

801.1 (b)
801.1 (c)

COUNSELORS AT LAW

November 6, 2000

Via Facsimile

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mike:

Thank you for your time and advice Friday. I write to review the facts we discussed, provide additional information regarding the appointment of the boards of the current organizations, and confirm your advice.

Two businesses, A and B, recognized as non-profit organizations under § 501(c)(3) of the Internal Revenue Code, intend to form Newco, also a non-profit organization. A and B will be the sole members of Newco.

Newco will have no appreciable assets. A and B will each appoint 50% of the members of Newco's board. The President of A and the CEO of B will serve as *ex officio* members of Newco's board, and can be removed, in effect, from those *ex officio* seats by Newco's board under certain circumstances.

Newco will have substantial control over the business activities of A and B. I explained, for example, that Newco would exercise control over budgets and capital expenditures of A and B, and could in some circumstances influence who is named as CEO of A or the President of B.

As you requested, I supply here additional information regarding the appointment of the boards of A and B. A's board will perpetuate itself through self-selection, according to its own by-laws, and the members of B will continue to elect the members of B's board. Newco will not name or appoint any member of the boards of either A or B.

[Redacted signature block]

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Based on these facts, you concluded that the formation of Newco is not a reportable event for Hart-Scott-Rodino ("HSR") purposes.

If I have misstated your conclusion regarding the HSR reportability of Newco, please contact me at your earliest convenience.

Thank you again for your time and assistance.

Sincerely,

ALTHOUGH THIS IS A DEFACTO CONSOLIDATION OF THE
BUSINESSES OF A & B, THERE IS NO REPORTABLE EVENT.
A & B COME TO CONTROL NEWCO THROUGH ITS
FORMATION, BUT NEWCO DOES NOT CONTROL ANYTHING,
AND DOES NOT HOLD ANY OF THE ASSETS OF THE A & B
BUSINESSES. THIS IS IN EFFECT A JOINT OPERATING
AGREEMENT ACCOMPLISHED THROUGH THE FORMATION OF
A SHELL NOT-FOR-PROFIT JOINT VENTURE.
T. HANCOCK & N. OVURA AGREE.

Michael Verne