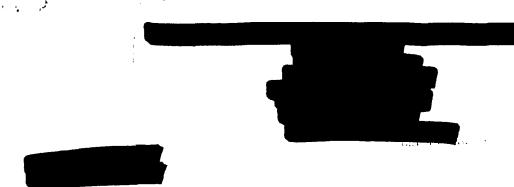
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May 12, 1995

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Thomas F. Hancock, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th Street and Pennsylvania Avenue
Room No. 303
Washington, D.C. 20580

Dear Mr. Hancock:

On the assumed facts below, I am writing to confirm that a Hart-Scott-Rodino filing is <u>not</u> required for the formation

Italked with you on may I1, 1995 about the same transaction. The parties forming this joint venture desire to comply with all applicable laws, including the Hart-Scott-Rodino Antitrust Improvements Act (the "Act").

We understand that a joint venture using a corporate

to file under to C.F.R. & 810.40. We also understand that the

Practice Manual, Interpretation 195.

Our client proposes to enter into a joint venture using

venicle has recently been authorized under the laws of most states. Limited liability companies are taxed as partnerships and reflect most of the other attributes of a partnership, but the owners enjoy limited liability similar to a corporation. Thomas F. Hancock, Esq. May 12, 1995
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We believe that the characteristics of this proposed joint venture more closely resemble a partnership, and therefore, unless advised otherwise, we will not to file a notification

1. Two domestic corporations, each or which has a different "ultimate parent entity" (as defined in 16 C.F.R. 801 1(a)(3)) will crosto a joint mosture by deptributing crost.

organized pursuant to the granted traditity company statute,

- 2. One contributor, Member A, is transferring an operating business to the LLC, valued by the parties for purposes of the Transaction at \$38.5 Million.
- 3. The other contributor, Member B, is contributing \$15 Million in cash to the LLC and paying \$5 Million directly to Member A. Member B has total assets of more than \$100 Million.
- 4. Member A and Member B each own 50% of the issued and outstanding shares of capital stock of a corporation (the "Subsidiary"). The Subsidiary was formed in by Member A and Member B as a joint venture. The FTC determined that formation of the Subsidiary was exempt from the notification requirements under the Act because the minimum dollar thresholds under 16 C.F.R. § 802.20 were not met. Member A and Member B are contributing all the stock of the Subsidiary to the LLC. The current fair market value of each contributor's interest in the Subsidiary has not yet been determined for purposes of the Transaction.
- 5. The management and operations of the LLC will be in accordance with an Operating Agreement. Under the Operating Agreement, the LLC will be managed by five Managers. Member A appoints two Managers and Member B appoints three. Managers will be officers, employees and agents of Member A and Member B. They will not be employees of the LLC. For significant management decisions, the approval of four Managers is required. Other major decisions are reserved to the Members, and both must approve such decisions.
- 6. Profits and losses will be allocated equally between the Members. Cash will be distributed equally to the extent needed to pay federal and state income taxes on the LLC's income. Next, cash will be distributed only to Member A until the capital accounts are equal. Further cash distributions will be equal. On dissolution, distributions will first be in

Thomas F. Hancock, Esq. May 12, 1995 Page 3

accordance with capital accounts, then, after capital accounts are paid, any further distributions will be equal.

- 7. The LLC has a limited existence. Its Articles of Organization provide that it will terminate in
- 8. The Members' interests in the LLC are not freely transferable. If the other Member does not consent to a transfer, the successor to the transferred interest has only financial rights and no governance rights with respect to the LLC interest.

Based on the foregoing, it is our conclusion that a

Transaction is not reportable, we would appreciate receiving written confirmation from you.

Thank you for your assistance.

