

[REDACTED]

[REDACTED]

December 17, 1990

Via Telefax

Richard B. Smith, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission

6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Mr. Smith:

Interpretation Under the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976 and Rules and  
Regulations of the Federal Trade Commission Thereunder

This letter is to confirm the informal advice of the  
Premerger Notification Office in the proposed transaction

of [REDACTED] which was filed on Friday, December 14, 1990, and

right to 50 percent of the profits (and in the event of

Liability. Persons "A" and Person "B" each owning the

Richard B. Smith, Esq.  
December 17, 1990  
Page 2

You indicated that the Premerger Notification Office continues to view the acquisition of partnership interests by

acquisition of all of the assets of the partnership. As applied to my hypothetical, the staff's view is that the acquisition by Person "A" of the partnership interest of Person "B" should be considered to be the acquisition by Person "A" of assets of Person "B" consisting of all of the assets of Partnership X.

The questions I posed to you concern the proper approach under § 801.10 to determine the value of the assets to be so acquired and the acquisition price. You have confirmed the following:

Value. Person "A" is required under § 801.10(c)(3) to determine in good faith the fair market value of the assets to be acquired. The value of the assets to be acquired by Person "A" from Person "B" is the value of the assets of Partnership X. Moreover, in determining the fair market value of the assets of Partnership X, liabilities "related to the assets to be acquired may be taken into account." (See Interpretation No. 87.) Accordingly, the fair market value of the assets to be acquired by Person "A" by reason of its

acquisition of assets from Person "B", assuming the value of Partnership X is \$20 million.

Acquisition Price. The sole consideration to be paid for the partnership interest, the "assets to be acquired," is \$10 million. Person "A" is not (and is not deemed to be) assuming liabilities of Person "B" merely by

corporation, the individual partners are not insulated from liability for partnership debts and must personally stand behind them). Thus, for purposes of § 801.10(c)(2), the only consideration received by Person "B" in this transaction "for the assets to be acquired" is \$10 million in cash.

*Best  
Fair market  
value  
test*

Richard B. Smith, Esq.  
December 17, 1990  
Page 3

Please let me know if my analysis is incorrect in any way. Thank you, once again, for your assistance and thoughtful comments.

Yours very truly,

[Redacted signature block]

12/21/90- Advice

... that the value of  
Please make sure  
assets to be acquired, i.e., assets of partnership, is fair market  
value of assets or, if determined and greater than the fair  
market value, the acquisition price. Since A is paying for  
B's partnership interest and not for the assets of the

the asset value (the assets) and, thus, in cases such  
as market value (the assets) + the other partnership  
of these (and assets) ... assets to be

acquired is then yours

RBS Smith