

[REDACTED]

PREMERGER NOTIFICATION
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VIA TELECOPY

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Ms. Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Room 303
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Limited Liability Company

Dear Nancy:

Attached is an outline of a transaction that involves the formation of a limited liability company and the subsequent transfer of certain membership interests in the limited liability company to other membership interest holders. We believe that the described transaction is exempt from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act.

We would appreciate your thoughts at your earliest convenience.

Sinc

[REDACTED]

[REDACTED]

attachment

...under the Freedom of Information Act...

This transaction involves the formation of a limited liability company, and the transfer of memberships in the limited liability company between the members at the time of its formation. This outline has been prepared to facilitate the determination that: (a) the formation of this limited liability company (and the transfer of assets in connection with its formation) and (b) the transfer of certain membership interests in this limited liability company among the members at the time of its formation are not subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

For purposes of discussion, assume that parties A and B (who are each their own "ultimate parent entities") meet the \$100 million "size-of-person" test.

Transaction Outline

1. Certain subsidiaries of A will form a limited liability company A/LLC. Upon formation, these subsidiaries will transfer certain assets to A/LLC.
2. A/LLC and B1 (a "controlled" entity of B) intend to form a limited liability company ("NewCo LLC").
3. In connection with the formation of NewCo LLC, the following events will be deemed to occur substantially simultaneously:
 - a. A/LLC will contribute certain assets to NewCo LLC in exchange for membership interests in NewCo LLC exceeding 50% in the aggregate. The value of these membership interests exceeds \$15 million.
 - b. In connection with the formation of NewCo LLC, B1 will be obligated to contribute certain of its assets to NewCo LLC, but will not make such contributions until after the formation of NewCo LLC. Nevertheless, in exchange for B1's contractual commitment to contribute certain of its assets, B1 will hold the remaining NewCo LLC membership interests that A/LLC does not hold as a result of A/LLC's initial contribution of assets to NewCo LLC.
 - c. B1 will initially pay to A/LLC approximately \$11 million in cash, subject to adjustment, and will indirectly make additional cash payments to A/LLC in the future based upon the future performance of NewCo LLC. Such additional cash payments will be effectuated through B1 making additional contributions to NewCo LLC and NewCo LLC making subsequent disbursements of such contributions to A/LLC. In exchange for the initial payment by B1 to A/LLC, B1 will receive a portion of the NewCo LLC membership interests that A/LLC holds. Following such initial payment, B1 and A/LLC will each hold 50% of the membership interests of NewCo LLC. The value of each of these 50% membership interests in NewCo LLC exceeds \$15 million.

Governance of NewCo LLC

1. NewCo LLC will be governed by a four person management committee.
2. A/LLC and B1 will each appoint two persons to the management committee.
 - a. These persons will be officers, directors or employees of A and B or their respective "controlled" entities.
3. The management committee will govern the day to day operations of NewCo LLC. The management committee will have limited authority -- many "board of directors" type powers (e.g. sale of NewCo LLC, merger or consolidation of NewCo LLC, voluntary liquidation or dissolution of NewCo LLC, incurrence of indebtedness of more than \$250,000 by NewCo LLC, etc.) have been specifically retained by the NewCo LLC members.