will be amended and restated to show that each partnership has been reconstituted with a subsidiary of Company B as a new partner. In the case of Partnership Y-12 Company B.

will be transferred. All of the assets presently in

held by those partnerships.

7. As part of the same transaction, Company A and Company B will form a new partnership, Partnership Y,

^{*} Partnership X-12 has a 50% partner that is unrelated to Company A; that partner will continue to hold a 50% interest after Company B acquires a 49.5% interest in Partnership R's 50% interest.

49.5% owned by a subsidiary of Company A. Company B has

assets. Company A has agreed to fund operating expenses of the partnership over a number of years.

Partnership X-10 will be managed jointly by Company A and

.

We believe that none of the transactions described above is required to be reported under the H-S-R Act. The acquisition by Company B of interests in the 12 partnerships

partnership not reportable, because a partnership interest is deemed neither a voting security nor an asset." See
Amendment of 16 C.F.R. § 801.1(b), 52 Fed. Reg. 20058, 20061
(1987). See also ABA Premerger Notification Practice Manual
(1985) (Interpretation #59). We are not aware of anv
published interpretation indicating that the partnership
form will be disregarded where the partners are controlled

in paragraph 7 above is not reportable, since the formation

There is no justification for disregarding the partnership form of X-1 through X-12 in analyzing the nature of the "interests" that are being acquired by Company B. In the absence of H-S-R criteria defining what constitutes a "partnership," the validity of a partnership should be determined by reference to state law. There can be no question that each of these partnerships is duly constituted under state law and is treated as a partnership for tax and other purposes by federal and state authorities. The fact that Company A currently owns 49% - 98% of X-1 through X-8 and X-12 and 100% of X-9, X-10 and X-11 does not invalidate their partnership status for H-S-R purposes. State law permits a partnership to be formed by two subsidiaries (or

In any event, the partnership form of X-1 through X-8 and X-12 cannot be disregarded, for H-S-R purposes, without nullifying the legally valid indirect interests in each of those partnerships that are currently held by unrelated third parties. (See paragraph 3 above.) There is no conceivable basis for viewing a partnership in which several unrelated parties hold economic interests as not constituting a valid partnership for H-S-R purposes.

partnerships) of the same corporate entity.

The fact that X-9, X-10 and X-11 are comprised entirely of wholly-owned subsidiaries of Company A should not invalidate their partnership form. However. even if

partnerships by Company B from Company A, this acquisition

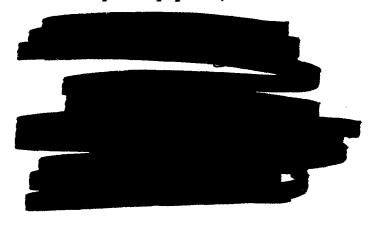
would not be required to be reported because less than \$15 million in assets would be acquired by Company B. (See 16 C.F.R. § 802.20(a)).

Fingliu thoma is no avoidence issue under the

more than four years ago, and none of them were formed to avoid H-S-R reporting requirements and (b) all of the assets of Partnerships X-1 through X-12 will remain in the respective partnerships after Company B acquires its

information, please feel free to call

Very truly yours,



cc: Victor Cohen, Esq.