

December 17, 2001

Alice M. Villavicencio
Office of Premerger Notification
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

2001 DEC 17 P 1:50
OFFICE OF PREMERGER NOTIFICATION

Re: HSR Reportability of Proposed Transaction

Dear Alice:

I am writing to request an interpretation on whether a certain transaction will require premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. [redacted] and I recently discussed this transaction with you. At your request, I am providing a ^{written} writing description of the following multi-step transaction as well as a chart depicting each step. It is anticipated that all of the following steps will take place simultaneously.

- 1) Current Structure - On one side of the transaction is X, Inc. (ultimate parent) which holds 100% of the interests of Y, LLC. Y holds 50.3% of Z, LP, with the remaining 49.7% of interests in Z held by the public. On the other side of the transaction is A, LLC (ultimate parent) which holds 100% of the interests of B, LLC. B holds 99% of P, LP and A holds the remaining 1% of P directly.
- 2) Step 1 - The 99% interest in P held by B will be contributed to Z. In exchange for the interest in P, a 77.8% interest in Z will be transferred to A. As a result, Y's interest in Z is reduced to 11.2% and the public's holdings are reduced to 11%.
- 3) Step 2 - Y will distribute its 11.2% holding in Z to X. A also acquires 100% of Y for a purchase price of \$35 million.
- 4) Step 3 - B will be merged with and into Y. At the same time, interests in Z will be sold in a secondary public offering. Assuming the offering is successful, the public's holdings of Z will increase to 67.7% and A's holdings of Z will be reduced to 21.1%. As a result, Z will be its own ultimate parent and no one entity will hold 100% of P.

[redacted]

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5) Step 3a - Our question arises in the situation where the public offering is either delayed or is not as successful as anticipated. In either situation, A could end up holding more than 50% of Z. If this were the case, A would hold Z and would be deemed to hold 100% of P.

In our prior phone conversations, we argued that even if the public offering was not successful, and the final structure was that depicted by Step 3a, there still would be no HSR filing required. Under § 801.1(c)(8), A currently holds 100% of P, and therefore is deemed to hold 100% of its assets, and will continue to hold 100% of P. As such, there is no transfer of assets between persons that would trigger a filing under the HSR Act.

(Not relevant to use 801.1(c)(8))

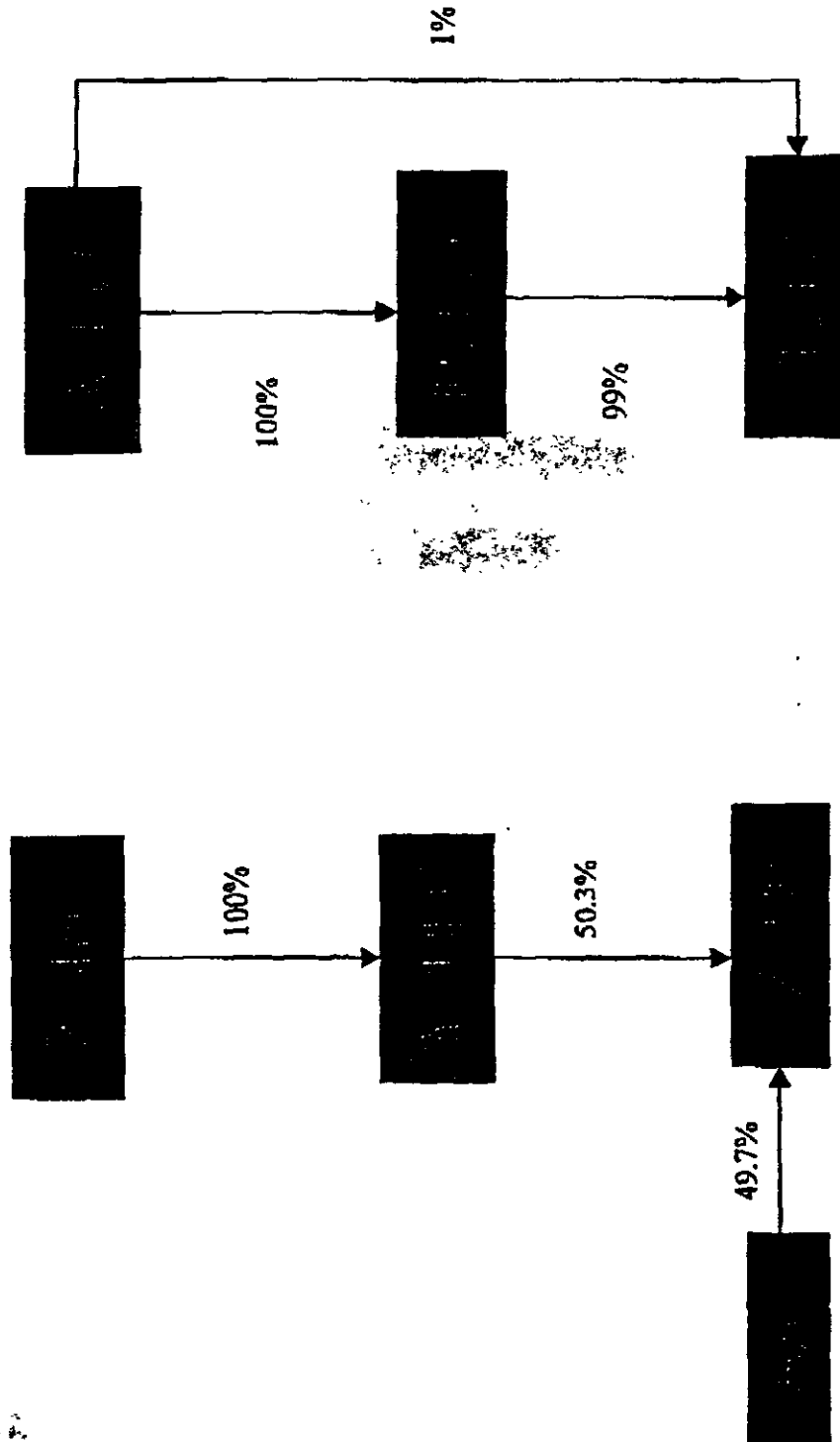
Feel free to call with any additional questions. Thank you for your assistance.



*Called White on 12/18/01.
Exempt. A holds 100% of P's
partnership interests, thus it holds
all of P's assets. NV
If A gets less than 100% of P - not
reportable under
Rule 801.1(c) Amended Control Rule.
See FR Vol. 52 Vol. 103 at 20061.*

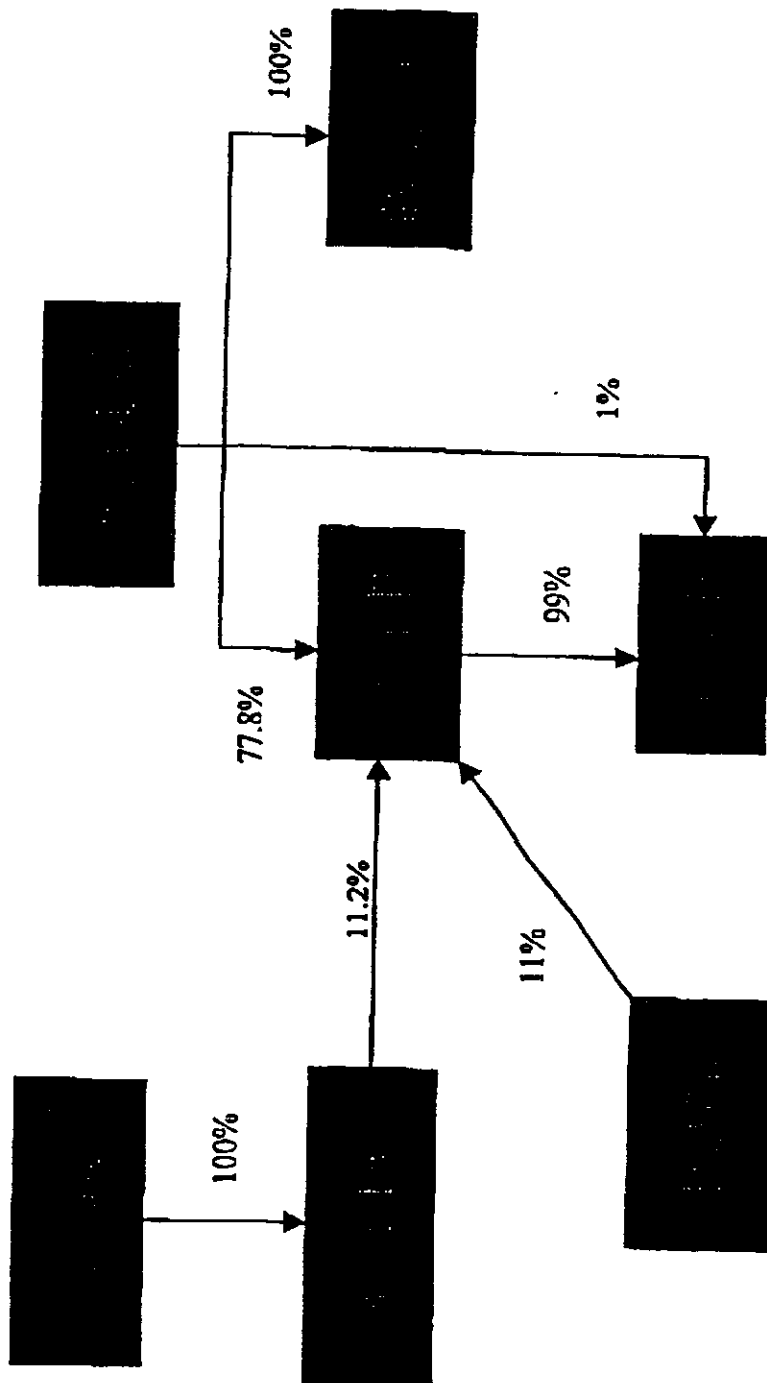


Current Structure

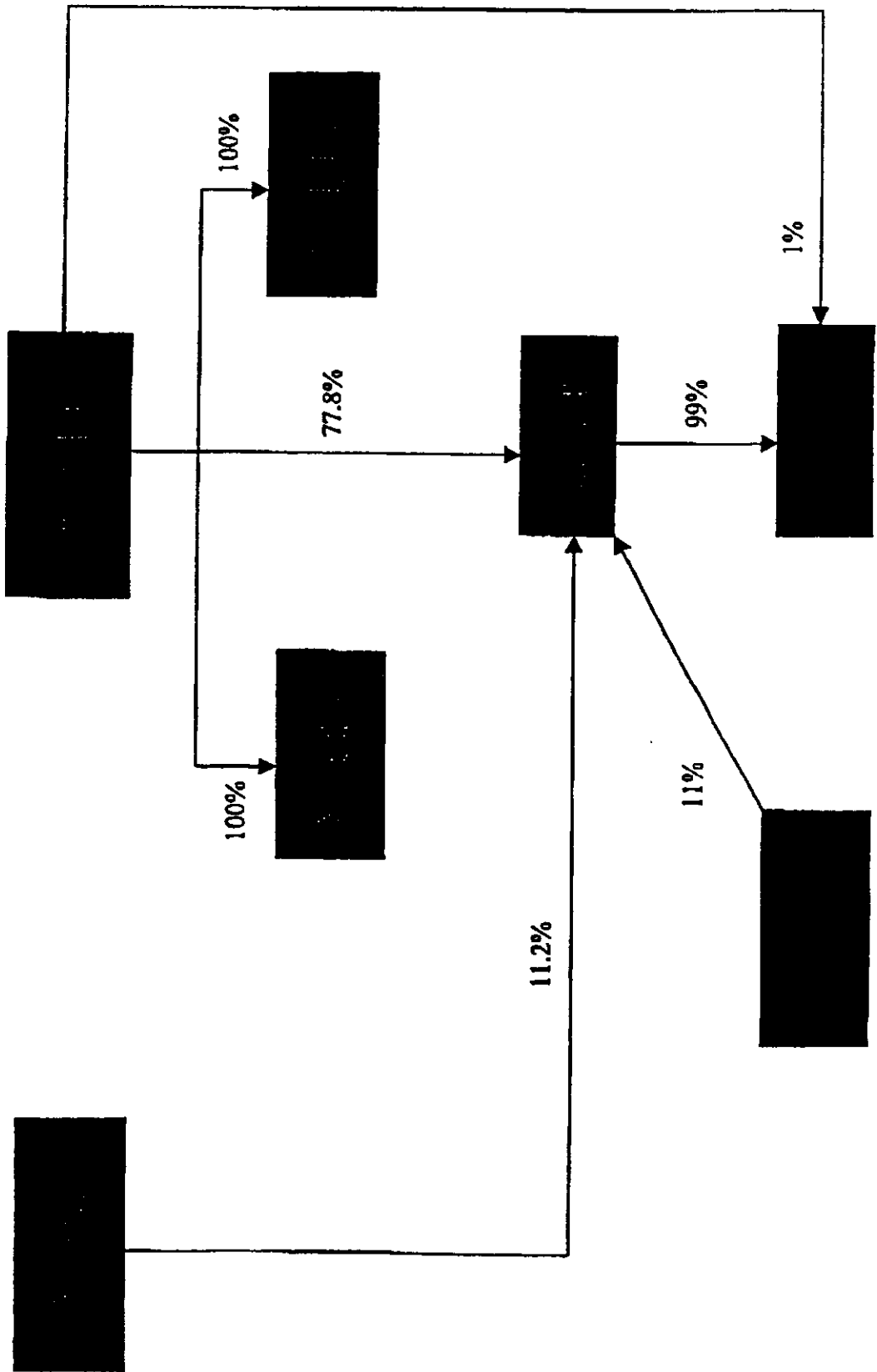




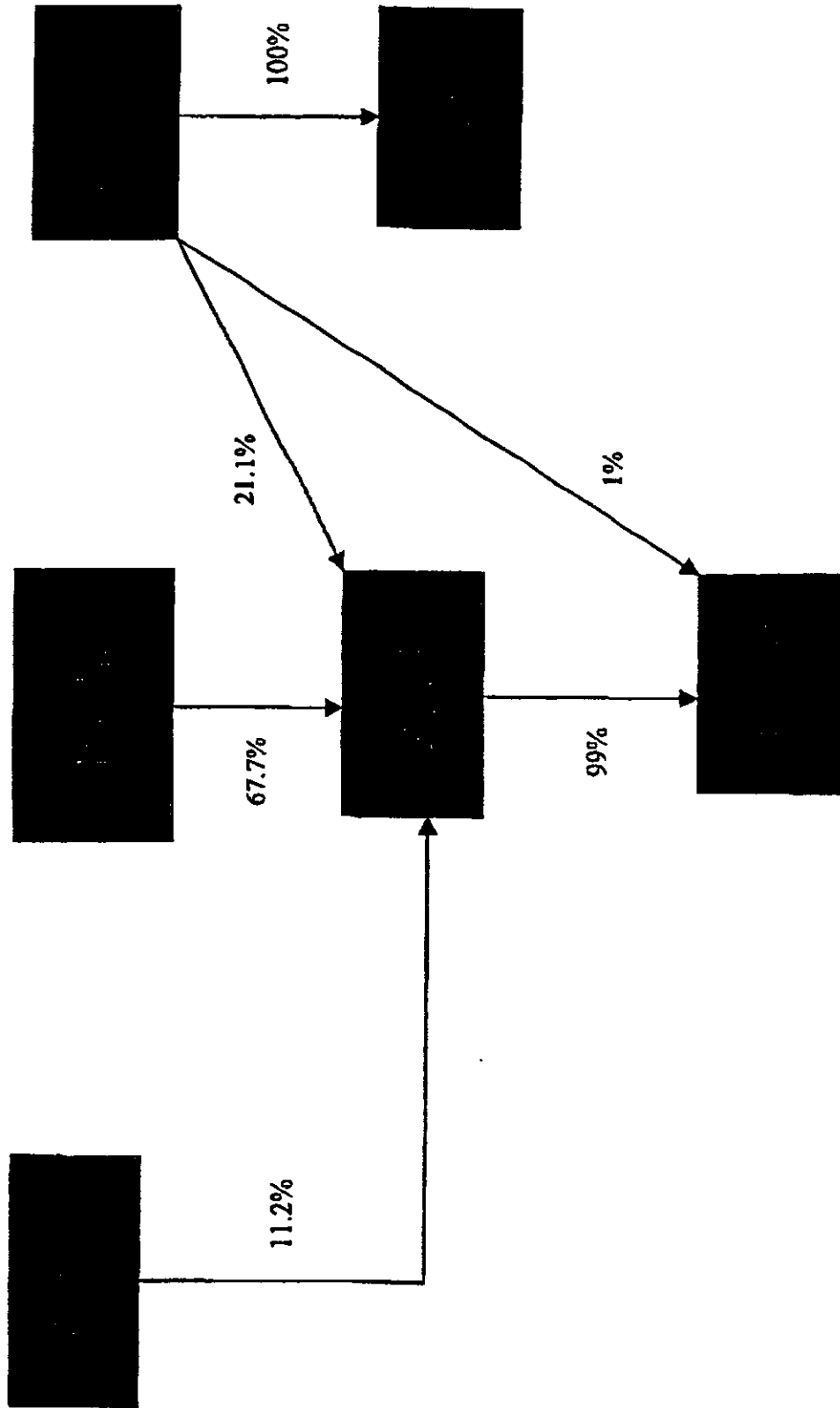
Step 1



Step 2



Step 3



Step 3a

