

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

JUN 21 11 55 AM '96

June 21, 1996

VIA FACSIMILE
Premerger Notification Office
Bureau of Competition
Room 303

6/25/96
Molera - I think the
is sent first

Attn: Alice Villavicencio

Re: Limited Liability Company

concern
on LLC formation. I am
the user E-mail. No need to
at this involved.

Ladies and Gentlemen:

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

proposed LLC as a corporation or partnership for purposes of premerger notification.

Personal case

The proposed LLC would have two members. Our client, which is a
would initially contribute operating assets of
one of its divisions with a value, net of liabilities, of approximately \$12X (not \$4x as I
The other member of the LLC which is not

off
of
of

approximately \$3X. Capital and profits interests in the LLC would be proportionate to

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

to appoint a majority of the managers, the managers
directors of the member appointing him or her, or of an entity included within the same
It is likely that the

11 tax
not
back

as
writing

[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

...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%

necessary in connection with the formation of the LLC.

Ms. Villavicencio and I did not discuss whether the possible inclusion in the

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, as 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

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]