

(control-
contractual
power)



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BY HAND

Patrick Sharpe, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I am not
an attorney

RECEIVED
MARCH 26 1996
FEDERAL TRADE COMMISSION
NOTIFICATION OFFICE

Dear Pat:

This letter confirms our conversation this morning concerning the FTC's interpretation of the phrase "[h]aving the contractual power presently to designate 50% or more of the directors of a corporation" which is part of the definition of "control". Rule 801.1(b).

I asked you to assume a situation in which Entity A and Entity B have a joint contractual right to designate 50% of the board of directors of Entity C. I asked you to further assume that Entity B had been passive so that Entity A had in fact designated 50% of the director's of Entity C for a number of years. However, Entity B retained the right to jointly designate 50% of the board of Entity C. The issue presented is whether Entity A controls Entity C.

You confirmed my conclusion that Entity A did not control Entity C, reasoning that both Entity A and Entity B had the "contractual power presently to designate 50 percent" of the board. Accordingly, neither Entity A nor Entity B controls Entity C as a result of the contract.

Thank you for your cooperation on this matter.

Sincerely,



I concur
(PS)
(RS)-also concurs

