

802.5

Phone: [REDACTED]

Fax: [REDACTED]

November 7, 2003

By Messenger

Michael B. Verne  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

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FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Telephone Conversation on November 5, 2003

Dear Mike:

Thank you for speaking with me on Wednesday, November 5, 2003 concerning the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act"). I am writing to summarize the facts I presented to you and your analysis of those facts.

In our conversation, I described a transaction that meets the size-of-person and size-of-transaction tests. More specifically, Company A plans to purchase from Company B a number of terminals used for the storage of bulk materials, including liquid fuels and similar products. Company A will use the terminals and related assets solely for rental purposes, not for its own use or that of its affiliates. The majority of the income from the assets being purchased will be from the rental of the terminal space, although Company A does expect to *derive additional income* from ancillary services like charges assessed for handling, additive services and the like.

I also explained that we believed that pursuant to the factors set forth in 61 Federal Register 13666, 13682 (March 28, 1996), Company A would have "investment intent."

Based on my description of this factual hypothetical, you indicated that the transaction would be exempt from filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act"). In particular, we agreed that the transaction I described would qualify for an exemption pursuant to § 802.5 of the HSR Rules, 16 C.F.R. § 802.5.

[REDACTED]

Michael B. Verne  
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I would greatly appreciate your confirmation of this analysis. Thank you very much for your time in discussing these issues. If you have any questions, please call me at [REDACTED]

Very truly yours,

[REDACTED]

[REDACTED]  
Enclosure

AGREE -  
B. [Signature]  
11/10/03

[REDACTED]