

801.40 (LLC)

June 6, 1995

VIA FACSIMILE AND MAIL

Richard B. Smith, Esq.
Senior Attorney
Premerger Notification Office
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Formation of Limited Liability Company

Dear Dick:

I am writing to confirm our telephone conversation of June 5, 1995, regarding the reportability of the limited liability company ("LLC") described below.

The LLC in question will initially have two members, although others may be added at a later date. At the formation, Company A will contribute its existing business (deemed in the LLC agreement to have a value of \$70 million) and commit to contributing an additional \$15 million in cash over the next twelve months. The other founding member, Company B, will contribute \$5 million in cash at formation and commit to contributing an additional \$5 million over the next twelve months. In return for these contributions, Company A will receive an interest of approximately 90 percent in the LLC, and Company B, an interest of approximately 10 percent.

The LLC will be structured and managed in such a way that it will be treated as a partnership for both accounting and tax purposes. It will have a limited duration, with a capability to extend upon consent of all members. It will also limit the liability of members.

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[Redacted]

[Redacted]

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The parties have agreed that the LLC will be managed by its members. The details of the management will be contained in the LLC agreement, which will provide that the governing body will be a "Members Committee." Both of the founding members and any subsequent members will be allowed to appoint employees to the Members Committee. The agreement will provide that a representative on the Members Committee cannot be an employee of any entity other than a member (or an affiliate of such member).

Day-to-day operations of the the LLC will be conducted by officers and other employees elected by, and delegated authority by, the Members Committee. Certain matters will be reserved exclusively for decision by the Members Committee, including the authority to set overall policy, to approve strategic plans and operating plans, to alter the scope of the LLC, to approve borrowing in excess of a set amount, and to approve other major changes in the organization of the company.

Based on our conversation, I understand the FTC Premerger Office position to be that the formation of the above-described LLC would not be reportable under the Hart-Scott-Rodino Act. In particular, the FTC staff does not view the interests being acquired by the two LLC members to be voting securities, because such interests do not allow the members to elect or appoint any third party to the Members Committee.

I would appreciate it if you would indicate your concurrence in this view by either initialing at the bottom of this letter and then faxing it back to me (at [Redacted] or giving me a call to confirm. As always, I appreciate your responsiveness in this matter.

[Redacted]
Sincerely,
[Redacted]

6/7/95 - Advised writer that his conclusion was correct that the formation of the subject LLC would not be reportable under 801.40 of the HSR rules.
RBSmith