

871.40 (LLC)

June 6, 1995

VIA FACSIMILE AND MAIL

Richard B. Smith, Esq.
Senior Attorney
Premerger Notification Office
Federal Trade Commission

Washington, D.C. 20580

Re: Formation of Limited Liability Company

Dear Dick:

I am writing to confirm our telephone conversation of June 5, 1995, regarding the reportability of the limited liability company ("LLC") described below.

The LLC in question will initially have two members, although others may

months. The other founding member, Company B, will contribute \$5 million in cash at formation and commit to contributing an additional \$5 million over the next twelve months. In return for these contributions, Company A will receive an interest of approximately 90 percent in the LLC, and Company B, an interest of approximately 10 percent.

The LLC will be structured and managed in such a way that it will be

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The parties have agreed that the LLC will be managed by its members

Day-to-day operations of the the LLC will be conducted by officers and other employees elected by and delegated authority by the Members Committee

company.

Based on our conversation, I understand the FTC Bureau's Office position to be that the formation of the above-described LLC would not be reportable under the Hart-Scott-Rodino Act. In particular, the FTC staff does not view the interests being acquired by the two LLC members to be voting securities, because such interests are not convertible into voting securities. I will advise the Members Committee.

I would appreciate it if you would indicate your concurrence in this view by either initialing at the bottom of this letter and then faxing it back to me (at [redacted] giving me a call to confirm. As always, I appreciate your

6/7/95 - Advise writer that his conclusion was correct that the formation of the subject LLC would not be reportable under 801.40 of the HSR rules.
RBS Smith