[redacted]

801.10

November 21, 2000

By Hand
Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room: 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This is to confirm the conversations [redacted] and I had with you on November 2 and 16, 2000 relating to the determination of the consideration and filing parties in the following transaction.

Company A is going to purchase the stock of several corporations whose only assets are interests in an LLC. The corporations jointly own 100% of the LLC, but none owns 50% or more. The consideration for the purchase of the LLC is stock of Company A, cash and either the assumption of liabilities of the LLC or payment of the liabilities of the LLC at the closing. The debt of the LLC is guaranteed by the corporations being acquired or their ultimate parent entities or intervening corporations.

You advised us that since the substance of the acquisition was the purchase of the LLC interests that we should look through the corporate ownership to the LLC. As a result the filing party would be the LLC as the seller and Company A as the purchaser. You further advised that since an LLC was being purchased, a filing would not need to be made for staggered closings except for the last acquisition which would convey ownership of 100% of the LLC interests to Company A.

You also advised us that in calculating the purchase price we should include the debt that will be assumed or paid as the acquisition of an LLC is considered to be an acquisition of assets.

The consideration for the purchase of the LLC interests will be stock of Company A, which is publicly traded. The value of the stock should be determined in accordance with 16 C.F.R.§ 801.10. Liabilities discharged by the transactions would not be added to the value of the securities of Company A received by the sellers.

[redacted]

We appreciate your advice on this matter. Please call me [redacted] should you disagree with any of the above. Thank you very much.

Sincerely,

[redacted]

[redacted]

cc: [redacted]

[redacted]

AGREE.
B. Michael Verne
11/22/00

[redacted]

Management Buy-Out

1. Manager A and Manager B, who are each employed by XYZ Company, will establish a Delaware LLC ("MBO LLC") with paid-in capital of $5 million. It will have no other assets. They will each hold 50% of MBO LLC. Neither has sales or assets above $10 million.

2. MBO LLC will establish a Delaware corporation as it subsidiary ("Newco"). Newco will have two classes of shares: perferred and common, each with voting rights. MBO LLC will contribute $5 million to Newco, and in return it will receive all of Newco's common stock. Newco will not have any other assets.

3. Newco will borrow $58 from Bank for the purpose of purchasing the widget business of XYZ Company (secured by senior note and security interest in assets of Newco). This purchase transaction will involve Newco acquiring (i) the assets of the US widget business and (ii) the shares in a Puerto Rican subsidiary which will then become a subsidiary of Newco. The consideration paid for the business is:

   (i) Newco will issue voting, preferred shares to XYZ Company (which will constitute 20% of the outstanding voting securities of Newco). The value of these preferred securities after closing will be $20 million.

   (ii) Newco will pay XYZ $63 million in cash (*i.e.* the sum of the initial capital contribution of $5 million and the $58 million borrowed from the Bank).

4. XYZ Company will not have the contractual rights to control the board of directors of Newco.

5. The assets of XYZ Company before and after the transaction will exceed $100 million.

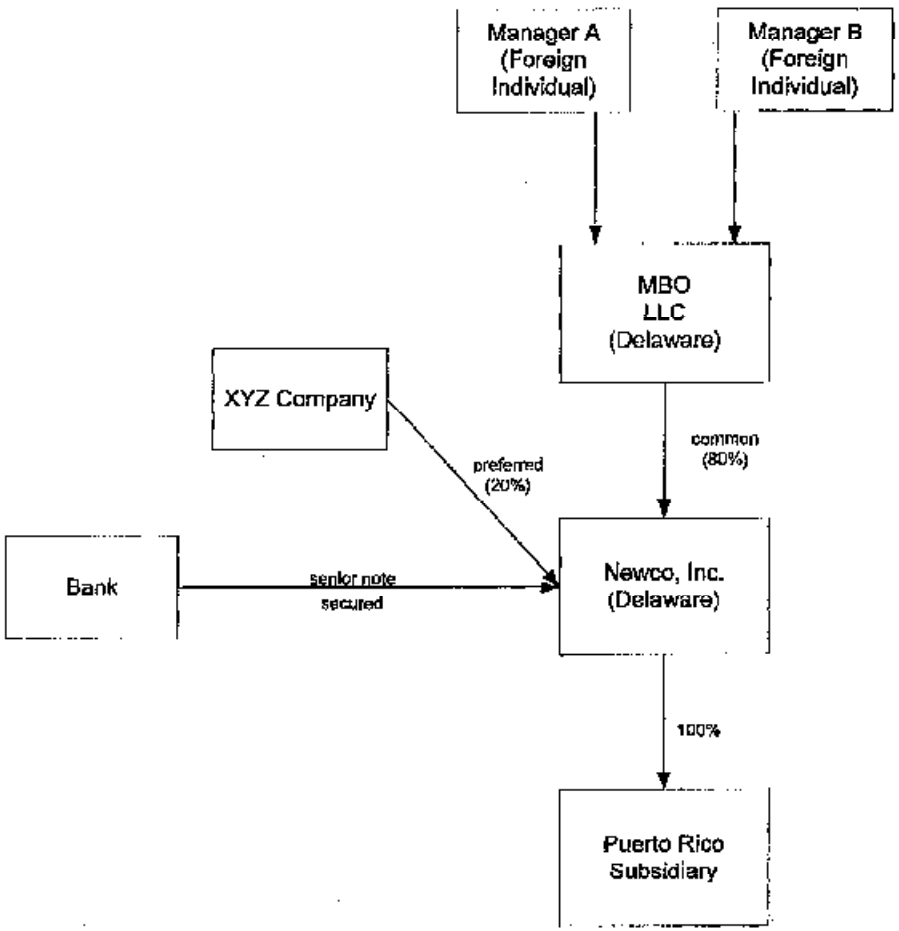
6. Neither Manager A or Manager B has assets or sales exceeding $5 million.

7. All steps are to occur concurrently.

When acquiring the preferred shares of Newco, is Newco already considered to own the assets so that the acquisition of the preferred shares triggers an HSR filing? NO -

FORMATION IS NON-REPORTABLE.
FOR PURPOSE OF XYZ ACQUISITION OF
NEWCO VIS, A+B ARE < NOT $10mm
REVENUES.
B. Michael Jay
11/29/00

[redacted]


Manager A
(Foreign
Individual)
Manager B
(Foreign
Individual)
MBO
LLC
(Delaware)
XYZ Company
preferred
(20%)
common
(80%)
Bank
senior note
secured
Newco, Inc.
(Delaware)
100%
Puerto Rico
Subsidiary