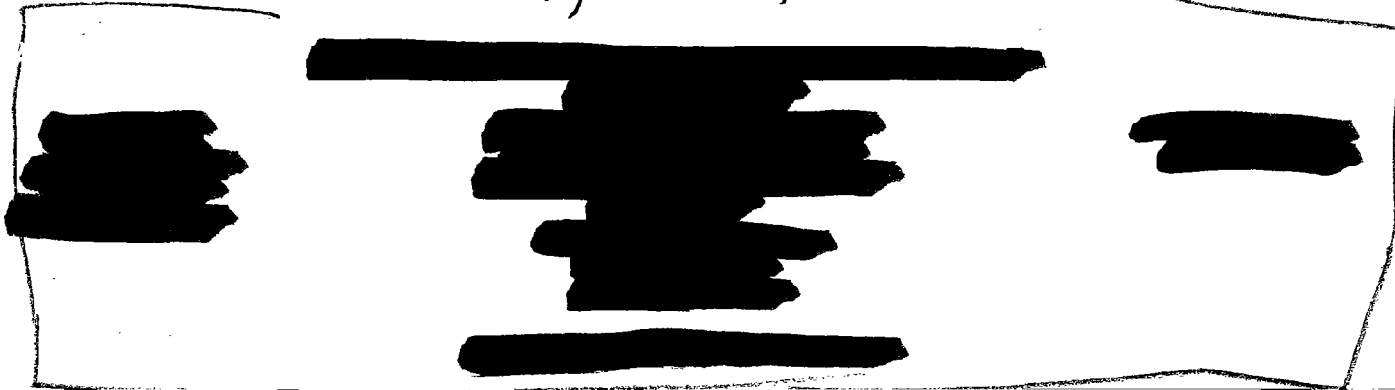


801.11(e); 801.40; 801.90



December 2, 1994

BY HAND

DEC 23 11 58 AM '94  
PREMIER  
FEDERAL TRADE COMMISSION

Bureau of Competition, Room 3030  
Federal Trade Commission  
Sixth St. and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

*This document may be confidential in whole or in part under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). This document is exempt from disclosure under 7A(h) of the Freedom of Information Act.*

Dear Dick:

This letter memorializes the advice you provided over the telephone on November 22 concerning the appropriate analysis of the Hart Scott Rodin Substantive Testimony of 1994.

subsidary corporation, Newco. Newco will then, in turn, create three wholly-owned subsidiary corporations --Sub1, Sub2, and Sub3.


3. After being formed, Newco will enter into acquisition agreements with each of ultimate parent entities ("UPE's") A, B,

and C. A is a \$100 million company. B and C are each \$10 million

4. Through Sub1 the Partnership (as UPE) will first

its subs) will have total assets of approximately \$39 million in cash (from contributions by partners, plus loan proceeds), but will not have a regularly prepared balance sheet.

5. Through Sub2, the Partnership will then acquire all the voting securities of a subsidiary of B in return for cash of

  
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approximately \$4 million plus voting and nonvoting securities of

acquisitions, the Partnership will remain the UPE of Newco and will be a \$10 million, but not a \$100 million, person.

You advised that the creation of the Partnership in Step 1 would be an exempt partnership formation transaction, and that the Partnership should be considered its own UPE, despite the fact that, as I explained, two of the partners are anticipated to be a father and son whose partnership interests combined would constitute more than 50% of the outstanding partnership interests. As I indicated, the son is not a minor, both father

commitment with the other. You also advised that the creation of Newco, Sub1, Sub2, and Sub3 (Step 2) would be exempt under § 802.30.

You further advised that § 801.11(e) would govern the determination of the Partnership's "size of person" for the acquisition of assets from A (Step 4). Under this section, as illustrated by the examples to the section, an acquiring person with no regularly prepared balance sheet has a "size of person" equal to the value of all assets held by the person at the time

the Partnership's "size of person" at the time of the acquisition from A would be \$6.5 million (\$39 million total assets less \$32.5

You further advised, in accord with § 801.11(e), that the Partnership would have a "size of person" for the acquisition

cash to be used for the acquisition from B. With respect to the acquisition from C, you advised that the Partnership's "size of

because the Partnership's "size of person" under these tests would be less than \$100 million with respect to both the acquisitions from B and C, and because B and C are each less than \$100 million in size, you advised that these acquisitions would also not be reportable.

[REDACTED]

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If this letter does not accurately reflect the advice you provided concerning the nonreportability of the transactions described above, please call me as soon as possible.

As always, I thank you for your time and assistance.

Very truly yours,

[REDACTED]

[REDACTED]

12/12/94 - called writer and advised that, based on the facts in this letter and the order in which the three acquisitions 10 + 10 ... H.A. 801.11(e) is usable and that 801.40 does

partnership interests are required under 801.10 paragraphs.

RB Smith