

August 11, 1992

VIA HAND DELIVERY

Bureau of Competition
Federal Trade Commission
Room 310
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Cohen:

assets that are subject to a financial (or "leveraged") lease must be reported under the Hart-Scott-Rodino Act. The acquisition satisfies the "size-of-persons" and "size-of-

conversation that the same stand I would describe the transaction in writing so that the Premerger Staff could determine whether the transaction is exempt as an acquisition of assets "in the ordinary course of business". In addition, since

confirm that the transaction is exempt under Rule 802.50.

The proposed transaction involves the acquisition of

The beneficial owner of the sis a limited partnership ("Partnership A") that was

controlled by Partnership A. Each has been leased to the same thin the period of twenty years (until the year 2007). The leases are typical "financial" leases, i.e., the

complete control over the use of the throughout the lives

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The lessee company has subleased all to another company. The proposed transaction will have no

both companies (the lessee and the sublessee, are U.S. corporations).

and I represent one of two U.S. companies that

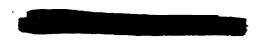
regularly originate lease financings and regularly buy and sell interests in assets that are subject to financial leases. Both the general and limited partners of Partnership A also are financial lease transactions. However, as we discussed with you over the telephone, the limited partner of Partnership A is, as part of a bankruptcy proceeding, presently undertaking to dispose of its partnership and financial in local scatter. The proceed transaction, however, does not involve all or substantially all of the assets of the limited partner's existing lease portfolio.

As priginally contemplated Partnership Blacold acquire only the 90% interest in Partnership A held by its limited partner, and not the 10% interest held by Partnership A's general martner.

interpretations of the HSR Act and implementing regulations

the acquisition of 100% of the partnership interests in

subject to financing leases if the following conditions are met: (1) the assets are subject to a bona fide financial lease; (2) while title to the leased assets will pass to the buyer, control of the assets will remain with the existing lessee; (3) the



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assats which he subject to a love term leads on a labor warments partner will not. we submit, nowever, that the exemption still should be available. To begin with, as originally structured, only the limited partner's 90% interest in Partnership A was to be admired. Addisquesed above that transaction would have been exempt. Moreover, any subsequent acquisition of the wawainini <u>100 wandananii</u> libaaani karaa karaa aadiadia all dira metely because the structure has changed so that both parthership interests will be acquired simultaneously.1/ In addition, it appears that in considering whether a sale of assets subject to a lease financing is exempt, the Staff has Her Handadenilis annimal that they the footier linked Interpretation No. 25, Commentary, (listing factors Staff considers in determining whether sale of assets subject to lease is eventt Where as here four of the five factors listed available. This is particularly so in a transaction in which one The fact that Partnership A is disposing of all its assets has no bearing on the analysis. Although the sale of all or substantially all of the assets of an "entity" typically takes a ally promise and at the seast of a newtonmakin and

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ultimately exit the business only because of a bankruptcy proceeding.

We believe that the proposed transaction is also exempt under Rule 802 50(a) of the Proposed Pulos because it is War

were built in Cinco the with stops at several ports, and back to The vessels primarily serve as is are manufactured in although it is possible that some U.S. produced goods also are carried on the at times. Routine maintenance of the takes place in 🖪 outside the United States. While all , none has ever sailed in the is necessary to qualify for certain H.S. personmentagnosas hacibhafa. inclosas ciligiatireglos these is scheduled to expire in at which time the lessee or sublessee would be free to "reflag" the under_the laws of ------In the past, the Staff has not considered the country of registration, or the nationality of the crew (here American) to be determinative in considering whether are assets Ignated in the United States Promorger Natification Manual 🛲 بالمراجي والمطبق وفاستقبط

the are serviced, and, most importantly, the source of revenues generated by the <u>Id</u>. See also 43 Fed. Reg. 33450, 33497 (1978) (exemption of foreign assets acquisition by U.S. person turns entirely on U.S. sales, if any, attributable to

the assets). Applying these factors to the question, it is clear that they should be considered assets located outside the United States.

War a resistance in this matter. Please call

