801.10
Formation LLC

[redacted]

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February 15, 1996

VIA FEDERAL EXPRESS

Mr. Patrick Sharpe
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Premerger Notification Requirement for Formation and Capitalization of Delaware Limited Liability Company

Dear Mr. Sharpe:

I corresponded with you during January with respect to the reportability of a transaction first described in a January 11, 1996 letter to Nancy Ovuka that you handled in Ms. Ovuka's absence. Since the time we first corresponded, I have come into possession of some additional facts relating to the transaction that may have some impact on your assessment of the non-reportability of the transaction. For your convenience, I have attached to this letter a copy of my January 11, 1996 letter describing the basic structure of the transaction, as well as my later letters confirming your advice that the transaction was not reportable.

In addition to the facts contained in the January 11 letter, I am now aware that in phase 1 of the transaction, in addition to the one-half interest in the assets of the Target that are being acquired by the subsidiary of my client for $10 million, the subsidiary ("Newco") will also assume an undivided

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one-half interest in the following liabilities of Target as of November 30, 1995, together with additional liabilities of Target arising in the ordinary course of business subsequent to November 30, 1995:

CURRENT LIABILITIES	
Line of credit	$2,635,400
Accounts payable	$2,808,300
Accrued liabilities	$1,521,100
Current portion of capital lease obligations	$80,700
Current portion of long-term debt	$723,200
TOTAL CURRENT LIABILITIES	$7,768,700
CAPITAL LEASE OBLIGATIONS, net of current portion	$114,800
LONG-TERM DEBT, net of current portion	$2,453,100
TOTAL LIABILITIES	$10,336,600
(one-half interest)	$5,168,300 (approx.)

As is explained in the January 11, 1996 letter, at a simultaneous closing, Target will enter into an asset secured loan agreement, pursuant to which my client (the parent of Newco) will provide up to a maximum of $7.2 million to retire outstanding bank debt of Target. This $7.2 million in effect will replace the line of credit and all long-term debt reflected in the above numbers, so that when Newco acquires the undivided one-half interest in the assets of Target, it will be assuming one-half of Target's obligation to Newco's parent, rather than the obligations to Target's current banks, as well as one half of Target's other liabilities.

Also simultaneously with the above two transactions, Newco will contribute its undivided one-half interest in Target to the LLC formed as described in my January 11, 1996 letter. Newco will be in possession of the portion of the assets of Target it is acquiring only as a vehicle for transferring the assets from Target to the Newco/Target LLC. Accordingly, the

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transaction is in substance a transfer of an equity interest in the Target/LLC to Newco for a net purchase price of $10 million.

If I can answer any additional questions that would assist you in analyzing this situation, please let me know. I look forward to hearing from you at your earliest convenience.

Very trul[redacted]

[redacted]
cc: [redacted]

The formation of the LLC is not reportable. However, the intermediate step of Client, through Newco sub, acquiring assets of target for an acquisition price of $15.2 mm is potentially reportable. Given the size-of-person test is met.
PS

Notified [redacted]
2/23/96. PS

orally ran this by RS and he concurs