

Michael Verne

From: [REDACTED]
Sent: Monday, December 9, 2002
To: Michael Verne
Cc: [REDACTED]
Subject: HSR Question

Dear Mike,

As a follow-up to the telephone conversation you had with [REDACTED] me on December 4, 2002, the following reiterates the facts and the conclusions of our discussion as I understood them:

"Parent LLC" is the ultimate parent entity of the acquiring entity, "Corporation A." Parent LLC is a pre-existing limited liability company that is its own ultimate parent entity (i.e., no person has an interest entitling it to 50% or more of the profits of the Parent LLC or 50% or more of the assets of the Parent LLC upon its dissolution). Corporation A is an indirect wholly-owned subsidiary of Parent LLC. The Parent LLC, through its controlled subsidiaries, operates a "business" as defined under the HSR Rules.

"Corporation B" is the ultimate parent entity of the acquired entity, "Target LLC." Target LLC is a newly-formed limited liability company ultimately controlled by Corporation B through its two controlled subsidiaries, "Sub 1" (a corporation) and "Sub 2" (a limited liability company).

Pursuant to a Purchase Agreement, Corporation A will acquire 95% of the limited liability interests of Target LLC and Parent LLC will acquire the remaining 5% of the limited liability interests of Target LLC in exchange for approx. \$322.5 million in cash and limited liability interests of Parent LLC valued at approx. \$17.5 million (which will represent between 1% and 5% of the total limited liability interests of Parent LLC). Immediately prior to the acquisition, Corporation B will cause assets held by Sub 1 and Sub 2 constituting a "business" under the HSR Rules to be contributed to Target LLC.

In summary, Parent LLC (as the ultimate parent entity of Corporation A) will acquire 100% of the limited liability interests of Target LLC from Sub 1 and Sub 2 (the "Sellers"), which are ultimately controlled by Corporation B, for approx. \$322.5 million in cash and approx. \$17.5 million in limited liability interests of Parent LLC.

Based on the facts above and our previous telephone discussion, I understand that this transaction should be viewed as a "reformation" of Parent LLC under HSR Formal Interpretation 15 because an acquisition of an additional business by an existing limited liability company that results in a change in the percentage membership interest of any member in the limited liability company is treated by the FTC's Premerger Office as the formation of a new limited liability company. The formation of a new limited liability company is reportable if: (1) two or more pre-existing, separately controlled businesses will be contributed, and (2) at least one of the members will control the limited liability company (i.e., have an interest entitling it to 50% or more of the profits of the LLC or 50% or more of the assets of the LLC upon its dissolution). Accordingly, although two pre-existing, separately controlled "businesses" will be combined within (i.e., contributed to) Parent LLC as a result of the acquisition, no person will own an interest in Parent LLC entitling it to 50% or more of the profits or 50% or more of the assets of Parent LLC upon its dissolution and, as such, is not reportable under HSR Formal Interpretation 15.

Mr. [REDACTED] and I disclosed that the essence of this transaction is Corporation A's acquisition of the

assets of the business held by Target LLC for consideration consisting primarily of cash and a very small minority interest in the Parent LLC valued in excess of the HSR size-of-transaction threshold. You confirmed that no HSR filing is required because the facts and circumstances fit literally within the requirements of HSR Formal Interpretation 15 and should not be viewed as an asset sale pursuant to the acquisition of 100% of the limited liability interests of Target LLC. You also confirmed that the value and percentage of the of membership interests (regardless of how de minimus) to be held by the Sellers (and ultimately by Corporation B) was irrelevant to the analysis of whether an HSR filing is required under HSR Formal Interpretation 15.

I would appreciate it if you would, again, confirm that, under these facts, this is a non-reportable transaction. Thank you for your time and consideration.

Best regards,

A large black rectangular redaction box covering the signature and name of the sender.

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AGREE THIS IS NON-REPORTABLE. A TECHNICAL
READING OF FI 15 INDICATES THAT THIS SHOULD
BE TREATED AS A FORMATION TRANSACTION.

B. M. [Signature]
12/11/02