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(PS)

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April 5, 1989

This material may be subject to the anti-trust provision of Section 7A (b) of the Clayton Act which prohibits release under the Information Act

Mr. Patrick Sharp
Compliance Specialist

Room 303
Washington, D.C. 20580

Re: HSR Requirements for Specific Realty Acquisitions

Dear Mr. Sharp:

The enclosed attachments were written for the purpose of summarizing your responses to my telephone inquiries of Friday, March 21, 1989 regarding the applicability of the

Please advise me of any comments you may have regarding this summary. Thank you for your kind attention to my questions.

Very truly yours,

[REDACTED]

[REDACTED]

1 37 PM '89

FEDERAL TRADE COMMISSION
PREMERGERS NOTIFICATION
SECTION

Re: Summary of Inquiry with Respect to HSR Requirements for Specific Asset Acquisitions

(In Summary of our conversation of March 31, 1989)
Provided that the Acts commerce, size of the person, and size of the transaction tests are satisfied, a Hart-Scott-Rodino (HSR)

II:

- 1) The purchase price (if determined) or fair market value of the assets (whichever is greater) exceeds \$15 million dollars; or

(The acquired person with respect to asset acquisitions is the ultimate parent entity of the person filing notification.)

*thresholds
asset
purchases*

Assuming the threshold tests are satisfied, the general rule with respect to the transfer of the classes of assets listed

- A. Foreclosure Property - A creditors' acquisition of

OR a debt work-out, if made in a nonrecourse credit transaction entered into in the ordinary course of the creditors'

respect to the transfer of any business is, a filing is required if the purchase price or fair market value of the business exceeds \$15 million.

- C. Agricultural Lands - The transfer of any land which in the ~~past~~ ~~was~~ ~~used~~ ~~as~~ ~~a~~ ~~business~~ ~~from~~ ~~which~~ ~~revenues~~ ~~were~~ ~~derived~~

transaction test.

- D. Mineral Rights - the transfer of land upon which lies minerals or timber is reportable, whether or not the land

wrong - IF timberland has been harvested in the past it is reportable. Otherwise, it is not reportable. Land with mineral rights is still raw land - not reportable.

has ever been excavated. The premise upon which the FTC determines reportability is that with respect to such transfers, the mineral properties have a value independent from the land itself based on the income potential of the minerals. The transfer of the right to the income in such properties is exempt provided that the underlying beneficial

Accounts Receivable - the transfer of accounts receivable T.S.A.

minimal or incidental with respect to the transfer as a whole, the value of the receivables as assets does not require a filing. This gray area requires consultation with the FTC before determining the applicability of the act. *acc of all of the assets of*

F. Mixed-Use Office Buildings - The transfer of buildings which function strictly as office space is exempt. The fair market value of the space utilized by hotels, restaurants, retail and other establishments which derive revenues from *or of a company whether*

the value of the mixed-use space exceeds \$15 million dollars, the transfer of the office building is reportable. The tests that are used to determine the applicability of

1) Square Footage Evaluation - The person filing determines the total square footage of the office building including the mixed-use property, and the fair market value or purchase price of each square foot. *We do not have any set guide lines as*

the most recent year. The most recently prepared balance sheet should be used to determine the revenues. If more than \$15 million dollars, in the most recent year were derived by the business operating within the building being transferred, a filing is required.

The flexibility of the size of the transaction test with regard to the transfer of mixed-use properties may conceivably result in manipulation of the true values of the properties so as to avoid filing, a violation of Section 801.90 of the Act. Due to this fact, the FTC recommends

that persons subject to the act verify their filing status
by calling or writing the FTC for an informal opinion

except that, the transfer of condominiums may require a
filing. The terms of such transfer should be discussed with
an FTC official before a final decision as to the
applicability of the Act is made.

any cases
of condominium
being reported
It's a good
idea to call
FTC office
to discuss the
possibility of
filing.

called

4-18-01 and company
no comments