

Assuming that no person has control of the subject partnership based upon the distribution of asset upon [redacted] subsequent distribution [redacted] to this former creditor must be considered a distribution of profit which must be considered in determining who (if any person) controls the partnership. [redacted]

801.116
Vp

April 22, 1992

Premerger Notification Office
Bureau of Competition
(Attn: Mr. Victor Cohen)
7th & Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

APR 24 2 11 PM '92

FEDERAL TRADE
COMMISSION
EMERGENCY NOTIFICATION
OFFICE

Re: Request for an Informal Interpretation re the
APPLICATION OF 16 C.F.R. § 801.1(D)(1)(ii)

Dear Mr. Cohen:

We have been asked on behalf of a client to request an informal interpretation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub.L. 94-435, 90 Stat. 1390 (1976) (codified as amended at 15 U.S.C. Sec. 18A) (the "HSR Act"), with respect to the determination of the "ultimate parent entity" of a

1. A newly formed limited partnership called [redacted] is proposing to acquire assets of a company ("Seller") whose ultimate parent entity has \$8 million of "annual net sales" and [redacted] is \$40 million, and the assets being acquired relate to an "activity affecting commerce."

2. In accordance with the terms of the contemplated limited partnership agreement to which all shall be parties, [redacted] shall have three "Investors," as follows:

"A" - The general partner;

"B" - The limited partner and

participating notes (the "Notes").

No other person or entity shall have the right to any of the profits of [REDACTED] or the right in the event of dissolution to any of the assets of [REDACTED], except for certain financial [REDACTED] which shall have a security interest in certain

assets upon [REDACTED].

losses, taking into consideration payments to "C" under the Notes. Operating together, the partnership agreement and the [REDACTED]

- (1) To return to "C" the amount of its investment, which is the amount of its loans to [REDACTED] (the principal amount of the Notes);
- (2) To pay "C" a rate of return of 10% compounded semiannually on the principal amount of the Notes;
- (3) To return to "B" the amount of its investment contributed as capital to [REDACTED];
- (4) To pay "B" a rate of return of 10% compounded semiannually on its contributed capital;
- (5) To return to "A" the amount of its investment contributed as capital to [REDACTED];
- (6) Thereafter, 20% to "A"; 45% to "B"; and 35% to "C"; with payments to "C" being called "contingent interest" on the Notes until "C" has achieved a 25% rate of return and thereafter, called "profit participation."

Net profits and net losses will be allocated in order to achieve the distributions set forth above.

[REDACTED] shall be set by the \$40 million purchase price for

"ultimate parent entity" of the acquiring person, and its annual net sales and total assets, must be determined.

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In determining the "ultimate parent entity" of the acquiring
party, the "entity which is not controlled by any other entity"

In my phone conversation with you on April 14, 1992, we

distributions and profits of [redacted] in order to identify the
"ultimate parent entity" of the "acquiring person." I explained

notes, particularly provision (b) above with respect to
distributions to the general partner, the limited partner and the
note investor.

You explained that under the circumstances, the payment of
"contingent interest" and "profit participation" to the note
investor would be considered to be a distribution of profits
under 16 C.F.R. 8801.1(b)(1)(ii) and thus that the percentage of

[redacted] or the right in the event of dissolution to 50% or more of
the assets of [redacted]. The size of [redacted] as the "ultimate
parent entity" must thus be examined in accordance with 16 C.F.R.

or total assets meet the "size-of-person" test under the
circumstances, thereby requiring the filing of a registration

With reference to the above-described factual situation,

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Please contact the undersigned if you have any questions on the facts or the informal interpretation being requested, and when the FTC has completed its review and you can discuss the FTC's interpretations. Thank you for your attention to this

Very truly yours,

