

L.L.C.

[REDACTED]

November 10, 1996

VIA TELECOPY (202) 328-2624

Ms Nancy Ovuka  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

11/20/96

Re: Exempt Transaction

Dear Nancy:

Attached is an outline of a transaction that involves the formation of a limited liability company. We believe that the events described in the attached outline are exempt

NO

We would appreciate your thoughts at your earliest convenience.

[REDACTED]

11/20/96

A should report for its acquisition of B assets. Subsequent formation of L.L.C. is exempt. To meet reporting requirements

reportable which it is not here. ✓

RS concurs

This transaction involves the formation of a limited liability company ("LLC"). Due to regulatory requirements and certain other factors, the LLC will be formed using an interim step — i.e., one party forming the LLC will transfer certain assets to the other party forming the LLC. This outline has been prepared to facilitate the determination that: (a) the initial transfer of assets from one party forming the LLC to the other; (b) the subsequent transfer of assets in connection with the formation of the LLC and (c) the formation of the LLC itself, are all not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

For purposes of this outline, assume that parties A and B (who are each their own "ultimate

### Transaction Outline

1. A2 (a "controlled" entity of A1 that is turn "controlled" by A) and B1 (a "controlled" entity of B) intend to form a limited liability company ("NewCo LLC"). Upon ~~formation of NewCo LLC, A2 and B1 will contribute assets to NewCo LLC.~~
2. Due to regulatory requirements and certain other factors, the formation of NewCo LLC will occur in two steps:
  - a. In step one, on or prior to December 31, 1996, A1 will purchase certain assets of B1 (the "Assets") in exchange for which A1 will pay to B1, approximately \$20 million in cash.<sup>1</sup> At the time of the transfer of the Assets, A2 and B1 will also enter into a an agreement to form NewCo LLC.
  - b. Upon satisfaction of certain conditions precedent to forming NewCo LLC, ~~A2 and B1~~ will contribute the Assets and B1 will contribute certain other assets, in exchange for which each party will receive a 50% member interest in NewCo LLC.

*reportable*

*NO*

<sup>1</sup> The transfer of the Assets from B1 to A1 should also be viewed as occurring in the ordinary course of A1's and B1's business because (a) each of A and B currently conduct operations relating to the type of assets being transferred; and (b) the Assets represent less than 5 percent of B's assets attributable to B's operations relating to the assets being transferred.

*sound like competitors*

**Governance of NewCo LLC**

1. NewCo LLC will be governed by a six person board of directors or management committee (the "Management Committee").
2. A2 and B1 will each appoint three persons to the Management Committee.
  - a. These persons will be officers, directors, or employees of A2 and B1 or their respective "controlled" entities.
3. The Management Committee will appoint a chief executive officer to govern the day to day operations of New Co LLC, who shall be designated by the members. The

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NewCo LLC, incurrence of indebtedness in excess of a certain amount by NewCo LLC, etc.) will be in the purview of the Management Committee or the NewCo LLC members.

