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November 11, 2005

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

Re: Application of Section 802.1/Ordinary Course of Business Exemption

Dear Mr. Verne:

This letter serves to summarize our discussion yesterday regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") to the transaction described below. During that phone call you concurred with our position that, based on the facts presented, an HSR filing would not be required.

Terms of Transaction

Company A, our client, and Company B are discussing a possible transaction whereby Company A will acquire certain assets from Company B. The size-of-parties and size-of-transaction tests are satisfied. At issue is whether the transaction is exempt from the filing requirements of the HSR Act pursuant to the "ordinary course of business" exemption set forth in Section 802.1 of the HSR Rules.

Company A is a foreign investment firm. Company B is a major U.S. company engaged in a variety of activities. A division of Company B provides equipment rental and leasing services. Company A intends to acquire certain assets from within that division. Such assets include equipment inventory and leases, and other assets incidental to running the business (such as vehicles, service agreements, and customer and supplier lists). In addition certain personnel (between 20-30) will be transferred. However, no intellectual property or real estate will be transferred. For an interim period, Company A will lease office space from Company B in order to conduct the business. Company A expects to relocate the business, and Company B will continue to conduct other aspects of its equipment rental and leasing business out of that office during and after the interim period. The information technology ("IT") used in connection with the assets also supports other processing requirements of the division. Once transferred, Company A will continue to use this technology under a transitional services agreement until a new IT strategy is developed.

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The companies are negotiating a non-compete agreement related to the assets to be acquired.

The subject assets consist primarily of used durable goods to be used by Company A solely for the purpose of leasing to third parties. Pursuant to Section 802.1(d) of the HSR Rules, such assets are exempt from the notification requirements of the HSR Act, provided they do not constitute an "operating unit" as defined in Section 802.1(a). We explore this issue in further detail below.

Company B/Equipment Rental and Leasing Division

As described in its SEC filings and on its website, Company B divides its business activities into several operating divisions, one of which is its "equipment services" division that rents and leases a wide range of equipment in several different industries ("B Division"). B Division is divided further into several businesses that focus on leasing certain types of equipment to certain industries. One of those businesses offers equipment leases to a specific transportation-related industry ("B Business"). The assets to be acquired by Company A are those related to the leasing of two specific types of equipment within B Business ("Acquired Assets"). Assets relating to several other types of equipment within the B Business are not being sold.

Company B accounts for and markets all of its equipment leasing and rental business as part of B Division. The Acquired Assets represent a very small portion of the assets in B Division. In fact, they represent about 1% of the total assets of the division and generate revenues representing about 1% of the total revenues of the division. Individuals who manage the Acquired Assets also manage other businesses within B Division and the B Business. B Division is headquartered in one office, along with all of the businesses within the B Division, and it will continue to be headquartered there after the sale of the Acquired Assets. Maintenance facilities owned and operated by third parties who service the Acquired Assets also service other B Division and B Business assets not included in the sale and will continue to do so.

The parties are currently negotiating a non-compete agreement. Although the exact terms remain uncertain, it is anticipated that the agreement would prevent Company B from leasing the two specific types of equipment included in the Acquired Assets in the transportation-related industry of the B Business. Company B will continue to otherwise engage in the equipment leasing business through its B Division, including using the assets within the B Business that have not been divested to lease other types of equipment in the same transportation-related industry serviced by the B Business.

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HSR Analysis/Application of Section 802.1

As noted earlier, the Acquired Assets consist primarily of used durable goods to be used by Company A solely for the purpose of leasing to third parties. Under Section 802.1(a) of the HSR Rules, such an acquisition would not be exempt if all or substantially all of the acquired assets comprise an "operating unit." We believe that while B Division could be considered a distinct operating unit, as that term is defined in the HSR Rules, the Acquired Assets do not rise to that level. As previously indicated, Company B (through B Division and even B Business) will continue in the equipment rental and leasing business following the sale of the Acquired Assets. We note that we have come across several FTC informal interpretations - with nearly identical fact patterns - where staff found that the assets at issue did not comprise an operating unit and that the 802.1 exemption applied. For these reasons, we believe - and you have concurred - that it is appropriate to apply the ordinary course of business exemption to this transaction.

Please let us know if the foregoing facts and conclusions are inconsistent with your understanding based on our earlier discussion. Thank you for your time and consideration.

Sincerely yours,

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*Acise - Bruchman
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