October 13, 1992

VIA HAND DELIVERY

Victor L. Cohen, Esq.
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Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 310
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Application of the Premerger Notification Rules
to the Formation of Limited Liability Companies

Dear Victor:

Following up on our recent telephone conversation, I am writing to confirm my understanding of the Premerger Notification Office's treatment of limited liability companies, and the application of these views to a fact pattern which can be summarized as follows.

Persons "A" and "B" plan to form a limited liability company under Delaware or Maryland law. "A" and "B" satisfy the commerce criterion contained in 15 U.S.C. § 18A(a)(1), each has annual net sales and total assets exceeding $100 million, and each plans to contribute more than $15 million of assets to the venture. In exchange, "A" will acquire about 65% - 75% of the new company's equity, and "B" will acquire about 25% - 35%. Finally, assume that no exemptions apply.

I understand that the FTC would require "A" and "B" to report such a transaction under the Hart-Scott-Rodino Act, because the Premerger Notification Office views limited liability companies as tantamount to corporations. More specifically, an equity interest in a limited liability company is considered a voting security under Rule 801.1(f), because that interest ~~will usually~~ entitle the holder to vote for individuals exercising functions similar to corporate directors. Thus, the formation of a limited liability company under the law of any state is analyzed as the formation of a corporation under Rule 801.40.

Please let me know whether I have accurately restated the Premerger Notification Office's views, and correctly applied them to the aforementioned facts. As always, I appreciate your assistance.

Best regards.

Sincerely,

[redacted]