

801.1(c)

WRITER'S DIRECT LINE

August 21, 1991

By Telecopier

Richard Smith, Esq.
Prosecco Notification Office

Dear Mr. Smith:

This is to request that you reconsider your initial advice that a separate filing is required in the situation where, an instant prior to selling its assets to Company A, Company X acquires title to its share of assets previously

with Company B and immediately transfers title to those assets (as well as its previously held assets) to Company A.

In this situation, it appears sufficient for Hart-Scott purposes that Company X file as acquired person with respect to its sale of assets to Company A. That is because Company X will not hold title to the former partnership assets (of which Company X acquires 49% upon the dissolution of the partnership an instant prior to the asset sale to Company A)

~~and dissolution agreement which provides that at the sale to~~

Substantively, the transaction being examined here by the Commission at the Justice Department in the acquisition of

[REDACTED]

Company X's filing with respect to that acquisition separately breaks out the portion of Company X's revenues derived from its 49% interest in the partnership assets. Also being provided is a copy of the termination and dissolution agreement (which is Ex. 1.1(A) to Attachment A). Thus, Company X's filing as acquired person includes all of the information that would be contained in a second filing as acquiring person. What we are talking about here is the expense -- including the \$20,000 filing fee -- of preparing a second filing with respect to the technical passage of title to some of the partnership assets through Company X on their way to Company A in a situation where that filing would provide no additional information to the enforcement agencies.

It appears to be your position that you would reach a different result if Company X were selling its share of the agreement from that which also includes its previously held assets. I respectfully suggest that that analysis should lead to the conclusion that no separate filing is required here. If in your hypothetical the transfer of partnership assets through

[REDACTED]

Company A occurs simultaneously with the reportable sale of Company X's operating assets to Company A

revised ABA Premerger Notification Practice Manual, with their emphasis on there being adequate assurance that the holding of title by an intermediary be merely transitory, support my position. The fact that Company X will hold the partnership assets for only an instant is an absolute certainty on the present facts.

I would appreciate hearing from you as soon as possible so that we can comply with all of our Hart-Scott requirements. Please let me know if you need any additional information. Our filing with respect to the sale of assets by Company X to Company A will be made today.

Respectfully submitted,

[REDACTED]

[REDACTED]

On 8/21/91 I advised [redacted] that her 8/21 letter to

based upon there being a conveyance [redacted] and [redacted] for
whatever reason, the transfer of the assets or voting stock will, for a
moment, stop in C. In the present situation, A has no contract

have agreed with each other to pass the assets received from
partnership to A.

While this fact situation appears to be a stretching of the
continuum theory, X to file for the purchase of
assets from the partnership as long as the partnership continues as
the sale of those assets from X to A and X agreed that it will
not use the fact that it does not yet hold those assets as a
reason for non-compliance with any record request. We also
must be certain that the original holder of those assets, the UPE
of the partnership, will supply the necessary data to X so that it
can substantially comply with any record request.

Our view that X does not have to file for its purchase of
assets from the partnership is limited to this fact situation only
and cannot be used to exempt any future transactions of a
similar nature.

PTB Smith