

11. 27. 96

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LLC
FORMATION



November 27, 1996

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~~11/27/96 10:00 AM~~

Victor L. Cohen
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
6th Street and Pennsylvania Ave., N.W.
Washington, DC 20580

RE: Applicability of Hart-Scott-Rodino Antitrust
Improvements Act of 1975 (the "Act") to formation
of Limited Partnership and Limited Liability
Company ("LLC")

Dear Mr. Cohen:

This letter is to confirm our conversations of October 31,

liability company to act as its the general partner, is subject to the reporting and waiting period requirements under the Act. It is my understanding that the proposed transaction, as described in detail below, would be treated as the formation of a partnership by the staff of the Premerger Notification Office of The Federal Trade Commission. As such, it would be exempt from the reporting and waiting period requirements of the Act. The transactions, chosen by the parties independently by Hart-Scott-Rodino considerations, is described as follows:

Company A and Company B propose to enter into a joint venture in the form of a limited partnership. Company A and Company B will each be equal limited partners.



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An LLC formed by Company A and Company B will be the general partner of the limited partnership. Company A

cash and a note.

The LLC will be governed by a Board of Directors. The Board

Company A and four (4) chosen by Company B), all of whom at formation will be officers, directors and/or employees of Company A or Company B ("Insiders"). While it is anticipated that only Insiders will serve on the Board, the governing documents do not require such.

I understand that the formation of the limited partnership is not subject to the HSR premerger notification filing requirements regardless of the size of the business or size of the

I also understand that the formation of the related LLC, as

period requirements of the Act. You confirmed that it is the position of the Premerger Notification Office to treat an LLC as a partnership if the governing body is comprised of individuals who are Insiders. I also understand that this would/not/be so if the governing body (at formation or subsequently) is comprised of other individuals (i.e. persons who are not officers, directors or employees of a member). In such case, it is the Premerger Notification Office's position that the interests held in the LLC would be voting securities and subject to the reporting and waiting period requirements under the Act.

Based on the above, I understand that the Premerger Office staff is of the position that the proposed formation of the

limited partnership and the LLC, as its general partner, is not subject to the requirements of the Act. If this letter does not Office, please contact me.

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I thank you for the prompt and courteous assistance you have

[REDACTED]
[REDACTED]
[REDACTED]
Formation of an LLC that has a governing body
P. H. A. H. A. A. D. I. J.

considered to be the formation of a partnership by the
Prereq. office even though the governing body has board
type powers. If the limitation in the [REDACTED] in the
50% interest is required it would be an acquisition
of voting stock and potentially reportable

[REDACTED]