

801.40 (LLC)

June 20, 1995

BY FACSIMILE TRANSMISSION

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:

We are writing to confirm our telephone conversation of June 19, 1995 in which you agreed with our conclusion that the formation of the limited liability company described below (the "LLC") is not a reportable event under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act").

As we discussed, the LLC will be organized under the Delaware Limited Liability Company Act (the "Delaware Act"). The LLC will have only two Members (although it is possible that one or more additional Members may be added in the future if the parties agree), both of which are corporations that will directly own their respective 51% and 49% ownership interests. Consistent with the Delaware Act, the LLC's Limited Liability Company Agreement (the "LLC Agreement") will provide that the management of the LLC will be vested in its Members. The LLC will not be managed by "managers" as defined in the Delaware Act.

Since the Members of the LLC are corporations, they will act and manage the LLC through a Members' Committee. Each Member will appoint two members of the Members' Committee. The fifth member of the Members' Committee will be the senior executive (e.g., "president") of the LLC, who will be appointed by the 51% Member/owner of the LLC, subject to the right of the 49% Member/owner to approve the appointment, which approval will not be unreasonably withheld. After his or her appointment, the person who

[Redacted]
Richard B. Smith, Esq.
June 20, 1995
Page 2

will be appointed as the senior executive of the LLC will be a full time employee of the LLC. Moreover, it is anticipated that the LLC will be consolidated by the 51% member for financial accounting purposes and will be treated as an entity within the person of the 51% member for HSR Act purposes.

As you may know, in order for a limited liability company to be taxed as a partnership under the Internal Revenue Code, it must not exhibit at least two of four "corporate" characteristics, including (1) continuity of life, (2) free transferability of interests, (3) centralization of management, and (4) limited liability. Rev. Proc. 95-10. The LLC is intended to qualify as a partnership for federal income tax purposes, and its governance structure is designed to satisfy Internal Revenue Service guidelines relating to absence of centralized management.

Based upon our conversation, we understand the FTC Staff position to be that the formation of the above-described LLC is not a reportable event provided that the individuals serving on the Members' Committee either will be (a) directors, officers or employees of the Member that appointed them or (b) full time employees of the LLC. It was your view that given this fact and the governance structure of the LLC, the LLC Members will not be acquiring interests that entitle them to vote for individuals exercising similar functions to those exercised by corporate directors and, therefore, will not be acquiring "voting securities" within the meaning of 16 C.F.R. § 801.1(f)(1).

We look forward to receiving confirmation from you at your earliest convenience that the foregoing accurately reflects the Staff's position as to this transaction.

Thank you once again for your assistance in this matter.

Very truly yours,

[Redacted signature block]

6/21/95 - Adviser writes that under facts presented here, the
A. ...