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LLC
FORMATION



November 27, 1996

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Via Telefax 202-326-2624

Victor L. Cohen
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
6th Street and Pennsylvania Ave., N.W.
Washington, DC 20580

RE: Applicability of Hart-Scott-Rodino Antitrust
Improvements Act of 1975 (the "Act") to formation
of Limited Partnership and Limited Liability
Company ("LLC")

Dear Mr. Cohen:

This letter is to confirm our conversations of October 31, November 1, and November 25, 1996 in which I requested your advice as to whether the formation of a bona fide limited partnership, including the formation of a bona fide limited liability company to act as its the general partner, is subject to the reporting and waiting period requirements under the Act. It is my understanding that the proposed transaction, as described in detail below, would be treated as the formation of a partnership by the staff of the Premerger Notification Office of The Federal Trade Commission. As such, it would be exempt from the reporting and waiting period requirements of the Act. The transactions, chosen by the parties independently by Hart-Scott-Rodino considerations, is described as follows:

Company A and Company B propose to enter into a joint venture in the form of a limited partnership. Company A and Company B will each be equal limited partners.



Victor L. Cohen
November 27, 1996
Page 2

An LLC formed by Company A and Company B will be the general partner of the limited partnership. Company A and Company B will each hold a 50% interest in the LLC. The joint venture will conduct the same business that is currently being conducted by Company A, who will contribute certain assets. Company B will contribute cash and a note.

The LLC will be governed by a Board of Directors. The Board will consist of eight (8) representatives (four (4) chosen by Company A and four (4) chosen by Company B), all of whom at formation will be officers, directors and/or employees of Company A or Company B ("Insiders"). While it is anticipated that only Insiders will serve on the Board, the governing documents do not require such.

I understand that the formation of the limited partnership is not subject to the HSR premerger notification filing requirements regardless of the size of the parties or size of the transaction based on the Premerger Office's interpretations of the Act (see, Interpretations, 195 and 196 of the ABA Premerger Notification Manual).

I also understand that the formation of the related LLC, as the general partner, would also be deemed to be the formation of a partnership and not subject to the notification and waiting period requirements of the Act. You confirmed that it is the position of the Premerger Notification Office to treat an LLC as a partnership if the governing body is comprised of individuals who are Insiders. I also understand that this would not be so if the governing body (at formation or subsequently) is comprised of other individuals (i.e. persons who are not officers, directors or employees of a member). In such case, it is the Premerger Notification Office's position that the interests held in the LLC would be voting securities and subject to the reporting and waiting period requirements under the Act.

Based on the above, I understand that the Premerger Office staff is of the position that the proposed formation of the limited partnership and the LLC, as its general partner, is not subject to the requirements of the Act. If this letter does not accurately describe the views of the staff of the Premerger Office, please contact me.

Victor L. Cohen
November 27, 1996
Page 3

I thank you for the prompt and courteous assistance you have provided with regard to the above.

Very truly yours,

[Redacted signature block]

[Redacted text]

Formation of an LLC that has a governing body limited to officers, directors or employees of forming persons who each take back a 50% interest in the LLC, is considered to be the formation of a partnership by the Prereorganization Office even though the governing body has board type powers. If the limitation is nullified or less than 50% interest is required it would be an acquisition of voting stock and potentially reportable.

[Redacted text]