

[REDACTED]

A PART OF WHICH INCLUDES PROFESSIONAL CORPORATIONS

[REDACTED]

Formal Delegation No 15

WRITERO DIRECT LINE

(FAX [REDACTED])

September 21, 1999

BY FAX

Richard Smith, Esq.
Michael Verne, Esq. -
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Gentlemen:

I am writing to confirm our conversations of the last week or so concerning the potential applicability of the Hart-Scott-Rodino Act to the facts outlined below and to advise of certain additional facts which I have just learned that I do not believe change the analysis. I would appreciate your confirmation that this letter accurately reflects our conversations and accurately concludes that under the facts described below, HSR Act filings would not be required.

FACTS

Company X controls a number of businesses through a number of limited liability companies. Company X is a \$100 million person. Company X also is a member of LLC, with company Y, a financial institution. When this LLC was formed, X contributed a business that it wholly-owned and a 49% LLC interest in another LLC. The financial institution contributed only cash.

Although LLC-1 was designed to be held 50% by X and 50% by Y, because Y is entitled to a priority return on the profits of LLC-1 until a certain threshold is attained, at the moment Y is entitled to well over 50% of the profits of LLC-1. If LLC-1 were to be liquidated today, again because of a priority allocation, Y would be entitled to slightly more than 50% of LLC-1's assets.

X intends to form a new LLC and intends to contribute to the new LLC a number of LLC's it controls and the businesses now held by LLC-1. Y will contribute additional cash to the new LLC and its membership interest in the new LLC will be greater than its interest in LLC-1. For financial structuring and other

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Richard Smith, Esq.
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business reasons, prior to the formation of the new LLC, X will contribute additional cash to LLC-1 and, as a result of this contribution, both X and Y, as originally intended, will be entitled to 50% of the assets of LLC-1 upon its liquidation.

ANALYSIS

On these facts, you have advised that the formation of the new LLC is not subject to the HSR Act's filing requirements. The formation is not reportable because it will not involve the contribution of two or more previously "separately controlled" businesses to the LLC. In this case, all of the business being contributed to the new LLC were controlled by X prior to the transaction. As Y is contributing only cash -- and the LLC which it and X each are deemed to control -- Y is not contributing a business that was "separately controlled" prior to the formation of the new LLC.

If the above description does not accurately reflect our conversations and the positions you expressed, please let me know.

Sincerely,

[Redacted signature]

[Redacted]
[Redacted]
9/22/99. Called writer who confirmed that LLC-1 referred to in letter is the presently existing LLC between X and Y, in which control adjustments will be made for financial and business reasons & before its contribution to the new LLC. We concluded that no reportable event was taking place under Form 1 Interpretation #15.
Dick Smith and Mike Verne