

Dec. 13, 1995 1:57PM

P. 2/3 801.40

(LLC)

199

In order to determine whether a formation of a new corporation is within 801.40 you must examine first

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

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as to terms, identity of purchasers, initial plan, capitalization & whether contribution are being used to acquire target. In this case the facts indicate that 801.40 applies unless the LLC

VIA TELECOPY

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is a partnership. The LLC will be within the Management Committee, which will ~~make~~ "determine & implement" the management of the LLC.

Re: Formation of Limited Liability Company

Dear Victor: These duties indicate, not a board of directors, but only managers;

We are writing to confirm your views as to whether the proposed formation of the limited liability company described below (the "LLC") is a reportable event under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Formation of LLC

- Corporation A will form the LLC by contributing to it certain assets. One of Corporation A's subsidiaries ("A Sub") will own 75% of the membership interests in the LLC, and a second subsidiary will own 25% of the membership interests.
- The second subsidiary will sell its 25% membership interest to two subsidiaries of Corporation B ("B Sub 1 and B Sub 2").

Therefore, it appears that a partnership is being formed. Even if this was a formation of an corporation type of organization, the fact that its members are limited to officers & directors & employees of the former persons involved in a partnership

• Accordingly, A Sub will be the 75% member of the LLC, and B Sub 1 and B Sub 2 will each be 12 1/2% members (the members of the LLC are referred to as the "Members").

Management of LLC

• The LLC will have a Management Committee with full authority to determine and implement the operations and financial management of the LLC. Day-to-day operations of the LLC will be conducted by officers and employees of the LLC, including a General Manager, subject to the overall authority of the Management Committee.

• A Sub will have the right to designate three members of the Management Committee, and B Sub 1 and B Sub 2 will together have the right to designate one member (so long as they hold at least a 5% membership interest in the LLC). Most business matters will be determined by majority vote of the Management Committee, except that certain significant matters (for example, incurrence of substantial indebtedness) will require a unanimous vote.

• The Management Committee will consist only of employees of the Members, although the General Manager will be a nonvoting member. The Members will have no right to designate third parties who are not their employees to serve on the Management Committee.

We look forward to speaking with you shortly.
Thank you for your attention to this matter.

Sincerely,

[Redacted signature block]