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September 18, 1991

VIA FEDERAL EXPRESS

Mr. Patrick Sharpe
Compliance Officer
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION
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~~Dear Mr. Sharpe:~~

Premerger Notification Act

I am writing in furtherance of a conversation which we had on September 5, 1991 regarding certain financing transactions which we are evaluating to determine the applicability of the premerger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"). The purpose of this letter is to describe those transactions and obtain confirmation from the Federal Trade Commission that such transactions do not require premerger notification under the Act.

The transactions which we are evaluating are financing techniques involving the sale of assets to business corporations organized solely for the transactions. Depending on the nature of the assets sold, the assets are either leased back to the seller, or, in the case of receivables or other financial instruments, held and collected by the buyer. Following is a more detailed summary of how these transactions might be structured.

vague

1. Transaction Structure. Each transaction would be structured by the creation of a single purpose business corporation (an "SPC") which would be organized for the sole

as a financing conduit in the transaction for lenders which are financial institutions or for public financing through debt markets such as the commercial paper market. The SPC would be owned by individuals or a corporate entity which would receive servicing or maintenance fees for owning and

IS SPC controlled by anyone



operating the SPC. In some cases the owner of the SPC would also receive a return on a small equity investment in the *v/s ?*

2. Purchase and Sale of Assets. Each transaction would involve the purchase by the SPC of an asset which



creditor doing

assets, the seller of the assets would probably lease the *vague*

nd is not a competitor of essee!

than the seller of the asset.

3. Leaseback, etc. In each transaction, the seller of the assets or other third party user/lessee and the SPC would enter into an appropriate lease agreement, receivables purchase agreement or similar kind of agreement which would result in initial proceeds being paid to the seller in return for a transfer of title to such assets to the SPC. In transactions involving nuclear fuel, for

Not a productive

SPC the energy generated from the nuclear fuel and pay a lease or use charge equal to the financing cost plus amortization of the indebtedness borrowed by the SPC as the nuclear fuel is consumed. In equipment leasing

transactions ~~agreements would be entered into~~

transactions would be structured so that the SPC and its lenders would collect payments due on the receivables



In this case we believe that there are two distinct transactions involved: the asset acquisition and the

acquiring person for purposes of the premerger notification. Only the user/lessee of the assets (and its affiliates) would be the acquiring person.

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lessor
purchased. Arrangements would be made to provide for losses on collection of the receivables to be borne directly or indirectly by the seller of the receivables.

~~Mitigation Control~~ In the above described

control over the assets would be in the hands of the SPC's lenders as secured parties. In all cases where a tangible asset is involved, the asset would be controlled by the user/lessee for use in its business, subject to any rights the SPC or its lenders may have upon the occurrence of

} usual case in sale lease back

collection of payments due would be vested with the seller or the SPC's lenders.

* * *

~~Where such arrangements in the structure of the~~

In all cases, however, the transactions would be financing mechanisms which do not involve the SPC controlling the use or allocation of productive goods. As financings, these transactions have no impact on competition and raise no issues under Federal antitrust laws.

Why not?

} not the test! the question is lease back

that, even in transactions where the seller of the asset and the user/lessee are different parties, the "sale" effected by those parties for purposes of the Act is a separate transaction ~~subject to the SPC's financing with arrangements~~

notification requirements of such seller and user/lessee under the Act would not require a premerger notification filing by the SPC or its ultimate parent entity as acquiring persons. Among the reasons for our view is our belief that the trans-

actions ~~covered in this letter would be exempt under 15 U.S.C. §18a(c)(12) and the rules of the Federal Trade Commission under 16 CFR §802.63, as bona fide credit transactions in which the SPC is acting as a creditor.~~

~~We also believe that the transactions involve goods transferred in the ordinary course of business of the SPC and therefore are exempt from the Act under 15 U.S.C. §18a(c)(1). — ?~~

Requires that the Commission & DOJ have exempted such by a specific rule (which may be § 802.63)

[REDACTED]

Mr. Patrick Sharpe
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I would appreciate if you would confirm your agreement with our analysis. Should you not concur, we would like the opportunity to consult further with the Federal Trade Commission as to the applicability and scope of the exemption provisions cited above and other requirements under the Act.

I thank you for your attention to this matter.

very truly yours,

[REDACTED]

[REDACTED]

Your letter is too vague. It should be fact specific. I need more details in order to give a definitive answer.

(BS)

RS concurs

Discussed comments about this letter with [REDACTED] on 9-26-91.