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P.02

FOI. 40
LLC

Formation of a LLC is corporate in nature

under FOI. 40

[redacted] if it has a

board of directors whose membership is not limited to the farming persons.

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION

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It does not matter that the board members of the LLC also manage the daily affairs of the LLC, a filing is still required if size tests are met.

August 23, 1996

VIA FACSIMILE

Victor L. Cohen
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Formation of LLC

Dear Victor:

The purpose of this letter is to confirm our recent conversations in which I requested your advice as to whether a transaction would be subject to the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act, as amended (the "Act"). Based on my description of the transaction, you advised me that the following proposed transaction would be treated as the formation of a partnership and, therefore, exempt:

TRANSITCO (two affiliated companies) and LEASECO propose to enter into a joint venture in the form of a limited liability company (the "LLC") which will: (i) conduct transit leasing and other loan and lease operations currently conducted by a TRANSITCO subsidiary; and (ii) develop a portfolio of transit assets for the purpose of entering into operating leases with TRANSITCO and third parties. TRANSITCO will contribute transit assets and current loan/lease assets and LEASECO will contribute cash, with each party receiving a 50% interest in the LLC. The parties have chosen the LLC form independently of HSR considerations. The LLC will be governed by a Board of Representatives consisting of two representatives from LEASECO and two representatives from TRANSITCO. Representatives must be personnel from within the respective organizations, i.e., there will be no "outside" representation on the Board.

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[REDACTED]

Victor L. Cohen
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Based on our conversations, it is my understanding that it is the policy of the Premerger Notification Office to treat an LLC as a corporation, rather than a partnership, if and only if it has a governing body whose membership is not limited to representatives of the members of the LLC, and that this is true even if the governing body also manages the day-to-day affairs of the LLC.

If treated as a partnership, then under long-standing interpretations of the Act (e.g., interpretations 40 and 47 in the ABA Premerger Notification Manual), the creation of the LLC would not trigger a premerger notification requirement regardless of the size of the parties or of the transaction.

As described above, the governing board of the LLC being formed by LEASECO and TRANSITCO will consist only of representatives of its members. Accordingly, the formation of the LLC would be treated as formation of a partnership, and no premerger filing would be required.

Please call me if you have any questions or if the above does not accurately reflect your advice.

Sincerely,
[REDACTED]