

7a(c)(10)

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

2004 MAR 15 P 5:11

March 15, 2004

VIA FACSIMILE

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Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303  
Sixth Street and Pennsylvania Ave., N.W.  
Washington, D.C. 20509

Re: [REDACTED]

Dear Marian and Mike:

Thank you for your assistance on March 10, 2004, with respect to the reportability of the [REDACTED] transaction. Attached for the record is the transaction summary I sent you on March 9. You advised based on this summary that, while the first step is reportable by both [REDACTED] and [REDACTED], the second step is exempt under Section 7a(c)10. This letter confirms that advice.

Sincerely,

[REDACTED]

Attachment

[REDACTED]

[REDACTED]

7A (C) (10)

CONFIDENTIAL



██████████ / ██████████ WIRELESS ACQUISITION

Re: Points for FTC Premerger Notification Office Discussion

2009 MAR -9 P 12:29  
FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

1. The Deal

- a. ██████████ is acquiring all of the voting shares of ██████████. For tax reasons, the transaction will take place in two steps.
- b. ██████████ is a joint venture of ██████████ and ██████████. The assets and operations of the business are within ██████████, which is owned 60 percent by ██████████ and 40 percent by ██████████.
- c. However, ██████████ is managed by ██████████ ██████████, a "management company" that does not hold significant assets. The voting securities of ██████████ are owned 50/50 by ██████████ and ██████████.
- d. Prior to the acquisition of ██████████, the equity structure of ██████████ will be adjusted through the issuance of non-voting interests to give ██████████ a 60 percent equity interest and ██████████ a 40 percent equity interest. While the voting stock will remain 50/50, the equity interests in ██████████ and ██████████ will be identical at that time.
- e. At closing, a wholly-owned subsidiary of ██████████ will merge with ██████████, with ██████████ as the surviving entity. For tax reasons, ██████████ will hold ██████████ for a period of time while corporate entities are converted to LLCs.
- f. Thereafter, ██████████ will be "dropped down" from ██████████ to ██████████. This step involves ██████████ contributing the ██████████ entities to ██████████ and in return the LLC issuing new LLC units to ██████████.

} per call, % ownership interests do not change

g. As noted, that will not affect the equity interests at 60/40.

2. Issues as to Step 1.

a. Obviously, [redacted] is acquiring a <sup>100%</sup> ~~60%~~ interest in [redacted] and must file.

b. [redacted] is technically ~~may be considered~~ <sup>is</sup> a second ultimate parent entity under 16 C.F.R. §801.1(b)(2) because it owns 50% of the [redacted] voting stock.

c. If the transaction were structured so that [redacted] made the acquisition directly, [redacted] would be the only filing. *true*

d. Since that is the end result, and the equity is always <sup>50/50</sup> ~~60/40~~, we propose the FTC staff ignore the interim step and treat this as ~~one~~ transaction with only [redacted] as the acquiring company. *(2 UFGs) 2*

3. Issues as to Step 2.

a. The "drop down" will not change any substantive ownership or control.

b. Again, the equity positions of [redacted] (60 percent) and [redacted] (40 percent) do not change in the second step of the transaction, nor will the 50/50 management.

c. The second step, while not literally an "intraperson transaction" under 16 C.F.R. §802.30 because the acquiring and acquired persons are not the same person *by reason of holdings of voting securities*, is analogous to that exemption in an LLC context. *true*

d. Moreover, if the second step were the acquisition of voting securities instead of LLC interests, it would be exempt under 15 U.S.C. §§18a(c)(3) (the acquisition of voting securities by a holder of 50 percent or more of the voting securities).

e. Thus, we propose the FTC staff not treat the second step as a second reportable event.

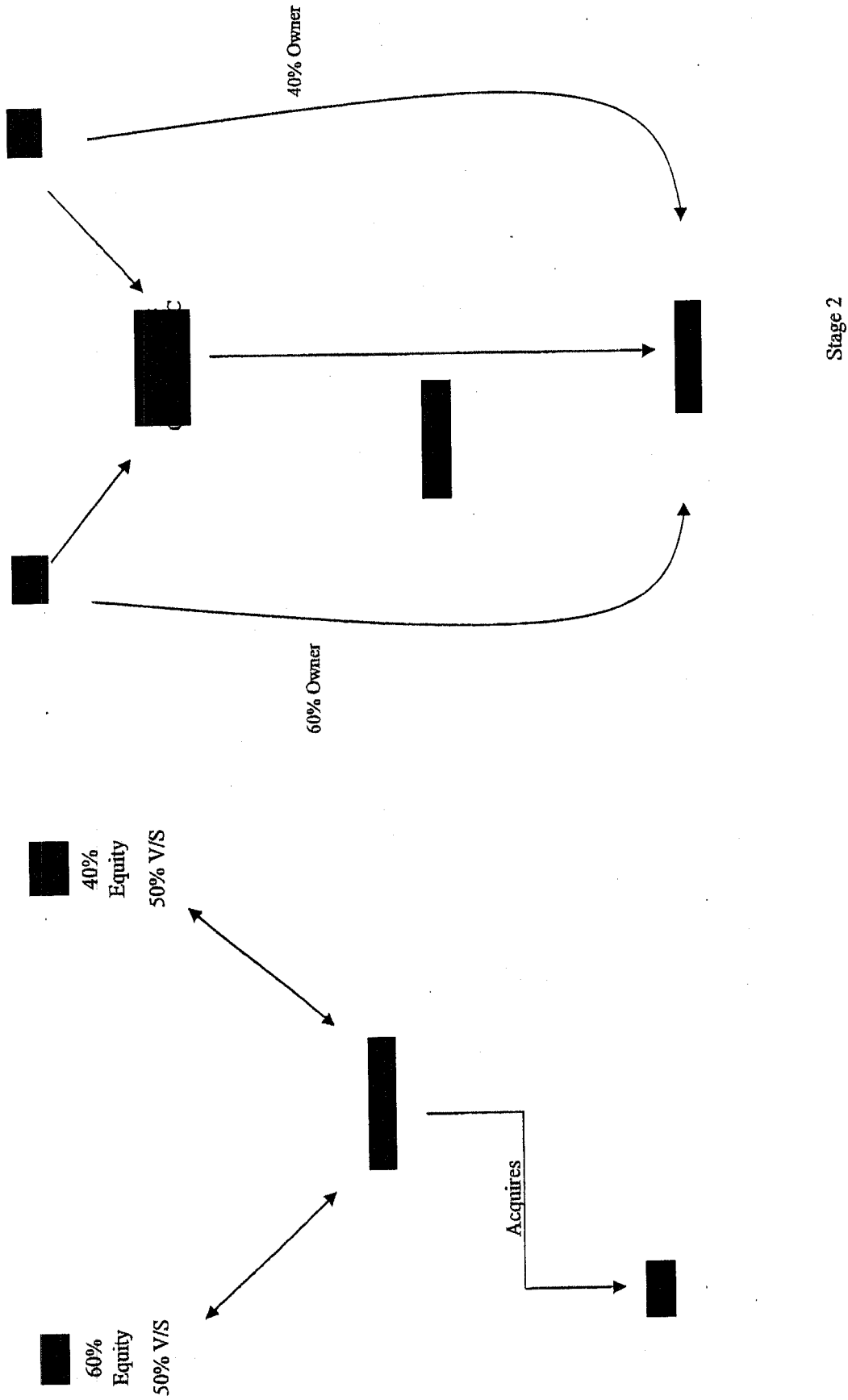
3/9/04

*But second step exempt under 7A(c)(10)*

*2 filings [redacted] & [redacted] file to acquire [redacted]*

*M Bruno + M. Verne*

# Transaction



Stage 1

Stage 2