

801.10(c)

April 21, 2000

VIA FACSIMILE and HAND DELIVERY

Mr. Michael Verne
Premerger Notification Office
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Confirmation of Fair Market Valuation Analysis

Dear Mike:

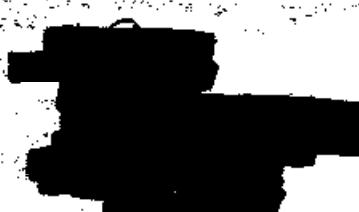
"acquired" through the LLC formation if the valuation is prepared by an accounting firm

The relative asset contributions to the venture than would result from committing 30%

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We believe that this letter accurately describes the guidance that you provided me.

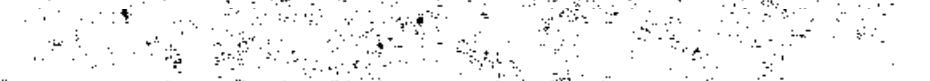
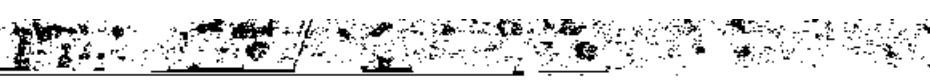
Enclosure



N. OVOKA AGREES:

B. Michael Verne

4/26/00



JULY 1997

HYPOTHETICAL FOR DISCUSSION WITH FTC PREMERGER OFFICE

Company A and Company B intend to form a new LLC to combine their respective businesses. A and B will each acquire a 50% interest in the LLC. Each of A and B will be contributing a business (and assets contracts, accounts receivables, but not receivables). No liabilities will be

separately controlled businesses are being contributed to the LLC, this is a potentially reportable event under Formal Interpretation 15.

in assets, so that the size of transaction test is met.

A and B have retained accountants to perform preliminary valuations of their respective businesses. The accountants have determined the EBIT for the businesses to be contributed, and

\$10M cash, designated as working capital	including the \$3M debt noted below)
	Note payable (debt) of \$3 million

The issue presented is the following. There is a reasonable method of deriving a fair market value for A's business that would value it at \$8M, and would value B's business at \$10M. If those values can be used, then neither A nor B would be making a reportable acquisition.

However, another way of viewing the transaction would say that the parties need to account for the fact that, in addition to the businesses, A is contributing cash and B is contributing a liability to the venture. In essence, the issue is whether, or how, the parties need to account for the fixed amounts being contributed (whether as cash assets or a note payable liability) in deriving fair

as a contribution is = B's business - \$3M note payable.

If you assume that A's business has some positive value, then under this scenario B's business being "acquired" by A would be worth some amount (undetermined) over \$15 M. If that's the

