

801.40 (LLC formation)

COMMISSION
MERGER NOTIFICATION
OFFICE

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March 14, 1996

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

Dear Mr. Smith:

This letter confirms our telephone conversation of March 12, 1996 in which you advised me that based on the facts described below the formation of a limited liability company would not be a reportable transaction under the Hart-Scott-Rodino Antitrust Improvement Acts of 1976, as amended, and the rules as promulgated thereunder. Specifically, I outlined for your consideration the following fact situation:

[REDACTED] "By-Products"), a subsidiary of [REDACTED] and an affiliate of [REDACTED], a subsidiary of [REDACTED] intend to form a joint business venture in the form of a limited liability company ("LLC") which will provide [REDACTED] supply, storage, transportation, acquisition, planning and related services for [REDACTED] and its affiliates and [REDACTED] and its affiliates. Additionally, the joint venture will provide [REDACTED] supply, marketing, sales, management and related services to others.

By-Products and Energy will each contribute an initial \$500,000 towards the operation of the joint venture. As part of the formation [REDACTED] will assign (by assignment, release or other contractual means) title to their respective natural [REDACTED] supply, storage, transportation and marketing contracts. Similarly, affiliates of [REDACTED] will assign (by assignment, release or other contractual means) title to their respective [REDACTED] supply, [REDACTED] marketing, management, and transportation contracts. Both By-Products and Energy will retain a 50 percent interest in the joint venture.

The joint venture will be in the form of an LLC in which the representatives of each joint venture participant on the Board of the LLC are required by the joint venture

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[REDACTED]

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documentation to be appointed from among the directors, officers or employees of the respective designating participant.

Under the above facts, you have confirmed that the formation of this LLC is exempt from HSR filing requirements because, in these circumstances, it is your Office's view that the participants in the LLC would not be acquiring voting securities within the meaning of the Act.

Thank you very much for the assistance and guidance you have provided in this matter.

Very truly yours,

[REDACTED]

[REDACTED]

3/19/96 I advised writer's assistant that no filing was required under rule 801.40 for the formation of the LLC since no "voting stock" would be acquired by the participants based on the appointment of their respective officers, directors or employees to the LLC

R. B. Smith