

ATTORNEY AT LAW

Formal Interpretation # 15

September 2, 1999

By FAX and By Hand

Richard B. Smith, Esq.
Deputy Assistant Director
Premerger Notification Office
Federal Trade Commission
Room H-323
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Smith:

This is to confirm our conversation on August 31, 1999, that the following three-step transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. §18a.

First, Company A will create an LLC in which it will place \$5 million and will own 100% of the membership interest. Then, Company B will contribute assets constituting operating units to the LLC in return for a 92.22% interest in the LLC; Company A's interest will be reduced to 7.78%. Finally, Company A will pay Company B to purchase part of its LLC interest which will result in Company A owning 70% of the LLC membership interest and Company B owning 30%.

The FTC's Formal Interpretation on LLCs provides that when membership interests in an LLC are changed (and no one person will own 100% of the LLC), the transaction is viewed as

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Richard B. Smith, Esq.
Page 2
September 2, 1999

the creation of an LLC. 64 Fed. Reg. 34804, 34806 (June 29, 1999) Thus, each of the three steps set forth above are viewed as the creation of an LLC.

For the creation of an LLC to be reportable, two pre-existing separately-controlled businesses must be contributed to the LLC. Since only Company B is contributing businesses, the requirement is not met and no premerger filing is necessary.

Should you disagree with the conclusion that a Hart-Scott-Rodino Premerger Filing is not required, please advise me within five (5) days of your receipt of this letter.

Thank you very much for your assistance.

Sincerely,

[Redacted signature]

[Redacted line]

[Redacted line]

9/7/99. Talked to writer. Advised that first step is not viewed by Premerger Office as the formation of an LLC. An LLC needs two different persons participating in it. However, no reportable LLC formation is taking place in step two and no person is acquiring 100% of the LLC interests. (NV also received letter.)
RBSmith

[Redacted signature]