

802.3
802.2

May 26, 2004

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 29580

Dear Mr. Verne:

This correspondence is a follow-up to our conversation of May 25, 2004 concerning a proposed transaction.

The factual circumstances described were as follows. Company A and Company B each currently hold a 50 percent membership in a limited liability company ("Company C") which is engaged in oil and gas exploration and development activities. Company A now intends to acquire Company B's 50 percent interest in Company C, a transaction which it is understood will be viewed as the acquisition by Company A of all of the assets of Company C for HSR purposes. Company C's assets primarily consist of interests in oil and gas fields in states in the Appalachian region (the "Fields"). At this point in time there are approximately 9,200 wells producing in the Fields.

The focus of my inquiry was whether Company A's acquisition of Company C would fall under exemptions such as the unproductive real property exemption set forth in 16 CFR § 802.2(c) (the "Unproductive Real Property Exemption") and the exemption concerning acquisitions of carbon-based mineral reserves set forth in 16 CFR § 802.3 (the "Oil and Gas Exemption").

My understanding from our discussion is as follows:

1. To the extent that certain properties and reserves in portions of the Fields have not yet generated any revenues, such properties and reserves will be treated as falling under the Unproductive Real Property Exemption, while those properties and reserves which are currently developed and producing will qualify for the Oil and Gas Exemption (assuming the latter's aggregate value is under \$500 million).

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2. In applying the Unproductive Real Property Exemption to Company C's interests in the non-producing properties in the Fields, it is not necessary to determine whether, for purposes of 16 CFR § 802.2(c)(2)(iii), such properties are or are not "adjacent to or used in conjunction with real property that is not unproductive real property" as long as any other such adjacent properties are otherwise exempt under the Oil and Gas Exemption. That is, if certain unproductive real properties in the Fields are adjacent to productive real properties in the Fields which are part of the transaction but qualify for the Oil and Gas Exemption, the unproductive real properties still qualify for the Unproductive Real Property Exemption.
3. In determining whether the transaction falls within the terms of the Oil and Gas Exemption, Company A need focus only on Company C's assets. In other words, the \$500 million figure in the Oil and Gas Exemption relates only to the target company (Company C) and not to the existing assets of Company A and Company B.
4. On the basis of the foregoing, Company A may acquire all and hold all of the membership interests in Company C without the need to make an HSR filing if it is determined by Company A, or its designee, in compliance with the HSR regulations at 16 CFR § 801.10, that: (i) a portion of Company C's assets consists of ownership interests in oil and gas properties which have not yet generated any revenues and therefore fall within the Unproductive Real Property Exemption; (ii) another major portion of Company C's assets consists of ownership interests in developed and producing oil and gas properties, as to which the fair market value of the properties, reserves, rights and associated exploration or production assets relating to such properties does not exceed \$500 million; and (iii) to the extent that there are any remaining direct or indirect assets of Company C which do not qualify as exempt assets under the HSR regulations, such remaining assets have a fair market value of less than \$50 million.

Please contact me as soon as possible at [redacted] if you should disagree with any of the views expressed above.

Thank you very much for your assistance.

Sincerely yours,

[redacted signature]

Agree -
B. [redacted]
5/26/04

cc: [redacted]