

Ferkingstad, James H.

801.1(a)(3)

From: [REDACTED]  
Sent: Friday, May 19, 2006 3:18 PM  
To: Ferkingstad, James H.  
Subject: HSR question: Manager deemed not to "control" limited liability company

VIA ELECTRONIC MAIL

Mr. James Ferkingstad  
Premerger Notification Office  
Bureau of Competition -  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

Dear Mr. Ferkingstad:

This message confirms our telephone conversation this afternoon (Friday, May 19, 2006) in which we discussed a proposed acquisition by my client, a newly-organized, for-profit Delaware limited liability company ("LLC"). In particular, I wish to confirm my understanding, based upon the facts described below, that neither the natural person who is the "Manager" of the LLC nor any other person would be deemed to "control" the LLC within the meaning of 16 CFR 801.1(b) and, therefore, that the LLC would be its own "ultimate parent entity" for the purposes of the HSR Act.

The LLC is a newly-organized limited liability company that, as of the time of the acquisition, will not have issued stock or any other securities other than units of (voting) membership interest. No person or entity will hold 50% or more of the units of membership interest (thus no person or entity will hold 50% or more of the voting power represented by the units of membership interest), and no person or entity will have the right in the event of dissolution to 50% or more of the assets of the LLC.

The LLC will not have any directors or trustees. However, pursuant to the Limited Liability Company Operating Agreement of the LLC, the LLC will have one "Manager". The Limited Liability Company Operating Agreement provides that the powers of the LLC shall be exercised by and under the authority of, and the business and affairs of the LLC shall be managed under the direction of, the Manager. Certain actions by the LLC, however, will require the approval of both: (i) the Manager, and (ii) members holding at least 66 2/3% of the units of membership interest.

The initial Manager will be a natural person who is named in the Limited Liability Company Operating Agreement. The initial Manager will serve until he resigns or is removed by the affirmative vote of members holding at least 75% of the units of membership interest.

Based on the foregoing, it is my understanding that the staff of the Premerger Notification Office that neither the Manager nor any other person will be deemed to "control" the LLC within the meaning of 16 CFR 801.1(b). Assuming that this conclusion is correct, the LLC will not be controlled by any other entity and, therefore, will be its own "ultimate parent entity" within the meaning of 16 CFR 801.1(a)(3).

Thank you very much for the assistance and guidance that you have provided in this matter. I would deeply appreciate it if you would telephone me at [REDACTED] or contact me by email at [REDACTED] to confirm that this message and the conclusions set forth herein correctly stated your advice.



05/19/06 Agree  
JF