

PARTNERSHIP FORMATION

ATTORNEYS AT LAW

URGENT DIRECT LINE

EMAIL ADDRESS

CLIENT/MAKER NUMBER

February 29, 2000

VIA FACSIMILE

Mr. Michael Verne
Premerger Notification Office - #303
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: HSR Filing Question

Dear Mike:

This will confirm the conversations last week and yesterday morning between yourself, [REDACTED] and me. In particular, the issue concerned the reportability under the Hart Scott Rodino Premerger Notification regulations of a German joint venture that includes U.S. operations.

Company A and Company B, both of which are German corporations, intend to form a worldwide joint venture with respect to one particular line of their businesses. The parties have agreed to use a German limited partnership as the joint venture vehicle, and Company A will hold a 35% interest in that limited partnership and Company B will hold a 65% interest. Among the holdings of the joint venture will be what today comprise the U.S. operations of Company A and the U.S. operations of Company B.

As its initial contribution to form the limited partnership, Company B will contribute all of its assets and subsidiaries in the line of business. Thus, the U.S. subsidiary of Company B ("B's U.S. sub") will become a wholly-owned subsidiary of the joint venture limited partnership. Rather than create a new limited partnership entity, however, Company B currently owns a 100% interest in a limited partnership that, in turn, holds the assets and subsidiaries that will be in this joint venture. Thus, this limited partnership will serve as the joint venture limited partnership and Company A will make its contribution to this limited partnership for a 35% partnership share. You indicated that the use of this existing 100% Company B owned limited partnership would not change the treatment of the formation of the

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SINCE B HOLDS 100% OF THE PARTNERSHIP INTEREST,
IT DOES NOT EXIST FOR ESR PURPOSES UNTIL A
SECOND PARTNER (A) RECEIVES INTEREST. THIS EVENT
IS CONSIDERED THE FORMATION.

German joint venture as non-reportable since the FTC would treat this as the formation of a partnership upon Company A's contribution.

As its contribution to the limited partnership, Company A will contribute all of its European operations and assets that are devoted to this line of business. Company A's U.S. operations are owned by a U.S. subsidiary ("A's U.S. sub"). Rather than contribute the assets of A's U.S. sub directly to the limited partnership, however, Company A will contribute cash to the German limited partnership. The German limited partnership will transfer these funds to B's U.S. sub (now wholly-owned by the limited partnership) and B's U.S. sub will transfer the funds to A's U.S. sub in exchange for the assets. Thus, as the joint venture is formed and this cash transaction occurs, all of the U.S. operations of Company A and Company B will be combined in B's U.S. sub (which will be a wholly-owned subsidiary of the joint venture). There is a single joint venture agreement that provides for these transactions, and the transfer of assets from A's U.S. sub to B's U.S. sub is expected to occur simultaneously with Company A receiving its 35% interest in the joint venture limited partnership.

As noted above, we understand that the Hart Scott Rodino Premerger Notification regulations would treat the combination of Company A's assets and Company B's assets in the joint venture limited partnership as a non-reportable event. Our other question was whether this particular means of transferring Company A's U.S. assets to the joint venture would result in the need for an ESR filing. In particular, the issue concerns the use of a cash transfer (1) from Company A to the joint venture, (2) then from the joint venture to B's U.S. sub, and (3) from B's U.S. sub to A's U.S. sub in exchange for the assets of A's U.S. sub. In our conversation last week, you indicated that the staff would treat this acquisition as the formation of the limited partnership joint venture and that, accordingly, no filing would be required with respect to the transfer of the assets of A's U.S. sub to B's U.S. sub as part of this joint venture formation.

If I misstated our conversations in any way or if you need any further facts relating to this transaction, please contact me as soon as possible. Thank you for your assistance in this matter.

Very truly yours

[Redacted signature block]

WE WOULD VIEW THIS AS THE
FORMATION OF A PARTNERSHIP WITH
AN EQUALIZED PAYMENT. THERE
IS NO ACQUISITION SUBSEQUENT TO
THE FORMATION OF THE PARTNERSHIP.

NON-REPORTABLE
Michael Verne
3/1/00