

802.63

September 12, 2000

Ms. Nancy Ovuka  
Premerger Notification Office  
Bureau of Competition, Room 303  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Ms. Ovuka:

The purpose of this correspondence is to confirm our recent discussion concerning the treatment of a specific synthetic lease financing arrangement.

As discussed, we represent a client (to be referred to herein as "Company A") which is entering into a synthetic lease financing arrangement with respect to a series of retail sites. Under the arrangements contemplated, Company A will enter into contracts to acquire either (i) land on which retail facilities are to be constructed or (ii) existing retail facilities. Prior to closing, the contractual rights will be assigned to a newly established special purpose trust (the "Trust"), the settlor of which is a commercial bank ("Bank A") as agent for a group of lending banks including Bank A, and the beneficiaries of which are the lending institutions including Bank A. The trustee of the Trust is a separate financial institution. The Trust (or trustee as appropriate in certain contexts) then acquires the real property in question and leases it to Company A. The acquisition of the property by the Trust (the "Acquisition") is financed by the lending institutions. The Trust also obtains construction financing for the unimproved land from the lending institutions and under an agency agreement authorizes Company A to build retail facilities on those sites, with the construction funding again coming from the lending institutions.

For each retail site, the lease period for the real property and related retail facility (the "Lease") will be approximately five years. During the term of the lease, the title to the real property is held by the Trust and Company A has sole use of the property and retail facility as lessee under the terms of the Lease. Company A makes rental payments to the Trust which are generally equivalent to the amount of interest owed by the Trust on the loans from the lending institutions. At the end of the lease period, Company A has the option to purchase the properties (a "Purchase"). If a decision is made by Company A to purchase the properties, the purchase price is generally equivalent to the principal owed on the loans obtained by the Trust from the lending institutions (plus related transaction and interest costs). Alternatively, subject to agreement by the lending institution to extend

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their financing arrangements with the Trust, Company A could renew the Lease. If Company A neither purchases the property nor renews the Lease, the Trust could sell the properties and in the process pay off the loans and Company A would be responsible for covering any deficiencies.

We understand that the Acquisition by the Trust is exempt under 16 C.F.R. 802.63. We further understand that no HSR filing would be required in connection with Company A's entering into the Lease. In connection with any Purchase by Company A, however, we understand that an HSR filing may be necessary if the HSR filing thresholds are met and an exemption (such as 16 C.F.R. 802.2(b)) is not otherwise available.

If you or your colleagues should disagree with the conclusions expressed herein, I would appreciate it if you would please let me know as soon as possible by contacting me at [REDACTED]

Thank you for your assistance in connections with this matter.

Sincerely yours,  
[REDACTED]  
[REDACTED]