



March 16, 1995

CONFIDENTIAL

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Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

This information
is confidential
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Re: Formation of Joint Venture in the Form



Attached is a write-up on the fact situation that we discussed earlier today. I appreciate your tentative concurrence, subject to further review, with my conclusion that the described formation of a joint venture in the form of a ~~written~~ limited liability company would not require USP filings. You

~~mentioned~~ the same transaction with us earlier this week.

Since I will be out of town tomorrow, I invite you to direct any follow-up questions on this matter to ~~[Redacted]~~. ~~[Redacted]~~ I will in any event contact you early afternoon. Our thanks for your advice and assistance in this regard.

Sincerely,

~~[Redacted Signature]~~

cc: ~~[Redacted]~~



Under the above facts, the formation of the LLC is

exempt from HSR requirements because it does not entail the formation of a joint venture in corporate form. (The subsequent acquisition of company D is subject to approval by the ICC and, for that reason, exempt from HSR requirements under 15 U.S.C. §18a(c)6.)

PT

3/17/95
I verified that the "managing" members of the LLC would be responsible for its day-to-day operations. On the basis of told [redacted] that the formation of the type of LLC is not reportable.

TF #2-

Companies A, B and C plan to organize a joint venture in the form of a Limited Liability Company ("LLC"). The planned LLC will become the vehicle for acquiring the stock of company D pursuant to a cash tender offer to be commenced prior to the LLC's formation. LLC and its wholly-owned subsidiary, company E, will complete the tender offer and merger with company D. The

49 U.S.C. §1180.2(d).

Company A will contribute 48% of the capital and receive a 48% membership interest in the LLC; companies B and C, each of which indirectly owns 50% of company A and is accordingly an ultimate parent of company A, will each contribute 26% of the capital and receive a 26% membership interest in the LLC.

The resulting three members of the newly formed LLC intend to designate company A as manager of the LLC. Company A's present officers will thereupon become officers of the LLC. The decision-making authority of company A's management is already subject to certain "permitted approval" rights that company B possesses, in its capacity as a limited partner in the entity that owns company A, in accordance with Delaware partnership law. The decision-making authority of company A's management in connection with their management of the affairs of the LLC will be subject to those same "permitted approval" rights of company B.