

[REDACTED]
Attorneys at Law

May 17, 1999

Alice Villavicencio
Compliance Specialist
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Washington, D.C. 20580

Re: Control of a corporation through a combination of holding
voting securities and having the power to designate a director of
the corporation

Dear Alice:

I very much appreciate your time and assistance during our May 14, 1999 telephone conversation concerning whether an individual can control a corporation through a combination of holding less than 50 percent of the voting securities and having the contractual power to designate fewer than half of the directors of the corporation. Pursuant to your suggestion, I am writing to confirm the substance of that conversation.

Facts

As I described to you, the hypothetical transaction involves A acquiring the voting securities of Corp.

(among Mr. B, Mr. B's father and Mr. B agreed)
Pursuant to a shareholders agreement, Corp. has three directors. The shareholders agreement provides that the directors are: Mr. B, Mr. B's father, and Mr. Y. The shareholders agreement provides that upon the death of Mr. B's father, Mr. B is to designate a director to take his father's place. Mr. B's father is no longer living.

Mr. B owns 33.3 percent of the voting securities of Corp. As specified in the shareholders agreement, Mr. B is also one of the three directors. In addition, pursuant to the above mentioned provision of the shareholders agreement, Mr. B has the contractual right to designate one of the other two directors.

[REDACTED]

May 17, 1999

Issue

You were kind enough to answer the following question concerning the above statement of facts. I have summarized the question and your answer below.

1. Whether the combination of 33.3% of Corp.'s voting securities and the right to designate one director and to be another director confer upon Mr. B control of Corp., an entity with three (3) directors?

Yes. Following the interpretation and discussion to informal staff interpretation number 62 in the Premerger Notification Practice Manual (American Bar Association, 1991 Edition), you advised that, based on the formula contained in interpretation 62, if you combine Mr. B's voting securities, 33.3 percent, and his power to designate a member of the three member board of directors, attributing the value of the director Mr. B designates to Mr. B (33.3 percent), Mr. B controls Corp. with 66.6 percent.

Informal interpretation 62 sets forth a formula to apply in this circumstance. You advised that the formula would be applied to these facts as follows: Multiply the percentage of the voting securities held (33.3 percent) by the number of directors eligible to be elected by the shareholders (3), this equals 1. If the sum of that product (1) and the number of directors that Mr. B has the contractual power to designate, 1, meets or exceeds 50 percent of all of the directors, Mr. B is deemed to have control. Since the sum is 2, and there are only 3 directors, the sum exceeds 50 percent (66.6 percent), and Mr. B has control of Corp. and is therefore its ultimate parent entity.

I hope that this letter accurately summarizes the advice we discussed last Friday. If I am incorrect in my summary of our conversation, please let me know.

Thank you again for your time and help.

Very truly yours,

[Redacted signature]

[Redacted name]

Called writer on 5/20/99.
Agree with Analysis Alice Villavicencio
RS concurs

[Redacted text]

Mr. B
can
designate
1 director
(33.3%)
and
Mr. B
hold
(33.3%)
Has Mr.
B control