

LLC

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[REDACTED]

March 9, 1998

Ms. Nancy Ovuka
Staff Attorney
Federal Trade Commission
Premerger Notification Office
Room 303
6th Street & Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR/LLC Question

Dear Ms. Ovuka:

02 7 17 1998

I am writing to confirm my understanding of our telephone conversation concerning the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 to the formation of the limited liability company described below.

Corporation A and Corporation B intend to form a limited liability company ("LLC"). Both Corporation A and Corporation B have revenues in excess of \$100 million. Corporation A will contribute essentially all of its operating assets and employees to the LLC. Corporation B will contribute approximately \$40 million. In exchange for these contributions, Corporation A will receive a 65-70% interest in the LLC and Corporation B will receive the remaining 30-35% interest. Corporation A and Corporation B have agreed that the ownership percentages will fairly represent the relative value of their contributions to the new LLC. The net income or loss of the LLC will be shared between Corporation A and Corporation B on the same proportionate basis as their ownership interests.

The LLC's organizational documents will provide that a board of managers will be responsible for the management of the LLC. Each member of that board will be designated by Corporation A from the current officers, directors, and employees of Corporation A. No representative of Corporation B will serve on the board of managers.

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Ms. Nancy Ovuka
March 9, 1998
Page 2

In the situation described above, you advised that the LLC would be treated as a partnership rather than as the formation of a joint venture that would result in the venturers holding voting securities. Because the LLC would be treated like the formation of a partnership, we understand that it would be exempt from the filing requirements of the Hart-Scott-Rodino Act. See *ABA, Premerger Notification Practice Manual* (1991 ed.), Interpretation No. 195.

Would you please confirm our understanding that the parties to a transaction of the kind described above are not required to file a Notification and Report Form for Certain Mergers and Acquisitions (the "HSR form") pursuant to the Hart-Scott-Rodino Act. If you have any questions about this request or if you need any additional information, please call me.

Thank you for your attention to this matter.

Very truly yours,

[REDACTED]

[REDACTED]