

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 03, 2011 12:17 AM
To: Verne, B. Michael
Subject: LLC HSR Question
Attachments: Holdings LLC Final Structure.pdf; Holdings LLC Detailed Description of Steps.pdf

Mike—

Thank you for your time this morning to discuss my questions regarding the proposed transaction involving Holdings, Company A and Company B. Below is a description of the deal and the two questions presented. I also have attached a depiction of what the ownership will look like after closing and a more detailed step-by-step description of the transaction.

A holding company LLC ("Holdings") owns, either directly or through other wholly-owned subsidiaries, 100% of four subsidiaries (Subs 1-4):

- (1) Sub 1, a UK company indirectly owned through LLC UK, owns the EU manufacturing operations;
- (2) Sub 2, an LLC, owns the U.S. manufacturing operations;
- (3) Sub 3, an LLC, owns U.S. manufacturing operations for a different/separate product line; and
- (4) Sub 4, an LLC, owns the research facilities for Subs 1, 2 and 3.

Company B is currently a minority investor in Holdings, holding a 20% interest. Certain of the existing management members of Holdings desire to sell their ownership interests in Holdings and Company B is contractually obligated to buy or arrange for a third party purchase of those management ownership interests. Company B does not wish to own more than a 49% interest in Holdings. Company B has agreed with Company A, an existing business entity entirely unrelated in ownership and management to Company B, for the two firms collectively and indirectly to acquire the management's ownership interests. In order to optimize the tax implications of the transactions, they will be accomplished through a complex restructuring of Holdings and its subsidiaries, all as described in greater detail in the attached Fact Appendix.

Under the contemplated transaction, the shareholders of Company A will transfer all of their stock in Company A to a new holding company, immediately after which the new holding company of Company A will convert Company A into a limited liability company (LLC Z) and then transfer a 100% interest in LLC Z to a newly created limited liability company (Investor LLC). Investor LLC will transfer a majority interest in LLC Z to Holdings and a minority interest in LLC Z to LLC UK (the parent of Sub 1). (As described below, Holdings will distribute its ownership of LLC UK as part of this transaction.) In exchange for the LLC Z interests, Investor LLC will receive a majority of the LLC interests of each of Holdings and LLC UK. Company B will purchase additional ownership interests in Holdings for cash from the management members. Each of Holdings and LLC UK will then redeem the balance of the management's ownership interests for cash coming from a combination of third party bank loans and a junior subordinated loan from Company B. Neither Company A nor Investor LLC will make any loan to Holdings or LLC UK.

As referenced above, the ownership of the LLC UK will be distributed by Holdings to Company B and to the other current owners of Holdings in proportion to their current ownership of Holdings. As a result, Company B will hold a 20% interest in LLC UK. After all the steps in the transaction, Investor LLC will hold an 80% interest in LLC UK. Holdings also will distribute 49% of the ownership interests in Sub 3 (also an LLC) with 9.8% to Company B and 39.2% transferring to the other owners (reflecting the 20/80 split in ownership of Holdings). Company B will then purchase the 39.2% share of Sub 3 from the other current owners for approximately \$4.75 million, with the result that Company B will then directly own 49% of Sub 3.

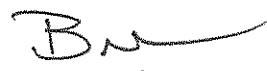
At the completion of the transaction, Investor LLC will own 51% of Holdings and 80% of LLC UK, Company B will hold 49% of Holdings, 49% of Sub 3 and 20% of LLC UK, and Holdings will own 100% of Sub 2 and Sub 4 and 51% of Sub 3. In addition, Holdings will owe additional debt, part to a bank and part to Company B. In total, the selling owners will receive approximately \$144 million, financed in large part by the amounts that Holdings will borrow from the third party bank and from Company B. The loan from Company B will be in two parts: one a mezzanine term loan in the amount of approximately \$65 million and the other a mezzanine term loan in the amount of approximately \$38 million. The \$65 million mezzanine loan replaces an existing loan from Company B to Holdings, bears interest at a market rate, and is secured by all of the assets of Sub 1, Sub 2, Sub 3, Sub 4 and each of their subsidiaries. The \$38 million mezzanine term loan, which is also secured by all of the assets of Sub 1, Sub 2, Sub 3, Sub 4 and each of their subsidiaries, will bear an interest rate of 12% starting 7 years after the loan is made or after a refinancing of more senior debt (whichever occurs first), and will provide that, in the event of insufficient funds to pay the term loan, Holdings may defer payment for some period of time. During any deferment, any applicable interest would continue to accrue on the remaining unpaid principal and the loan would include a condition that no profit distributions could be made to the LLC owners in any year that Holdings was not current on the term loan principal and interest payments (although certain tax distributions to the LLC owners may still be made). In addition, Company B can demand payment in full on the \$38 million loan at any time after 10 years.

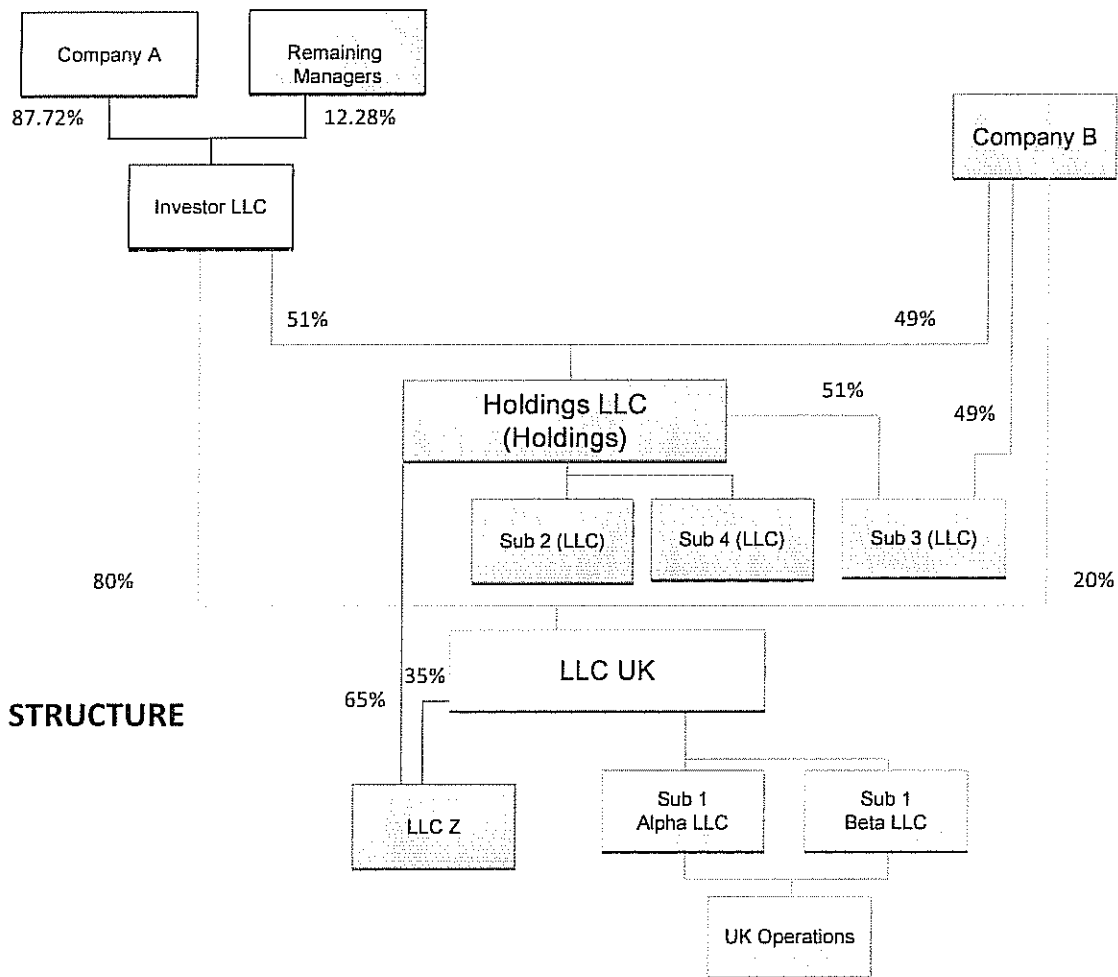
With this transaction background, we wanted to address the following HSR filing issues:

1. We understand that under §801.1(f)(1)(ii) loans to an LLC, including loans made by entities that own an interest in the LLC, do not constitute a non-corporate interest for purposes of the HSR regulations. Therefore, the loans by Company B would not be considered in determining control of Holdings after the transaction and Investor LLC, with the right to 51% of the profits and 51% of the assets upon dissolution (after payment of all debts including those owed to Company B) would be deemed to have control of Holdings under §801.1(b)(1)(ii) as a result of the acquisition and Company B would not have control. Please confirm that this understanding is correct.

2. As a result of the transaction, Company B will hold a 49% interest in Holdings and a 49% interest in Sub 3. The remaining 51% interest in Sub 3 would be held by Holdings. We understand that under § 801.1(b)(1)(ii) we look at each of these LLCs separately and do not count Company B's share of Sub 3's profits as the sum of (1) any profits received directly from Sub 3 plus (2) some indirect allocation reflecting Company B's 49% share of Holding's share of Sub 3's profit distributions. Thus Company B would not control Holdings or Sub 3 as a result of the transaction. Please confirm.

Thank you for your attention to this matter.


11/3/11



FINAL STRUCTURE

Detailed Fact Appendix

Holdings is currently owned as follows: 80% of the membership interests are held (either directly or through separate single-member limited liability companies) by individual members who comprise the Holdings management group (Management Group) and the remaining 20% membership interest is held by Company B, a corporation that also is a major customer of Holdings.

In the proposed transaction, the following steps will occur:

- Holdings will distribute a 49% interest in Sub 3, a limited liability company subsidiary of Holdings, to Company B and the Management Group pro rata
- Company B will purchase the interests in Sub 3 distributed to the Management Group for approximately \$4.75 million, giving Company B a 49% interest in Sub 3 with the remaining 51% interest in Sub 3 still held by Holdings
- Holdings will distribute ownership of LLC UK, a new limited liability company holding company for Holdings's European operating subsidiary, pro rata to the current members of Holdings (Company B and the Management Group)
- The shareholders of Company A, an existing corporation unrelated to Holdings and Company B, will transfer all of the stock of Company A to a newly formed holding company, and then convert Company A into a limited liability company (LLC Z)
- Certain (but not all) members of the Management Group will contribute to a new holding company (Investor LLC) certain ownership interests in Holdings and the holding company of LLC Z will contribute its entire interest in LLC Z to Investor LLC
- Investor LLC will contribute a 65% membership interest in LLC Z to Holdings in exchange for a 34% interest in Holdings and will contribute a 35% membership interest in LLC Z to LLC UK in exchange for a 45% interest in LLC UK
- Holdings and its subsidiaries and LLC UK and its subsidiaries will borrow funds from banks and from Company B to pay off existing debt owed to banks and Company B, make certain other payments to Company B and fund redemptions of interests of the Management Group
- Company B will purchase interests in Holdings from members of the Management Group for \$29.7 million, increasing Company B's percentage interest in Holdings to 31%
- Holdings will redeem interests of the Management Group for \$59.3 million, having the effect of increasing the ownership of Investor LLC to 51% of Holdings and of Company B to 49% of Holdings

- LLC UK will redeem interests of the Management Group for \$50.5 million increasing the ownership of Investor LLC to 80% and of Company B to 20%
- As a result of the overall transaction, the Management Group will collectively receive total payments of approximately \$144 million

Post closing:

1. Investor LLC will own a 51% membership interest in Holdings and Company B will own a 49% membership interest in Holdings.

2. Investor LLC will own an 80% membership interest in LLC UK and Company B will own a 20% ownership interest in LLC UK.

3. Holdings will own a 51% membership interest in Sub 3 and Company B will own a 49% membership interest in Sub 3.

4. Holdings will own a 65% membership interest in LLC Z and LLC UK will own a 35% membership interest in LLC Z.

The resulting structure will be as shown on the attached chart.