

BY HAND

Richard B. Smith, Esquire
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Sixth St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Dick:

I am writing to memorialize the advice you provided yesterday over the telephone concerning the appropriate analysis under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Act") and the implementing regulations of the formation of a partnership and a limited liability company ("LLC"). In ~~discussing the transactions outlined below~~, I asked you to assume

First, I described a bona fide partnership formation transaction in which each of Persons A and B will contribute

return. You advised, in conformity with a longstanding Premerger Notification Office informal interpretation, that such a partnership formation transaction, including the contribution of assets by each of A and B, would not be subject to the Act's reporting requirements.

Second, I described a bona fide LLC formation transaction in which each of persons A and B, both corporations, will contribute assets to the LLC and receive LLC ownership interests in return. The governing body of the LLC will be a board of managers or directors consisting of representatives of A and B, who are employees, officers, or directors of A and B, respectively.

You advised that the formation of such an LLC, including the contribution of assets by each of A and B, would not be subject to the Act's reporting requirements, because the LLC's ownership

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interests would not be deemed to constitute "voting securities." You advised that the transaction would remain nonreportable even if the LLC had plans to hire an "outside" manager-employee, reporting to the governing board, who was not a director, officer or employee of A or B. However, you indicated that if A and B had plans to appoint such an outsider or outsiders to the managing board itself, then the LLC formation transaction would be reportable on the same basis that a corporation formation transaction would be reportable. The reason, you indicated, was that in such a circumstance, the LLC's ownership interests would be deemed to constitute voting securities.

If this letter does not accurately describe the advice you provided concerning the transactions discussed above, please call

Very truly yours,

[REDACTED]

6/17/95 Called writer and advised that I was in agreement with the partnership and LLC conclusions set forth in her letter.

R B Smith