

WRITER'S DIRECT DIAL NUMBER

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December 12, 2002

Confidential

Via Email & Mail

Mr. Michael Verne  
FTC Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Verne:

This letter is to confirm our discussions yesterday regarding the formation of a new limited liability company, and the contribution of assets to that company. As we discussed two separate legal entities, ABC Inc. and XYZ Inc., are currently negotiating the formation of a new LLC for the manufacture and marketing of widgets (industrial products). Each ABC and XYZ would hold a 50% interest in the LLC. Both ABC and XYZ are currently engaged in the manufacture and sale of different types of widgets.

XYZ would contribute its entire current manufacturing plant and related employees etc. to the LLC which would continue to operate at its current site. The LLC would also assume the liabilities of the business being contributed by XYZ. Based on our information, the approximate value of the assets being contributed by XYZ is \$65 million and the amount of liabilities about \$29 million.

As we discussed, our question was whether ABC's contribution qualifies as a "pre-existing, separately controlled business" for the purposes of Formal Interpretation 15. The nature of ABC's contribution is contemplated as follows:

*Fixed assets.* ABC will contribute its widget-manufacturing equipment. However, the equipment will remain at ABC's plant and will continue to be operated by ABC's employees (the LLC will be charged a fee for these services).

*Real Property.* ABC will not contribute any real property to the LLC. Instead, the LLC will lease space from ABC (i.e. the space where the contributed equipment is located). ABC will continue to operate its other lines of business at the site.

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*Portion of business.* ABC produces other related products. The type of widgets made using the equipment to be contributed by ABC to the LLC constitute approximately 16% of ABC's overall sales.

*Intangible assets.* There will be no patents or trademarks assigned or exclusively licensed to the LLC by ABC.

*Employees - Operators.* No employees will be transferred to the LLC. Instead, the 15 employees currently engaged in operating the fixed assets will continue to operate the contributed equipment as employees of ABC. The costs associated with such employees will be charged back to the LLC.

*Employees - Administration/Management.* ABC does not have any administrative or management employees dedicated exclusively to the widget assets. No administrative or management personnel will be transferred by ABC to the LLC. Administrative services will be provided by ABC employees to the LLC for a fee. In addition, the widget sales invoicing, supply and inventory will continue to be administered as part of ABC's integrated software program. The costs associated with such services will be provided to the LLC by ABC for an administrative support fee.

*Non-compete.* ABC and XYZ will agree not to produce widgets in the U.S. in competition with the LLC. ABC will continue to sell widgets manufactured by one of its foreign affiliates.

*Cash.* Because ABC's contribution of assets is of substantially less value (less than half) than XYZ's contribution, ABC is making a cash payment to XYZ which is approximately equal to the value of ABC's contribution in assets.

As we discussed, your understanding is that this transaction would not be reportable because ABC's contribution did not qualify as a "pre-existing, separately controlled businesses" for purposes of Formal Interpretation 15. If this is not your understanding, please inform us as soon as possible.

Sincerely,

[Redacted signature]

[Redacted signature]

AGREE.  
B. [Redacted signature]  
12/16/02

[Redacted signature]