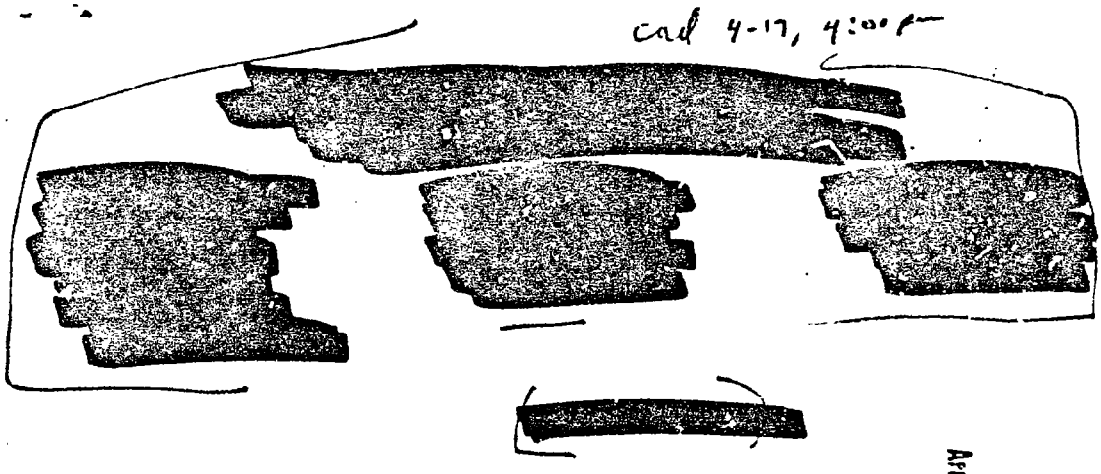
call 4-17, 4:00 p—



Dana Abrahamsen, Esq.
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 22580

Re: April 5, 1984 Telephone Conversation

Dear Dana:

In a conversation this morning, I requested an informal opinion with respect to the following factual situation:

Mr. X (a $100 million person), together with his wife and children (not minors), will form Partnership A. Partnership A will join with unrelated party B to form Newco. Partnership A will own 75% of Newco, unrelated party B will own 25% of Newco.

Newco will receive a total of $3 million in contributions from A and B. Newco also will borrow $25 million from unrelated sources, and these funds will not be guaranteed by any entity.

Newco will make a tender offer for Company Y, followed by a merger, for $28 million.

Question

Do any of the above transactions require a filing pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976?

Discussion

You have advised me that none of the transactions described above requires a Hart-Scott-Rodino filing for the following reasons:

(a) The formation of a partnership is not subject to the filing requirements of the Hart-Scott-Rodino Act;

(b) The formation of Newco, a corporation which will have total assets of $3 million, does not meet the requirements of Rule 801.40; and

(c) Newco's tender offer for, and merger with, Company Y is not reportable because Newco, together with its ultimate parent entity, Partnership A, does not meet the $10 million size of person test. You noted that the $25 million borrowed by Newco for its transaction with Company Y is not counted as an asset of Newco in assessing Newco's size.

I believe this accurately describes our conversation and the informal opinions which you rendered today. If it does not, please contact me as soon as possible.

Sincerely yours,

4/9/84

[redacted]

What does trust buy as compared to what a corporation buys.

802.64 applies to trust. in its own acquisitions.

– O of 802.1 acquisition
– restrictions on what money market funds would acquire.

acq of voting securities of by Money Market Fund to extent holdings are comprised only of C 2 exempt securities.

rules change on [illegible] or [illegible] as [illegible] to a [illegible]

If an entity holds voting [illegible] what is exempt then any purchase is exempt.

If
501(c)(3)(4) + (6) Where settlor divides assets into 2 parts —
– If settlor has passed all interests
– in unit trust situation – back sets it up – proceeds of sale of units creates a pool.

Since Unit holders cash out - it's like they are establishing a revocable trust

To protect us - interpret unit holders in that way unless anyone unit holder contests trust.

[redacted] will get one notice up to speed - will check out prospectus + will come up to scheme re interpretation - come in + talk + then put something in writing - informal perfectly acceptable.

Bureau of Competition
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

MEMORANDUM

To: PMNO Staff

From: Wayne E. Kaplan WEK 4/9/84

Re: Comments on attached letter of April 5, 1984 from [redacted]

Please disregard the views set forth in the letter as to non-reportability which I allegedly expressed to [redacted] since they were based on incomplete and different facts than now appear in the letter.

I now believe that shareholders 2-7 are definitely making an acquisition. The only question is how do we value the amount of voting securities each is acquiring and holding.

It appears that since, under some of the alternatives, there will be a pay off of the note by the shareholders ($85 MM of principal and interest) the value of the shares of the corporation will be increased from $62 MM (the assigned value of shareholder one's 50% interest, doubled) to 147 MM and the value of the holdings of each acquiring shareholder (2-7) will be either 22.05 MM (15%) or 29.4 MM (20%). Under such an alternative these would be reportable acquisitions.

However, under other alternatives, the corporation itself would pay off the $85 MM using borrowed money (possibly from shareholders 2-7). This would leave the value of the voting securities unchanged since the repayment of $85 MM in debt is replaced by the new debt of $85 MM created to provide those funds. Under such an alternative it appears that [redacted] conclusions are correct that the value of each shareholders resultant holdings would be less than $15 MM.

Sent attached letter 4/12/84

It seems that we should not decide that issue on the form that the transaction takes, yet that seems inevitable.

Please let me have your written comments by COB on 4/11/84.

Thanks

I called [redacted] on 4/12 & left [illegible]

Meeting 4/12/84 after MSC

DRAFT

TO: John Sipple/PMN Group April 10, 1984
FROM: Sandra M. Vidas and Wayne Kaplan
RE: [redacted]

As we recently discussed [redacted] files differently than other entities. The [redacted] interpretation" was adopted when [redacted] was acquiring [redacted] and then dumping them into limited partnerships which it formed. According to the [redacted] interpretation" the company waived the informal interpretation which the PMN office has given for several years, namely that control of a partnership cannot be determined therefore the partnership is always its own ultimate parent entity. [redacted] asserted that, as the sole general partner in the partnerships that it created, the company controlled the partnerships. It was clearly less burdensome for [redacted] to file as the UPE of both the corporation and the partnerships because the transfers to the partnerships would have entailed another filing for the same [redacted] This interpretation was adopted while Naomi Licker and Sandy Pfunder were still in the PMN office.

When we discussed the current situation, [redacted] counsel for [redacted], had advised me that changing the interpretation would increase the number of filings that would be required. Wayne's experience with the filings that have been received so far does not entirely correspond with the representations because some of the transactions would have been exempt as he analyzed them. However, a large transaction involving many partnerships could result in a multiple filing situation for both [redacted] and the acquiring person.

Notwithstanding all of the above, [redacted] and at least one other unnamed major [redacted] company are the acquiring persons in acquisitions from [redacted] The acquiring persons correctly conclude that these transactions would be exempt under the interpretation that a partnership is always its own UPE because the assets acquired from each partnership do not meet the size of transaction test. Understandably, they do not want to file notification.

Wayne and I have discussed the problem and a number of possible solutions. We would recommend two for serious consideration.

First, we could say that the [redacted] interpretation only applies when [redacted] is the acquiring person. This has the advantage of keeping the present method of filing for the company and limiting the burden of filing when they are the acquiring person. The approach has the disadvantage of appearing to be theoretically inconsistent. Ideally, it should not matter

whether [redacted] is the acquiring or acquired person is when we analyze a transaction. Morever, in some of the reportable transactions it would require multiple filings on [redacted] part.

Second, we could let [redacted] file in those transactions in which it is the acquired person and indicate in the cover letter that the acquiring person will not be filing because they are following the interpretation that a partnership is always its own UPE. Dana informs me that a letter describing the "partnership as its own UPE" theory as a rationale for the exempting the transaction from the filing requirements might be issuing a formal interpretation without the concurrence of DOJ. He suggests that a phone notification or better yet, a letter stating that the transaction doesn't meet the size-of-transaction test.

Another solution we considered, and which may be worth further consideration, included eliminating the [redacted] interpretation altogether. This solution has the obvious advantage of being consistent with our advice to the rest of the public. However, it does place a heavier filing burden on [redacted] and does deprive us of the better information should [redacted] start acquiring [redacted] properties again. (It appears unlikely that [redacted] will ever get a corner on the market for [redacted] so this may not be an important consideration).

In your absence we decided to let [redacted] file and have the acquiring person send a letter representing their position. We would then send the letter to the parties described in the second recommendation.

Please advise us ASAP if you disagree.