

L.L.C.

[REDACTED]

November 19, 1996

VIA TELECOPY (202) 328-2624

Ms Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

NOV 20 1996
FEDERAL TRADE COMMISSION

Re: Exempt Transaction

Dear Nancy:

Attached is an outline of a transaction that involves the formation of a limited liability company. We believe that the events described in the attached outline are exempt from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act.

NO

We would appreciate your thoughts at your earliest convenience.

Sinc

[REDACTED]

11/20/96

A should report for its acquisition of B assets. Subsequent formation of L.L.C. is exempt. To meet "continuum theory" criteria, the last event must be reportable which it is not here. ✓

RS concurs

This transaction involves the formation of a limited liability company ("LLC"). Due to regulatory requirements and certain other factors, the LLC will be formed using an interim step - i.e., one party forming the LLC will transfer certain assets to the other party forming the LLC. This outline has been prepared to facilitate the determination that: (a) the initial transfer of assets from one party forming the LLC to the other; (b) the subsequent transfer of assets in connection with the formation of the LLC and (c) the formation of the LLC itself, are all not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

For purposes of this outline, assume that parties A and B (who are each their own "ultimate parent entities") meet the \$100 million "size-of-person" test.

Transaction Outline

1. A2 (a "controlled" entity of A1 that is turn "controlled" by A) and B1 (a "controlled" entity of B) intend to form a limited liability company ("NewCo LLC") Upon formation, A2 and B1 will be the sole members of NewCo LLC and will each hold 50% of the membership interests of NewCo LLC.
2. Due to regulatory requirements and certain other factors, the formation of NewCo LLC will occur in two steps:
 - a. In step one, on or prior to December 31, 1996, A1 will purchase certain assets of B1 (the "Assets") in exchange for which A1 will pay to B1, approximately \$20 million in cash.¹ At the time of the transfer of the Assets, A2 and B1 will also enter into a an agreement to form NewCo LLC.
 - b. Upon satisfaction of certain conditions precedent to forming NewCo LLC, including, the receipt of certain regulatory approvals, A1 will transfer the Assets to A2. A2 and B1 will then form NewCo LLC, pursuant to which A2 will contribute the Assets and B1 will contribute certain other assets, in exchange for which each party will receive a 50% member interest in NewCo LLC.

reportable

ok

NO

¹ The transfer of the Assets from B1 to A1 should also be viewed as occurring in the ordinary course of A1's and B1's business because (a) each of A and B currently conduct operations relating to the type of assets being transferred; and (b) the Assets represent less than 5 percent of B's assets attributable to B's operations relating to the assets being transferred.

sound like competitors

Governance of NewCo LLC

1. NewCo LLC will be governed by a six person board of directors or management committee (the "Management Committee").
2. A2 and B1 will each appoint three persons to the Management Committee.
 - a. These persons will be officers, directors, or employees of A2 and B1 or their respective "controlled" entities.
3. The Management Committee will appoint a chief executive officer to govern the day to day operations of New Co LLC, who shall be designated by the members. The chief executive officer, chief operating officer and chief financial officer will have limited authority – many "board of directors" type powers (e.g., sale of NewCo LLC, merger or consolidation of NewCo LLC, voluntary liquidation or distribution of NewCo LLC, incurrence of indebtedness in excess of a certain amount by NewCo LLC, etc.) will be in the purview of the Management Committee or the NewCo LLC members.

