



May 16, 1996

BY FACSIMILE - (202) 326-2624

Ms. Nancy Ovuka  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 303  
Washington, D.C. 20580

Dear Ms. Ovuka:

Pursuant to our conversation this morning, we are writing to request an opinion from the Federal Trade Commission's Premerger Notification Office as to whether our client shall be

you will recall, during this conversation we discussed that a limited liability company, similar to a partnership, may be exempt from filing under the HSR act. In connection with our request, we have set forth below the facts and circumstances, on an anonymous basis, of the proposed transaction as they exist on the date hereof.

Company A, a [redacted] corporation, together with Company B, [redacted] corporation and commonly owned sister company of Company A (Company A and Company B will be collectively referred to herein as "Company AB"), and Company C, a [redacted] engage in the same business in some of the [redacted] locations within the same state. Pursuant to standard

otherwise triggering the requirement to file under the HSR Act.

Company AB and Company C have signed a letter of intent to enter into an arrangement whereby Company AB and Company C



[REDACTED]

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shall create a [REDACTED] limited liability company (the "LLC") pursuant to the [REDACTED] Limited Liability Law. Company AB and Company C shall for the foreseeable future be the only members of the LLC, each holding a membership interest in the LLC of 51% and 49%, respectively. Each of Company AB and Company C shall contribute as capital substantially all of their assets and properties to the LLC and the LLC shall assume certain debts, liabilities and obligations of Company AB and Company C in

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Operating Agreement which governs its operations (the "Operating Agreement") shall be as follows:

by its Members, Company AB and Company C, exclusively in their membership capacity. No "manager" will be appointed, whether a

2. The Chief Executive Officer and the President and Chief Operating Officer of the LLC shall be two employees from, and the sole stockholders of Company C (collectively the

officers of the LLC, provided, however, that the appointment of any senior management officer of the LLC earning compensation in excess of a certain threshold per annum shall be subject to the approval of Company AB.

3. The day-to-day operations of the LLC shall be vested in and shall be conducted by the Senior Officers. In the absence of one of the Senior Officers, the other Senior Officer shall have the right to assume all of the responsibilities of both Senior Officers or appoint another person to assume such position, subject to the approval of Company AB.

4. If Company C sells or assigns all of its membership interests in the LLC, Company AB shall have the right to assume all of the day-to-day operations of the LLC. No provision is made for the management of the LLC by a third party. Only when all of the original principals of Company AB and Company C are no longer available will new senior executives (possibly a third party) be appointed by two-thirds of the aggregate share of the membership interests in the LLC ("Supermajority").

[REDACTED]

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5. Major events and other significant matters relating to the operations of the LLC shall require the approval of a Supermajority of the members of the LLC (which in effect

shall include any merger, reorganization, consolidation, recapitalization, or combination of or with the LLC; the issuance of any membership interests, or any sale

of, or the granting of any option to acquire, the membership interests of the LLC or the assets and operations of the LLC

operations of the LLC, or voluntary appointment of a receiver, trustee or other fiduciary to conduct or manage the business

insolvency or submission of a plan for the benefit of creditors of the LLC or the making of any such submission

capital calls for contributions to the LLC; the execution and delivery of any agreement regarding any material real property transactions, including, without limitation, the execution and delivery of any lease, sublease or contract for the sale or purchase of real property; creation, termination and funding of pension and deferred benefit plans and any other

but not limited to, a sale, transfer or distribution or payment of any money or property, a loan or advance of money or property, an investment in or purchase or repurchase of any membership interest, indebtedness or property, with a member or affiliate or

an affiliate or a relative of a member; and any agreement, arrangement or commitment to do any of the foregoing.

shall be authorized by a Supermajority of the members of the LLC except as otherwise set forth in the Operating Agreement.



05. 21. 96 10:59 AM [REDACTED]

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[REDACTED]

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7. The members of the LLC shall act as agents of the LLC.

8. Company AB and Company C shall each designate a principal of their respective companies to provide any consent or approval required by each of Company AB and Company C in the management of the LLC pursuant to the terms of the Operating Agreement of the LLC.

9. The LLC can be dissolved by a vote of the Supermajority of the members.

Based on the foregoing facts, please advise us as to whether Company AB and Company C are required to file a

[REDACTED]

If you have any questions regarding the foregoing, please do not hesitate to contact me at [REDACTED] or [REDACTED]

Very truly yours,  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]