

802.52
802.30
801.10(c)(3)

TELEPHONE
FACSIMILE

February 23, 2000

VIA HAND DELIVERY

Michael Verne
Premerger Notification Office
Room 303
Federal Trade Commission
6th & Pennsylvania Avenue, NW
Washington, DC 20580

Re: Application of Rule § 802.52 to Indirect Acquisitions of US Assets or Voting Securities from a Foreign Governmental Corporation

Dear Mike:

This letter will confirm our telephone conversation on Tuesday, February 22, and memorialize your advice regarding the application of Rule § 802.52 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, as amended.

In the transaction as I described it to you, my client – a corporation wholly-owned by the German government – intends to sell all of the voting securities in a group of its German subsidiaries to a private German buyer. The German voting securities in question control, among other things, certain United States issuers, and so there will be an indirect transfer of United States voting securities as a result of the transaction. My client further intends, in a simultaneous transaction, either to retain or to buy back from the purchaser certain assets located in the United States, which at present are held by one of the United States issuers in question.

Rule § 802.52 states that “an acquisition shall be exempt from the requirements of the [HSR] Act if: (a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and (b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.” The Statement of Basis and Purpose (SBP) specifies that if a transaction exempted under this rule also involves the acquisition of assets or voting securities in the United States, that portion of the transaction is non-exempt and must be analyzed separately to determine whether it is reportable. See 43 F.R. 33,450, 33,499 (July 31, 1978). However, the

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SBP goes on to explain that the foreign-governmental-corporations exemption does extend to the indirect acquisition of United States assets and voting securities. See id. at 33,500.

Based on this observation in the SBP, you agreed that the transaction was not reportable, so long as only German voting securities were directly changing hands.

You also observed that the client's simultaneous re-acquisition of United States assets from the purchaser was potentially reportable, as in itself this aspect of the transaction would fall outside the exemption of Rule § 802.52. My client has since confirmed that the book value of the United States assets in question is less than \$15 million, so that the re-acquisition falls short of the size-of-transaction test established by the HSR Act and will not in itself be reportable.

Since our conversation, I have been informed that the client intends to structure the deal so that the United States assets in question will be transferred to another entity within the client before the sale of the German voting securities takes place. In this way, no other person would at any time have control of the United States assets. If the deal is so structured, I conclude that this aspect of the transaction would be in itself nonreportable an exempt intraperson transaction under HSR Rule § 802.30. As the book value of the assets is less than \$15 million, the application of the intraperson exemption would in a sense become moot; however, it will spare my client the obligation to perform a fair market valuation according to the procedure prescribed by HSR Rule § 801.10(c)(3).

Please let me know promptly if you disagree with any part of this analysis. Unless I hear from you to the contrary, I shall advise my client that no HSR filing will be necessary in connection with this transaction.

As always, many thanks for your time and attention.

Best regards,

[Redacted signature block]

With the list
fair market value
must be determined

As long as
this entity is
a corporation,
802.30 is
applicable.

A GAGE WITH THE CONCLUSIONS OF THE WORTH, SUBJECT
TO THE COMMENTS NOTED ABOVE. T. HANCOCK CONCURS.

B Michael Verne
1/29/00