

801.1(b)

November 30, 2009

VIA EMAIL (mverne@ftc.gov)

Mr. Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mike:

The purpose of this letter is to confirm the conclusion reached during a telephone conference [REDACTED] and I had with you on November 13, 2009, in which you concluded that, under the facts described below, neither of the entities described below controls the corporation. In particular, our inquiry related to the interpretation of the staff of the Federal Trade Commission of Rule 801.1(b)(2) relating to whether either of the entities described below has the contractual power presently to designate 50% or more of the directors of the corporation. The relevant facts, as we discussed them, are as follows:

C is a U.S. corporation. No person holds 50% or more of the issued and outstanding voting securities of C. Under a Shareholders Agreement, the holders of two classes of C's outstanding voting securities, Class A common stock and Class B common stock, have the right to designate the members of C's board of directors. Shareholder X holds 100% of the issued and outstanding shares of the Class A common stock. Shareholder Y holds 100% of the issued and outstanding shares of the Class B common stock.

C has a five person board of directors. Under the Shareholders Agreement, X and Y each have the right to designate two members of the board. The right to designate the fifth director is shared by X and Y; the designation must be made by mutual agreement, and X and Y thus each have the contractual power to veto the other's choice of the fifth director. Neither X nor Y alone has the unfettered right to designate the fifth director. As a result, neither X nor Y has the contractual power presently to designate 50% or more of the directors of C.

Based on these facts, you confirmed that neither X nor Y controls C. This conclusion is supported by two earlier informal staff interpretations (Informal Interpretation Nos. 8712002 and [REDACTED])

Michael B. Verne, Esq.
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8807006) and is consistent with Interpretation 38 published in the Premerger Notification Practice Manual (Fourth Edition).

Please call me immediately at [REDACTED] should the position of the Federal Trade Commission staff with regard to this matter be different from that set forth above. In addition, please retain this letter in your files. I appreciate very much your assistance and helpful advice on this matter.

cc:

[REDACTED]

[REDACTED]

AGREE -
BM
11/30/09

[REDACTED]