

801.40 (LLC formation)

August 31, 1995

VIA FEDERAL EXPRESS

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th and Pennsylvania, NW
Room 303
Washington, D.C. 20580

RE: Premerger Notification for Limited Liability
Company Joint Venture

Dear Mr. Smith:

This will confirm our telephone conversation of August 25, 1995, in which we discussed the current policy of the Commission's Staff regarding the coverage of Section 7A of the Clayton Act, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and FTC Rule 801.40 thereunder, to limited liability company joint ventures. It is our understanding, based on the facts as set forth below, that the formation of a limited liability company (LLC) joint venture which might otherwise meet the size-of-the-person and size-of-the-transaction tests under the HSR Act would not be a reportable transaction under the HSR Act.

Our client (Corporation A) is a corporation which plans to form an LLC joint venture with another corporation (Corporation B). Both Corporation A and Corporation B are engaged in the same industry. The proposed joint venture will be formed to conduct certain operations in both Corporations' industry. Corporation A and Corporation B will each be a Member of and will each have a 50% interest in the LLC.

The LLC will be structured in one of two ways:

1. Management of the LLC will be vested in the Members, with each Member having one vote on all matters submitted for approval of the

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Members. The Members will establish a Member Committee composed of Representatives designed by each Member. The Representatives of each Member will be officers or employees of such Member. The Member Committee will serve as the vehicle for Member meetings. The Representatives will be empowered to cast their Member's vote, but will not vote as individuals and will have no policy-making authority independent of the Members.

2. As an alternative, the LLC will be managed by a Management Committee composed of Representatives selected by each Member. Each Representative will be an officer or director of the Member selecting him or her. Each Representative will have one vote on all matters submitted for approval of the Management Committee, which will act by majority vote of the Representatives. The Management Committee will be vested with policy-making authority for the LLC.

It is our understanding the FTC Staff is of the view that neither of the foregoing alternatives would be interpreted as the issuance of "voting securities" (defined by Rule 801.1(f)(1) as securities which entitle the holder "to vote for the election of the directors of the issuer..."), and, accordingly, the formation of the proposed LLC joint venture would not be subject to the premerger notification requirements under the HSR Act.

We would be grateful if you would confirm at your earliest convenience whether our understanding is correct.

We greatly appreciate your guidance and assistance in this matter.

[REDACTED] regard

[REDACTED] 9/1/95- called writer and advised that the LLC formation (either in Form 1 or 2) is not negotiable under 801.40.

RBSmith