

§ 20(a) - § 101.10(b) [partner's purchase of other partner's interest]

[REDACTED]

1 October 1996

Via Hand Delivery

Richard B. Smith, Esq.
Senior Staff Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 323
6th Street and D Street, N.W. Washington, D.C. 20547

Dear Dick:

On behalf of my client [REDACTED], I am writing to confirm my

of the transaction is always the current gross fair market value of the partnership's assets regardless of the acquisition price for the partnership interest or any value which could be imputed therefrom.

I. SUMMARY OF THE RELEVANT FACTS

net sales and total assets each exceeding \$100 million. [REDACTED]
is an ultimate parent entity of the acquired entity, which is engaged in manufacturing cable assemblies
and subsystem businesses. The acquired person has annual net sales exceeding \$10 million, although
its most recent balance sheet states that its total assets have a book value below \$10 million.

[REDACTED]

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Formation of the Joint Venture Partnership: In July 1994, [REDACTED] wholly-owned subsidiary [REDACTED] acquired fifty percent of [REDACTED] assets for approximately \$7 million plus the assumption of certain liabilities. This transaction was exempted by Rule 802.20(a) because neither the purchase price nor the fair market value exceeded \$15 million, and there were no other assets or voting securities the value of which needed to be aggregated. [REDACTED] then immediately contributed these assets to a partnership formed [REDACTED]

[REDACTED]

The Proposed Partnership Buyout: [REDACTED] now desires to exercise its call option and has [REDACTED]

[REDACTED]

of the partnership's assets is between \$5,391,000 and \$9,231,000. Finally, the aggregation rules would not require [REDACTED] to aggregate the value of any other assets or voting securities in determining whether it will cross the \$15 million notification threshold.

II. SUMMARY OF THE RELEVANT LEGAL PRINCIPLES

Rule 801.10(b) states that "[t]he value of assets to be acquired shall be the fair market value of the assets, or, if determined and greater than the fair market value, the acquisition price." The acquisition of a 100 percent interest in a partnership is for H-S-R purposes deemed to be an acquisition of 100 percent of that partnership's assets. See, 52 Fed. Reg. 20061 (May 29, 1987). Although Interpretation 132 states that "the FTC staff has not formed a definitive position," I understand based on our recent and prior conversations, as well as a number of letters I have seen in my H-S-R FOIA files over the years, that such a transaction is necessarily valued at the gross fair market value of the partnership's assets, regardless of any value which could be imputed from the acquisition price(s) for the partnership interest(s). In other words the acquisition price is for the partnership interests not for the partnership's assets; but the latter

imputed or extrapolated from the price of the partnership interests) and the fair market value of the assets is therefore controlling even where the fair market value is less than the purchase price for the partnership interests.

[REDACTED]

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III. APPLICATION OF THE RELEVANT LEGAL PRINCIPLES TO THE PROPOSED TRANSACTION

Here [REDACTED] originally paid approximately \$7 million for fifty percent of the assets or the initial fifty percent partnership interest, and now plans to pay about an additional \$9.8 million for the remaining partnership interests. [REDACTED] also has assumed certain liabilities in connection with each of these transactions. Nevertheless, for U.S.D. purposes the purchase price of the assets is deemed

overstate the current fair market value of the partnership interests and the partnership's assets.

IV. CONCLUSION

In short, when a person acquires 100 percent of a partnership's interests, the size-of-transaction test is determined solely by the current gross fair market value of the partnership's assets, regardless of the aggregate purchase price paid for all the partnership interests or any other which could

Dollar value rule so long as the current gross fair market value of [REDACTED] assets does not exceed \$15 million.

at your convenience to confirm whether we have accurately stated the current positions of the Decedent

with nighest regards, I am

Very sincerely,

[REDACTED]

cc
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10/3/96 - writer confirmed that purchase price was 4th line on p. 7 included assumption of liability
for 50% interest. Since option is for 50% interest