



February 12, 2004

Michael B. Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Pennsylvania Avenue N.W.
Washington D.C.

LLC and Grantor Trust HSR analysis

Dear Mike:

I am writing to follow up on our discussion on January 29, 2004, concerning whether any HSR filings would be required in connection with the formation of an LLC and trust structure and associated initial public offering. This letter provides additional detail on the proposed structure and related transactions, which may affect the conclusions we reached on our call.

I. Proposed LLC and trust structure

Company M proposes to form an LLC as a vehicle for an initial public offering. 100% of the membership interests in the LLC will be held by a newly created special-purpose grantor trust. The trust will issue publicly traded trust certificates, which will be offered to investors in the IPO. The sole reason for the use of the trust in the structure is so that investors will receive a 1099 tax statement, which would not be available if they held the LLC membership interests directly.

The trust will act as a passive "mirror" of the LLC in that each trust certificate matches each LLC membership interest, and the trustee is required to vote the LLC membership interests in accordance with the vote of the certificate-holders. In this way, the trust certificates give the certificate-holders the right to vote for directors of the LLC.



Following the IPO, no single investor will hold 50% or more of the trust certificates, and consequently no single investor will control 50% or more of the LLC membership interests.

We did not discuss the HSR analysis of the acquisitions of trust certificates by investors in the IPO, however, I believe these would not be reportable transactions even in the unlikely event that a single investor were to acquire over \$50 million in trust certificates. This is either because (1) the trust certificates are not voting securities under the HSR Rules; or (2) the investors are effectively acquiring LLC membership interests, which would be non-reportable under Formal Interpretation 15. Please let me know if you agree with this assessment.

II. Contribution of businesses to the LLC

TRUST CERTIFICATES ARE NOT VOTING SECURITIES

Simultaneously with the IPO, four foreign entities, A, B, C and D, propose to contribute their interests in two U.S. corporations to the LLC in return for trust certificates. The interests of each of these entities are as follows:

Company 1	A – 50% equity
	B – 50% equity
	C – 50% subordinated debt
	D – 50% subordinated debt
Company 2	A – 50% equity
	B – 50% equity

Entities A and B will contribute the voting securities in the two corporations, and entities C and D will assign the subordinated debt in Company 1, so that the two corporations will be wholly-owned by the LLC (indirectly through a newly created, wholly owned subsidiary of the LLC). In return, entities A and B will each receive approximately 8% and entities C and D will each approximately receive 2% of the trust certificates (equivalent to 20% of the membership interests in the LLC).

From our discussion, I understand that this transaction would be viewed as an LLC formation in which A and B contribute the businesses operated by Companies 1 and 2 and each take an 8% membership interest in the LLC. Under Formal Interpretation 15, this transaction is not reportable because (1) no other trust certificate-holders are contributing businesses to the LLC in return for their interests, so there is no contribution of two or more pre-existing separately controlled businesses, and (2) no one of the certificate-holders will control the LLC. I assume that, since the contributions by C and D are not equity interests in the companies, their acquisitions of trust certificates would be analyzed in the same manner as other investors acquiring certificates in the IPO and no filings would be required.

You also suggested that this transaction may be exempt under §802.71 of the HSR Rules, which exempts acquisitions resulting from transfer by a settlor to an irrevocable trust. You commented that the taking back of trust certificates by A and B would likely be non-

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reportable since trust certificates are not usually considered to be voting securities. In light of the voting rights that attach to the certificates, which we did not discuss on our call, I would be interested in whether you would now come to a different conclusion on this point.

DOES NOT CHANGE ANALYSIS.

III. Other acquisitions

Simultaneously with, or very shortly after, the IPO and contributions of Companies 1 and 2, the LLC proposes to acquire other businesses from Company M and other third parties. I understand that each of these transactions needs to be separately analyzed to determine whether (1) the value of the voting securities or assets to be held by the LLC as a result of the acquisition exceeds the size of transaction threshold; and (2) the LLC/trust and the third party meet the size-of-person thresholds at the time of the acquisition (if the value is between \$50 and 200 million). As the third parties are not contributors to the LLC, I assume that §801.11(e)(1) would apply to determine the total assets of the LLC/trust for the size-of-person determination.

YES - FOR FIRST ACQUISITION.

You advised that in order to allow these transactions to close at or shortly after the IPO, HSR filings could be made prior to the spin-off and IPO taking place on behalf of the trust as the ultimate parent entity of the LLC, even if at the time of making the filing the LLC membership interests were held by Company M.

Could you please let me know whether you agree with the conclusions set out above? Thank you again for your time and counsel in this matter.

Sincerely,



AGREE (WITH ABOVE COMMENTS)

B. Verne

2/12/04

