

802.63

January 13, 1993

Ms. Nancy Ovuka
United States Federal Trade Commission

AM 11
1 - 3 PM
FEDERAL TRADE
COMMISSION

from Notification Requirement of the Hart-Scott-Rodino
Antitrust Improvements Act of 1976

Dear Ms. Ovuka:

This is to confirm your advice of January 11, 1992 with

Antitrust Improvements Act of 1976 (the "Act") provided by

1. Creditor is a large [redacted] firm which is in the business of making [redacted]. Creditor has assets in excess of \$100,000,000.
2. Creditor has loaned money to, and made [redacted] in, two related ventures, namely Partnership A and Partnership B. Schedule A attached hereto is a schematic diagram of Creditor's interests in the Partnerships.

PARTNERSHIP A

[redacted] manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.

This document is to be held in confidence and its disclosure is prohibited by the confidentiality provisions of Section 24 (b) of the Clayton Act which restricts release under the Freedom of Information Act.

Ms. Nancy Ovuka
January 13, 1993
Page 2

4. The general partner of Partnership A is [redacted] Corporation A and the limited partner of Partnership A is [redacted] Corporation A. Corporation A is entitled to

Does GP right

outstanding capital stock of [redacted] Corporation A is held by Individual A.

under Capital returned GP

5. Creditor holds an option to purchase nonvoting shares of [redacted] Corporation A representing 80% of the

7. Creditor has loaned money to Partnership A. A commercial bank (since taken over by the FDIC) has also loaned money to Partnership A.

Partnership A has no involvement. It has total [redacted] due.

PARTNERSHIP B

9. Partnership B is engaged in commerce other than manufacturing. It has assets in excess of \$15,000,000 but less than \$100,000,000.

10. The general partner of Partnership B is [redacted] Corporation B and the limited partners of Partnership B are [redacted] Corporation B and [redacted] Corporation

entitled to 49.5% of the profits of Partnership B following the return of the capital invested in

B IS HELD BY INDIVIDUAL A AND 100% OF THE ISSUED AND

11. Creditor holds options to purchase nonvoting shares of both [redacted] Corporation B and [redacted] Corporation C, representing 80% of each such corporation's issued and such options.

Ms. Nancy Ovuka
January 13, 1993
Page 3

12. Creditor holds voting shares of [redacted] Corporation B which represents 80% of [redacted] Corporation B's issued and outstanding capital stock. Individual A and Individual C each hold 10% of such shares.

commercial banks (one of which is the bank which loaned money to Partnership A) have also loaned money to Partnership B.

14. Partnership B is insolvent. It has total liabilities in excess of the fair market value of its assets and it is unable to pay its debts as they come due.

WORK-OUT OF DEBT

15. A plan for the restructuring of Partnership A and Partnership B has been worked out among Partnership A, Partnership B, Creditor and the bank lenders of both Partnership A and Partnership B, the relevant components of which include the following:

a. Creditor shall, through its control of [redacted] Corporation A and [redacted] Corporation B, [redacted] cause the liquidation of both

both of the Partnerships are now insolvent and the [redacted] Corporations remain liable for all of the debts of the Partnerships, all of the Partnerships' respective assets will be distributed to the [redacted] Corporations; none of such assets will be distributed to the [redacted] Corporations.

b. Following such liquidations, [redacted] Corporation A will be merged with and into [redacted] Corporation B, with the result that Creditor

will receive [redacted] of the [redacted] Corporation B before dilution for management equity [redacted] and as a result of the merger

(iii) [redacted] of [redacted]

Ms. Nancy Ovuka
January 13, 1993
Page 4

interests in Corporation B and (iv) the banks will be issued a warrant to purchase a portion of the stock of Corporation B in the event certain conditions are satisfied.

CONCLUSION

You confirmed that, because, inter alia, Creditor is a creditor which extended credit to the Partnership in the course of its business, ~~the~~ debt credit

W

connection with a bona fide debt work-out, such transactions may be effected without filing a notice under the Act by reason of the exemption from notification set forth in 16 C.F.R. §802.63(a).

Please let me know if the foregoing conclusion is

Thank you.

Sincerely,

[Redacted signature block]

[Redacted block]

1/13/93

Exempt under 802.63
RS concurs.

nmc-

Schedule A

Debts

Loans
Creditor
Loans

