

[REDACTED]

802.2 (g)

April 4, 2000

BY FAX

Melea Epps, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 809
6th and Pennsylvania Avenue, NW
Washington, DC 20058

Re: Application of Agricultural Exemption Pursuant to Section 802.2(g) of the HSR Rules, 16 C.F.R. § 802.2(g)

Dear Ms. Epps:

The purpose of this letter is to confirm advice you have provided verbally regarding application of the agricultural exemption found in section 802.2(g) of the Hart-Scott-Rodino ("HSR") rules of practice, 16 C.F.R. § 802.2(g) (1999). This advice was provided to us on Monday, April 3, 2000 and was based on the following set of facts:

Our client is considering the acquisition of certain assets of a company engaged in the poultry production and research business (hereinafter referred to as the "Acquired Company"). The Acquired Company produces breeding stock that is sold to "poultry integrators," i.e., vertically integrated companies that raise, slaughter and process chickens for consumption.^{1/} The function of the Acquired Company is to improve the genetic characteristics of existing lines and/or to develop new lines of chickens reflecting various superior traits, e.g., "meatier" breasts and enhanced egg production capacities. As an integral part of its operations, the Acquired Company conducts genetic research in laboratory facilities. It also operates hatcheries in which it produces live baby chickens to be sold to poultry integrators as breeding stock.

^{1/} These poultry integrators raise chickens solely for consumption. They are not involved in producing chicken eggs for consumption.

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The Acquired Company's revenues are generated exclusively from the sale of poultry breeding stock. The typical sale to a given customer is for tens of thousands of day-old baby chickens. Repeat sales to a customer are necessary when the breeding stock reaches the end of its productive life and must be replaced.

The assets to be acquired include real property and improvements (chicken houses, hatcheries and associated office space); realty leases and leasehold improvements; contract rights; equipment and machinery; inventory; furniture, furnishings and fixtures; trucks, vehicles and trailers; handling and delivery equipment; office, packaging and other supplies; contracts with suppliers and vendors; customers lists; trademarks, tradenames and intellectual and proprietary property; licenses, permits and bonds; and certain genetic lines. All of such real property and associated agricultural assets are integral to the Acquired Company's poultry production and research business. The assets to be acquired DO NOT include poultry processing facilities.

The agricultural exemption found in section 802.2(g) states, in part, that:

An acquisition of agricultural property, assets incidental to the ownership of such property and associated agricultural assets shall be exempt from the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetable, livestock, poultry, milk and eggs (activities within SIC Major Groups 01 and 02).

(1) Associated agricultural assets are assets integral to the agricultural business activities conducted on the property. . . .

In our telephone conversation with you, we inquired as to whether the Acquired Company's business should be classified within Standard Industrial Classification ("SIC") major group 02, Agricultural Production - Livestock and Animal Specialties, or major group 07, Agricultural Services. In this regard, we noted that SIC code 0254, Poultry Hatcheries, applies to an establishment that is primarily engaged in operating poultry hatcheries, either on their own account or on a contract or fee basis. The examples provided within this code include "chicken hatcheries." The other SIC code that could possibly be used to classify the Acquired Company's business is SIC code 0751, Livestock Services, Except Veterinary. The examples provided within this SIC code include "breeding of livestock" and "livestock breeding services."

You stated that if the primary source of the Acquired Company's revenues is the operation of hatcheries and related sale of baby chickens for use as breeding stock, the

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proper SIC code is 0254, not SIC code 0751. In distinguishing SIC code 0751, you explained that 0751 is used to classify a business that generates revenue primarily from the provision of services, not products such as baby chickens. For example, a stud horse farm providing breeding services for customers' mares would fall within the scope of 0751. Finally, you agreed that the laboratory assets required for operation of the Acquired Company's poultry production and research business should be considered as "associated agricultural assets" within the meaning of section 802.2(g).

In summary, based upon the information provided regarding the Acquired Company's business, you concluded that: (1) the Acquired Company's business operations should be classified in SIC 0254, Poultry Hatcheries; and (2) the agricultural property exemption of 18 C.F.R. 802.2(g) would apply to the proposed acquisition of the Acquired Company's assets. Accordingly, you advised that no HSR filing would be required in connection with the proposed transaction.

We have written this letter to memorialize our conversation and request that you telephone [redacted] confirm the advice provided to us. We thank you for your time, consideration and guidance in this matter.

Kindest regards,
[redacted]

Called the writer to confirm that Acquired Company derives no third-party revenues from its research activities, which are all internal. Letter accurately reflects informal advice given —