

801.1 (b)
801.1 (c)

COUNSELORS AT LAW

November 6, 2000

Via Facsimile

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mike:

Thank you for your time and advice Friday. I write to review the facts we discussed, provide additional information regarding the appointment of the boards of the current organizations, and confirm your advice.

Two businesses, A and B, recognized as non-profit organizations under § 501(c)(3) of the Internal Revenue Code, intend to form Newco, also a non-profit organization. A and B will be the sole members of Newco.

Newco will have no appreciable assets. A and B will each appoint 50% of the members of Newco's board. The President of A and the CEO of B will serve as *ex officio* members of Newco's board, and can be removed, in which event their seats will be filled by the board under certain circumstances.

Newco will have substantial control over the business activities of A and B. I explained, for example, that Newco would exercise control over budgets and capital expenditures of A and B, and could in some circumstances influence who is named as CEO of A or the President of B.

As you requested, I supply here additional information regarding the appointment of the boards of A and B. A's board will perpetuate itself through self-selection, according to its own by-laws, and the members of B will continue to elect the members of B's board. Newco will not name or appoint any member of the boards of either A or B.

[Redacted signature block]

Mr. Michael Verne

Based on these facts, you concluded that the formation of Newco is not a reportable event for Hart-Scott-Rodino ("HSR") purposes.

If I have misstated your conclusion regarding the HSR reportability of Newco, please contact me at your earliest convenience.

Thank you again for your time and assistance.

Sincerely,

ALTHOUGH THIS IS A DEFACTO CONSOLIDATION OF THE
BUSINESSES OF A & B, THERE IS NO REPORTABLE EVENT.
A & B COME TO CONTROL NEWCO THROUGH ITS
FORMATION, BUT NEWCO DOES NOT CONTROL ANYTHING,
AND DOES NOT HOLD ANY OF THE ASSETS OF THE A & B
BUSINESSES. THIS IS IN EFFECT A JOINT OPERATING
AGREEMENT ~~AND~~ THE FORMATION OF
A SHELL NOT-FOR-PROFIT JOINT VENTURE.
T. HANCOCK & N. O'NEAL AGEE.

Michael Verne