

801.1 (b)

September 21, 2007

VIA E-MAIL AND U.S. MAIL

Michael Verne, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Dear Michael:

Thank you for speaking with me on September 20, 2007. I am writing to confirm our telephone conversation.

As we discussed, my client ("Acquisition LLC") will be acquiring a minority of the membership interests in another limited liability company ("Target LLC"). In the transaction, Acquisition LLC will acquire the right to receive a preferential return of approximately \$35 million, to be adjusted upward each year by an agreed percentage. It will receive the first \$35 million distributed by Target LLC to its members, whether by distributions or upon liquidation. At the time of the transaction, the fair market value of the membership interests of Target LLC (as determined in good faith by the Board of Managers of Acquisition LLC) will be well in excess of \$100 million. Accordingly, if Target LLC were sold as of the closing, Acquisition LLC would receive less than 50% of the proceeds of such sale.

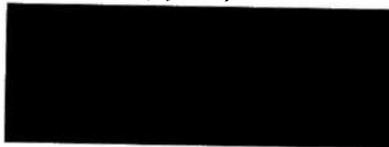
We assume, for purposes of this letter, that the size of the parties test will be satisfied. We also assume, for purposes of this letter, that, if Acquisition LLC is deemed to obtain "control" over Target LLC in the transaction, the size of the transaction test will be satisfied and a Hart-Scott-Rodino filing required.

In our conversation, however, we concluded that an HSR filing is not required because Acquisition LLC will not be obtaining "control" of Acquisition LLC. You advised that, because Acquisition LLC's preferential return represents less than 50% of Target LLC's fair market value at the time of closing, it will not be acquiring "control." As we discussed, the fair market value determination must, of course, be reasonable and determined in good faith pursuant to 16 C.F.R. § 801.10(c).

Michael Verne, Esq.  
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Thank you for your consideration of this matter. If my understanding is in any way inaccurate, please contact me at your earliest convenience.

Very truly yours,



AGREE  
BN  
9/21/07

