

801.2 (LLC  
formation)

802.50

802.51

April 26, 1999

BY FACSIMILE

Nancy M. Ovuka, Esq.  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Nancy:

I am writing to confirm our recent conversation in which we agreed that the following transaction would be exempt from the premerger filing requirements of the HSR Act.

Company A (a U.S. corporation) and company B (a Japanese corporation) are proposing a joint venture operated through two entities to be formed.<sup>1</sup> One entity will be a Japanese corporation. A and B each will contribute only cash to this corporation, and each of A and B will hold 50% of the shares. As we discussed, even if we assume that the size-of-person and size-of-transaction tests are met, since the newly formed company will have no U.S. assets and made no sales in the most recent year, the acquisition by A would be exempt pursuant to Section 802.50(b) of the HSR Rules. The acquisition by B would be exempt pursuant to Section 802.51(b) of the HSR Rules.

The second entity to be created will be a U.S. LLC. A will contribute operating assets and cash; B will contribute only cash. Each of A and B will hold 50% of the LLC interests. Even if we assume that the size-of-person and size-of-

<sup>1</sup> The structure of this joint venture was determined based on tax considerations.

Nancy M. Ovuka, Esq.  
April 26, 1999  
Page 2

[REDACTED]

transaction tests are met, since B will not contribute a "business" to the LLC, the formation will not combine under common control two existing businesses, and therefore the acquisition of LLC membership interests are treated like the acquisition of partnership interests. See, 63 FR 54714. Since acquisitions of less than 100% of a partnership interest are exempt under the HSR Rules, neither A nor B is required to make an HSR filing with respect to the formation of this LLC.

I will call you to confirm that this letter accurately reflects our discussions and your analysis. Thank you again for your assistance.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]