

PHN Form 1413-1000 #1



June 7, 1999

HAND DELIVERY

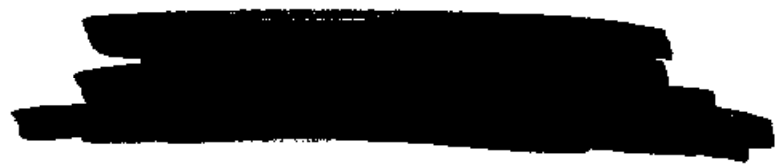
Richard B. Smith  
Deputy Assistant Director  
Premerger Notification Office  
Federal Trade Commission  
Room 11-323  
6<sup>th</sup> and Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Mr. Smith:

This is to confirm that the following transaction, which we discussed about May 20, 1999, is not reportable. The assets of four separate companies, each of which companies is presently owned 50/50 by two adult brothers, will be placed in a newly-created limited liability company (LLC), resulting in four LLCs. Then the membership interests of the four LLCs will be contributed to a newly-created holding company LLC, which will be owned 50/50 by the two brothers. Thereafter, a third party will purchase 51% of the membership interest in the LLC from the brothers. The result will be that the third party will own 51% of the LLC and the brothers will jointly own 49% of the LLC.

The creation of the four LLCs and the LLC holding company is exempt from making a Hart-Scott-Rodino filing because a filing is required only if two or more pre-existing, separately-controlled businesses will be contributed to the LLC. Formal Interpretation Number 15, 64 Fed. Reg. 5808, 5809 (Feb. 5, 1999). Here, the businesses will be controlled by the same parties before and after the creation of the LLCs.

The acquisition of the 51% interest in the holding company by a third party is not reportable, although the size-of-parties and size-of-transaction tests are met. This is because Formal Interpretation Number 15 provides that the acquisition of an interest in an LLC is not reportable unless (1) a business is contributed to the LLC as consideration, or (2) 100% of the LLC is acquired. Id. In our situation, cash is the consideration, and less than a 100% interest is being acquired. Therefore, no filing is required. -



Richard B. Smith  
Page 2  
June 7, 1999

Please advise me within three (3) days of your receipt of this letter if you disagree with the above.

Thank you very much.

Sincerely,

[Redacted signature]

[Redacted]

[Redacted]

6/14/99 - Winter advised that in second sentence in letter, not one - but rather four - LLCs were being formed by the two adult brothers. No reportable LLC formations are taking place. MV agrees with conclusion.  
RBSmith

[Redacted]