

[REDACTED]

March 16, 1995

CONFIDENTIAL

Thomas F. Hancock  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580

This material may be subject to the  
confidentiality provisions of Section  
72(f) of the Civil Service Reform Act,  
5 U.S.C. 552a, and the provisions of 5 U.S.C. 552a

Re: Formation of Joint Venture in the Form  
of Limited Liability Company

Dear Mr. Hancock:

Attached is a write-up on the fact situation that we discussed earlier today. I appreciate your tentative concurrence, subject to further review, with my conclusion that the described formation of a joint venture in the form of a limited liability company would not require HSR filings. You might particularly want to review the attached write-up with Richard Smith since he was kind enough to review other aspects of the same transaction with us earlier this week.

Since I will be out of town tomorrow, I invite you to direct any follow-up questions on this matter to [REDACTED]. [REDACTED] will in any event contact you early afternoon. Our thanks for your advice and assistance in this regard.

Sincerely,  
[REDACTED]

[REDACTED]

cc: [REDACTED]

Under the above facts, the formation of the LLC is exempt from HSR requirements because it does not entail the formation of a joint venture in corporate form. (The subsequent acquisition of company D is subject to approval by the ICC and, for that reason, exempt from HSR requirements under 15 U.S.C. §18a(c)6.)

PT

3/17/95  
I verified that the "managing" members of the LLC would be responsible for its day-to-day operations. On the basis of told [redacted] that the formation of the type of LLC is not reportable.

TF #2-

Companies A, B and C plan to organize a joint venture in the form of a Limited Liability Company ("LLC"). The planned LLC will become the vehicle for acquiring the stock of company D pursuant to a cash tender offer to be commenced prior to the LLC's formation. LLC and its wholly-owned subsidiary, company E, will complete the tender offer and merger with company D. The acquisition of company D will require the prior approval of the Interstate Commerce Commission pursuant to 49 U.S.C. §10505 and 49 U.S.C. §1180.2(d).

Company A will contribute 48% of the capital and receive a 48% membership interest in the LLC; companies B and C, each of which indirectly owns 50% of company A and is accordingly an ultimate parent of company A, will each contribute 26% of the capital and receive a 26% membership interest in the LLC.

The resulting three members of the newly formed LLC intend to designate company A as manager of the LLC. Company A's present officers will thereupon become officers of the LLC. The decision-making authority of company A's management is already subject to certain "permitted approval" rights that company B possesses, in its capacity as a limited partner in the entity that owns company A, in accordance with Delaware partnership law. The decision-making authority of company A's management in connection with their management of the affairs of the LLC will be subject to those same "permitted approval" rights of company B.