

FEDERAL TRADE COMMISSION
MERGER

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

May 5, 1994

VIA TELECOPY

Mr. Richard Smith
Federal Trade Commission
Sixth and Pennsylvania Ave., N.W.

Re: Interpretive Advice on Hart-Scott-Rodino

Dear Mr. Smith:

We are writing to confirm our phone call of May 5, 1994

its ownership [REDACTED] some of which have been
optioned between certain partners and such options are immediately
exercisable for nominal consideration, and in the alternative (ii)
whether a proposed transaction would qualify as a "bona fide debt work-
out" and therefore be exempt from the filing requirement of the Hart-
Scott-Rodino Anti-Trust Improvements Act of 1976, as amended.

[REDACTED] ("Lender"), presently is the lender to a holding company
and its [REDACTED] operating subsidiaries ("Borrowers") pursuant to a loan
agreement ("Loan Agreement") which has been in effect for the last

the Lender will own a 20% partnership interest at closing and the right
to acquire up to 75% of the remaining partnership interests in the

outstanding indebtedness of the Borrowers under the Loan Agreement to
Newco and a release of the liens and other debt obligations of

Pursuant to Section 7A (a)(1)-(3) of the Clayton Act (the
"Act") pre-merger notification is required only if each of three tests

are satisfied; the Commerce test, the size of person test and the size of transaction test. An application of these jurisdictional tests requires an analysis of definitions set forth in the Act's regulations. Rule 801.1(a)(1) defines "person" as the "ultimate parent entity" and all other "entities" which it controls directly or indirectly. Rule 801.1(a)(3) defines "ultimate parent entity" as an "entity which is not controlled by another entity." Rule 801.1(a)(3)(i) and (ii) states that "control" is found to exist when an entity either owns 50% or more of the voting securities or, in the case of an entity without voting securities, the right to 50% or more of the profits or, in the event of dissolution, to 50% or more of the assets.

Our interpretation of Section 7A(a)(1)-(3) and the rules thereunder which you have agreed with is that a partnership is an

exercised. Therefore, in our transaction, the Lender would be found to be a 20% owner of the partnership and thus not the "ultimate parent entity" despite the Lender's ability to exercise the option at any time to obtain up to 75% ownership interest.

In the alternative, even if the existence of the option was

promulgated thereunder, which you have confirmed and agreed with, is that, in the event the Lender (and any other entities controlled by, controlling or under common control with the Lender) does not engage in a line of business as a direct competitor to Newco and the company being purchased, a transaction in which Lender, either directly or indirectly through a newly formed entity, receives assets of its borrower in lieu of foreclosure or pursuant to a bona fide work-out in satisfaction of all outstanding obligations is an exempt transaction and therefore filing under the pre-merger notification rules would not

deemed to be an opinion letter, and no other party shall have the right to rely on anything contained herein. Thank you very much for your time and assistance with this matter.

16/94 ~~Author~~ Writer advises that
Very truly yours,

under meets "ordinary course of business" requirement of 802.63. Also that partnership has been set up in the described manner for purposes and not for avoidance. The phrase "in satisfaction of all outstanding obligations" and the phrase "pursuant to a bona fide work-out" I agree with the conclusions of this letter regarding control of the partnership and the use of 802.63. RRB Smith