

801.40; 801.11(e)

[REDACTED]

May 18, 1998

VIA FEDERAL EXPRESS

Dick Smith, Esq.
Senior Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission, Room 303
[REDACTED]

Dear Mr. Smith:

This letter is to confirm the oral advice from your [REDACTED] described on the enclosed [REDACTED] and Ownership Structure [REDACTED]

Based upon the description of the parties and transactions in the attachments, and as further discussed with us, you have concluded that no premerger notification is required under the Hart-Scott-Rodino Antitrust Improvements Act for Transaction One, either in connection with the formation of LLC, the formation of Holding Corp. [REDACTED]

Corp. are newly formed for purposes of this transaction, and do not have regularly prepared balance sheets. Substantially all of the \$9.9 million being contributed to LLC by its members will be invested in Holding Corp. to fund the acquisition of Operating Company. Similarly, the aggregate \$9.9 million and \$2.4 million being contributed to Holding Corp. by LLC and Existing Corp. will be used by Holding Corp. to fund the acquisition of Operating

[REDACTED]

[Redacted]

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Company. Thus, in preparing the pro forma balance sheets for LLC and Holding Corp., such amounts would be subtracted, leaving LLC close to a zero dollar acquiring person. Rule § 801.11(e).

Thank you for your prompt review and response to our inquiry.

Very truly yours,

[Redacted Signature]

cc: [Redacted]

Since LLC is only a 9.9111 person, no filings would be required for its formation even if its structure made it more like a corporation. *D.R. Smith*

[Redacted]

STRUCTURE
(analysis)

20 other individuals and one corporation who are investors (investing less than \$1 million each) in aggregate

Existing Corp.

\$2,400,019
19% shareholder (approximate)

g Corp.

100% shareholder

Company

133003

OWN

One million (max.)
individual Two \$1.0 million (max.)

Appr each \$2

LLC

30,081 shareholder (approximate)

Individual \$3

The relevant facts to the analysis of whether a Pre-Merger Notification and Report Form (a

required, are as follows:

Transaction One:

[REDACTED]
purchase price will be financed through borrowings from an unaffiliated commercial bank and/or proceeds from sale of certain assets of the Operating Company in Transaction Two.

2. Operating Company is presently a wholly-owned subsidiary of a corporation with greater than \$100 million in total assets and annual net sales.
3. LLC is being formed for this transaction and will own approximately 81% of the outstanding shares of Holding Corp. No member of the LLC has or controls 50% or more of the ownership interests in the LLC. No member of the LLC has the power to vote 50% or more of the voting interests in the LLC. No member of the LLC has the right to 50% or more interest in profit or liquidation distributions of the LLC. No investor in LLC or Holding Corp. is guaranteeing any loan or other indebtedness.

Transaction Two:

[REDACTED]
Shortly after Holding Corp. acquisition of Operating Company, Holding Corp. intends respect to this asset sale will be making an HSR Filing in connection with such transaction.

5. Based upon our research and the foregoing structure, we have concluded that no HSR