Annex 1

[redacted]

March 8, 1989

VIA FACSIMILE TRANSMISSION

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Room 301
Federal Trade Commission
Washington, D.C. 20580

802.30

[redacted]

Antitrust [redacted]
the Rules to the transactions [redacted]

Summary of Business Relationships. [redacted] (the "Partnership").

[redacted]

Company B, [redacted] excess of $100 million. No [redacted] within the meaning of [redacted] either Company A or Company B

Pursuant to the partnership agreement which created the Partnership, each of Company A and Company B directly or indirectly owns a 50% interest in the Partnership and is entitled to receive 50% of the Partnership's profits. In addition, the partnership agreement gives each of Company A and [redacted] designate 50% of the [redacted] Partnership currently

[redacted]

has a wholly-owned [redacted] serves as a holding company for [redacted] "Operating Companies").

[redacted]

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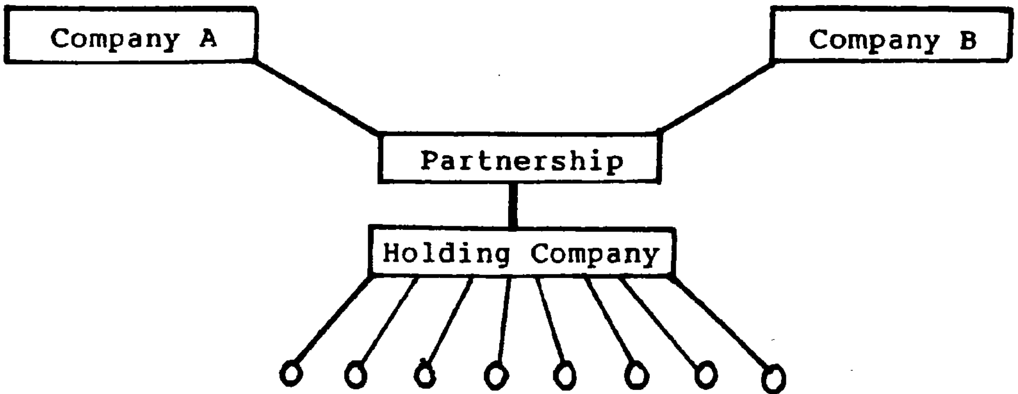
[redacted]

The following diagram reflects the existing business [redacted] Holding Company and the Operating Companies.



[redacted]

Company A is presently unable to fund its 50% share of the cash necessary to finance future acquisitions that have been identified by the Partnership. By contrast, Company B presently has sufficient cash to finance a disproportionately large share of such possible acquisitions. After extensive negotiations, Company A and Company B have developed the following interim arrangement (the "Proposal") for financing such possible acquisitions.

Under the Proposal, Company A and Company B will enter into an agreement (the "Ownership and Governance Agreement"). Pursuant to the Ownership and Governance Agreement, the [redacted] Operating Companies to Newco (the "Stock Contribution"). [redacted] diagram reflects the proposed transactions described above.

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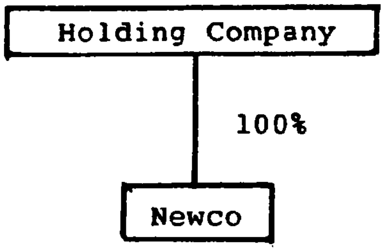
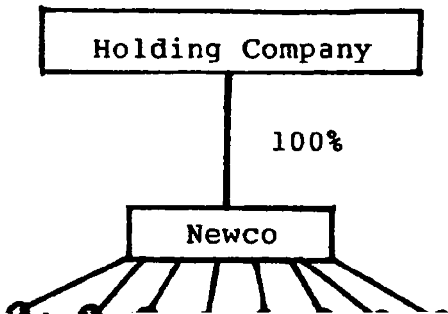
<u>Step 1</u>: Holding Company forms Newco.

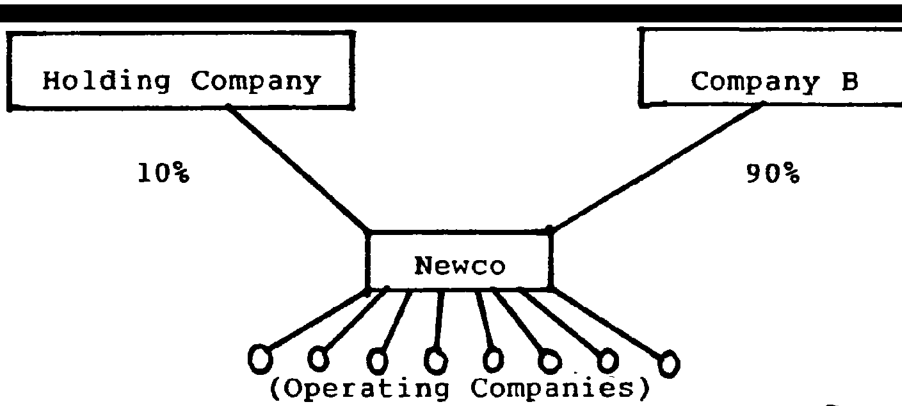


<u>Step 2</u>: Holding Company contributes to Newco all of the voting securities of the Operating Companies.



[redacted]

[redacted]



For a period following execution of the Ownership and Governance Agreement, Company B will be obligated to finance 90% of the total cost of all acquisitions effected by Newco, while Holding Company will be obligated during the same period to finance the remaining 10% of the total cost of such acquisitions (all such companies acquired by Newco, including [redacted]

In addition, pursuant to the Ownership and Governance Agreement, Company A will be granted options (the "Purchase Options") to purchase up to a 50% ownership interest in each of [illegible] will specify that Purchase Options must be exercised in the order in which the Covered Companies are acquired (i.e., on a "first-in, first-out" basis).

The Ownership and Governance Agreement will also give both Company B and the Partnership certain rights to representation [redacted] Company) and Company B own 100% of a Covered Company, the board seats will be distributed equally between them. Generally, where the Partnership (indirectly through the Holding Company) and Company B own less than 100% of a Covered Company, the Partnership will have more board seats than it would otherwise have given its ownership percentage (10%), but fewer board seats than Company B.

Reporting Requirements under the Act.

It appears that the only potentially reportable transaction under the Act is the sale to Company B of 90% of the outstanding stock of Newco (the "Newco Stock Sale"). For the following [redacted]

First, we believe that the Newco Stock Sale should be viewed as exempt under Section 802.30 of the Rules [redacted] persons are . . . the same person . . . ." We are aware that the Bureau of Competition historically has taken the position that partnership interests are not "voting securities" within the meaning of the Act, since they typically do not entitle

[redacted]

their owners to elect persons exercising functions similar to those exercised by directors of corporations. In this case, however, each of Company A and Company B has the right under the partnership agreement to designate 50% of the members of the Partnership's governing board. Furthermore, the basis for distinguishing between partnership interests and voting securities in the context of Section 802.30 seems significantly eroded, given that the current definition of "control" has the effect of treating partnerships substantially as corporations for purposes of determining their ultimate parent entities. Moreover, Company A and Company B could avoid this technicality (and would be willing to do so) by causing the Partnership to distribute the stock of Holding Company to them equally, so that each would "control" Holding Company through the holding of voting securities. It therefore seems anomalous to deprive [redacted] terests rather than voting securities.

Second, no real change in "control" will occur as a result of the Newco Stock Sale. The "acquired person" in the Newco Stock Sale will be Newco. Since Company B has the right to receive 50% of the profits of the Partnership, Company B currently "controls" the Partnership within the meaning of Section 801.1(b)(1)(ii) of the Rules. Company B therefore currently indirectly "controls" Holding Company and the Operating Companies, and prior to the Newco Stock Sale will indirectly "control" Newco. Thus, the acquiring person (Company B) and the acquired person in the Newco Stock Sale [redacted] Newco Stock Sale as the information which will be obtained through reporting will not be meaningful. If filing were required with respect to the Newco Stock Sale, as the acquiring person Company B would include in the information reported [redacted] under Items 5-9 of its Notification and Report Form <u>only</u> the [redacted] Notification and Report Form would be identical to that [illegible] Report Forms which would be filed by Company B as the acquiring person and by Company B and Company A as the ultimate parent entities of the acquired person will not disclose any real change in "control" of Newco and would not appear to be meaningful to the Bureau of Competition. We therefore believe that reporting of the Newco Stock Sale should not be required.

As we discussed by telephone today, we would like to receive your interpretive advice by not later than the close of business on Thursday, March 9, 1989. Please feel free to contact me or [redacted] respectively, if you have questions or need [redacted] additional information.

Sincerely yours,

[redacted]

[redacted]

Section 802.30 cannot apply when there are two UPE's (50-50) on the acquired side. The B-B transaction is intraperson but the B-A is not. However, [illegible] the statute and you will find that B's acquisition of an issuer of which it owns 50% is exempt.

call [redacted] 3-9-89
and conveyed the staff's conclusion on this issue