

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

JUN 21 11 55 AM '96

June 21, 1996

VIA FACSIMILE

Premeger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580
Attn: Alice Villavicencio

Re: Limited Liability Company

Ladies and Gentlemen:

*6/25/96
Melca - I think the
conclusion is just good
consistent with where we are
on LLC formation. I agree
with your E-mail. No need to
get John involved.
Duf*

As I have discussed by telephone with Ms. Villavicencio, a corporate client of ours proposes to engage in a joint venture with another corporation and desires to use a limited liability company ("LLC") as the joint venture entity. This letter summarizes the facts of the proposed LLC and my understanding of the FTC staff's view of the status of the proposed LLC as a corporation or partnership for purposes of premerger notification.

the usual case

The proposed LLC would have two members. Our client, which is a subsidiary of a large multinational conglomerate, would initially contribute operating assets of one of its divisions with a value, net of liabilities, of approximately \$12X (not \$4x as I mentioned in my call with Ms. Villavicencio). The other member of the LLC, which is not included within the same person as our client, would initially contribute cash of approximately \$3X. Capital and profits interests in the LLC would be proportionate to contributed capital. Thus, our client would control the LLC under Rule 801.1(b)(1)(ii), and it is intended that our client would always have a majority of the capital and profits interests in the LLC.

*control of another
not having 51%*

The LLC would be managed by a Board of Managers, which would have seven members ("Managers"). Our client would appoint a majority of the Managers and the other member of the LLC would appoint the remaining Managers. (Although Ms. Villavicencio and I discussed a 4/3 split in appointment authority, I am informed that the exact proportion of appointment authority has not been finally resolved, although our client will have the right to appoint a majority of the Managers). All Managers would be required to be employees or directors of the member appointing him or her, or of an entity included within the same "person" (within the meaning of Rule 801.1(a)(1)) as that member. It is likely that the

*this is
text member
are not required
as taking back
writing step!*

[Redacted signature area]

[REDACTED]
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*responsible for
day-to-day running of
LLC 70% of so, not
functioning as a director!*

General Manager of the LLC, an employee of the LLC selected by the Board of Managers, will always be one of the Managers.

I understand the position of the FTC staff to be that an LLC will generally not be treated as a corporation so long as it is managed by a board of managers consisting of LLC members or employees of corporate members, and that employees of the LLC will be treated as employees of a "controlling" member for this purpose, since the LLC would be included within a person that controls it. I have been advised by Ms. Villavicencio that the LLC proposed by our client should be treated as a partnership for purposes of the Premerger Notification Rules if each Manager must be an employee of one of the LLC members. Ms. Villavicencio also confirmed my understanding that the General Manager of the LLC (or any other employee of the LLC) would be treated as an employee of our client by virtue of its control of the LLC under Rule 801.1(b)(1)(ii) because of its holding of a greater than 50% capital and profits interest in the LLC. Accordingly, no premerger notification would be necessary in connection with the formation of the LLC.

Ms. Villavicencio and I did not discuss whether the possible inclusion in the Board of Managers of the LLC of directors of a member or employees or directors of other entities included within the same "person" as a member would change the result. We do not believe it should. First, for premerger notification purposes the "person" within which the member is included would be treated as the member of the LLC, so employees of entities within that person should be treated as employees of the member. Second, the appointment of a director of an LLC member to the LLC's Board of Managers represents a retention of authority by a person responsible for the management of the member rather than a delegation of authority to an outsider.

I understand that I will be contacted by telephone in the event you have additional questions and/or to confirm orally the accuracy of this statement of the staff's views. Thank you for your consideration of this matter.

Very truly yours,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]