

FI AS

June 7, 2000

VIA FACSIMILE

Mr. Michael Verne
Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: LLC Formation Issue

Dear Mike:

On Monday, June 5, 2000, we had a telephone conversation to discuss the reporting obligations associated with the acquisition of an exclusive technology license by an LLC from a forming, controlling parent in connection with the formation of the LLC. I have attached a copy of the hypothetical situation upon which our conversation was based.

Under the attached hypothetical, you advised me that you do not view the LLC's acquisition of an exclusive technology license from Company A (the LLC's UPE) as a separate and distinct transaction, but rather a constructive part of the LLC formation itself. Consequently, the LLC's acquisition of an exclusive technology license from its own UPE, Company A, would only be reportable if it caused the LLC formation to be reportable.

As we discussed, however, the inclusion of the exclusive technology license does not alter the HSR analysis of the LLC formation because Company A will still control the LLC (including the exclusive technology license) as a result of its 60% interest in the LLC. Under the control rules relating to LLC formations, Company B will not be deemed to be acquiring Company A's "assets" (the exclusive technology license) through this formation event. Thus, the LLC formation is not reportable because neither Company A nor Company B will be acquiring control of assets valued at \$15,000,000 or more through this formation.

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I believe that this letter accurately portrays our discussion on Monday. If you disagree with my summary or the outcome of the analysis, please let me know as soon as possible. Based upon our discussion, we are not planning to file on the formation of this LLC.

Thank you for your assistance in this matter.

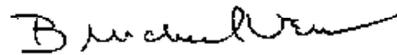
Sincerely



Enclosure

cc: 

AGREE -



6/9/00

HYPOTHETICAL FOR DISCUSSION WITH FTC PREMERGER OFFICE

Company A and Company B intend to form a new LLC. Company A will contribute approximately \$12,000,000, contracts related to a line of business, and agree to grant an exclusive IP license to the LLC (described below). Company B will contribute approximately \$8,000,000 and an exclusive IP license to the LLC. Consequently, Company A will acquire a 50% interest in the LLC and Company B will acquire the remaining 40% interest in the LLC.

Assume that the fair market valuation of the assets being contributed to the LLC by Company B is less than \$15,000,000.

Contemporaneous with the formation of the LLC, but under a separate agreement, Company A will also enter into a licensing agreement with the LLC pursuant to which the LLC will receive an exclusive technology license to use Company A's technology within a specified field of use. The LLC will pay Company A more than \$15,000,000 for the exclusive technology license. This exclusive technology license is the fundamental technology that will be used in the LLC's products.

Does Company A have to file and observe the HSR waiting period as both an acquiring and acquired person for the LLC's acquisition of the exclusive technology license from Company A or is the transaction not reportable because the exclusive technology license is constructively viewed as part of the LLC's formation?