

[REDACTED]

[REDACTED]

[REDACTED]

August 30, 1996

VIA FACSIMILE AND US MAIL

Alice Villavicencio
Premerger Notification Office
Bureau of Competition Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, NW
Washington, D.C. 20580

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552 of the Clayton Act which restricts
release under the Freedom of Information
Act.

SEP 4 12 14 '96
FBI/DOJ

Dear Ms. Villavicencio:

I am writing to memorialize the advice you provided during our telephone conversation on Monday, August 26, 1996, concerning the appropriate analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and regulations promulgated thereunder in connection with the formation of a limited liability company (the "LLC"). In discussing the transaction outlined below, I ask you to assume that all applicable size tests were met.

Facts:

In the proposed transaction, two corporations ("Corporation A" and "Corporation B", respectively) will contribute assets to the LLC, and will receive equal LLC ownership interests therefor, in connection with the formation of the LLC. Corporation A will contribute non-cash assets with a value of \$X to the LLC. Corporation B will contribute cash in the amount of \$Y to the LLC. So as to achieve an equal ownership between Corporation A and Corporation B in the formation of the LLC, the LLC will make an "equalization payment" to Corporation A in an amount equal to the difference between the value of assets contributed by Corporation A and the amount of cash contributed by Corporation B (i.e., \$X minus \$Y). The difference between \$X and \$Y may exceed \$Y. The equalization payment to Corporation A will be made from (i) the cash contributed to the LLC by Corporation B, (ii) cash from a loan by Corporation B to the LLC, or (iii) a combination of both (i) and (ii) above. The governing body of the LLC will be a board of managers consisting of representatives of Corporation A and Corporation B who are employees, officers or directors of the corporations.

but will not exceed \$X.

The equalization payment does not constitute a transfer of assets or netting assets.

[REDACTED]

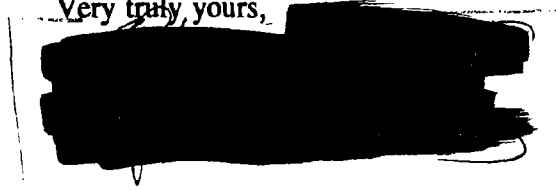
Ms. Alice Villavicencio
August 30, 1996
Page 2

Analysis:

During our conversation, you advised me that the formation of such an LLC, including the contribution of the assets by Corporation A and Corporation B, would not be subject to the Act's reporting requirements because the ownership interests in the LLC would not be deemed to constitute voting securities. However, you indicated that if Corporation A or Corporation B appointed an outsider (i.e., a person who is not an employee) to the LLC's managing board, then the LLC formation transaction would be reportable under the provisions of the Act relating to the formation of a joint venture corporation. You further advised me that the payment to Corporation A by the LLC would constitute an equalization payment in connection with the LLC's formation and, as such, would not constitute a reportable distribution or be deemed a payment in connection with an acquisition by the LLC.

If this letter does not accurately describe the advice you provided during our conversation, please call me as soon as possible. Thank you for your time and assistance in this matter.

Very truly yours,



8/30/96, Walter was contacted and informed
with regard to the facts set forth above, the Form 204
is not reportable. This conclusion is based on the
following: "the governing body of the LLC -
the board of managers" is equal to the board of directors
is composed of employees, officers, or directors of the
corporations & the two partners of the LLC; therefore, no
voting stock is being taken back (only ownership
interests). The structure of this LLC is that of a
partnership rather than a corporation that is
described, analyzed and governed by Rule 1.4c.

THA:rcs

