

Item 5

Ovuka, Nancy M.

From: [REDACTED]
Sent: Thursday, November 03, 2005 10:41 AM
To: Ovuka, Nancy M.
Subject: Clarified interpretation regarding intracompany transfers under Item 5

Nancy,

I am writing to confirm the guidance and interpretation that you have provided regarding the need to report, under Item 5 of the Notification and Report Form, revenues that are attributable to transfers between entities within the same ultimate parent.

As I explained in our phone call earlier today, my client is engaged in the mining and processing of coal for sale to third parties. It conducts this business through several different subsidiaries that perform services for one another, typically for a fee. For instance, while one subsidiary may own the rights to the coal, it may pay a fee to a different subsidiary which processes the coal.

In our conversation, you explained that, for purposes of Item 5, the Premerger Notification Office is only interested in revenues from intracompany transfers when one subsidiary sells a manufactured product to a different facility or entity. Therefore, you advised that unless my client is engaged in manufacturing, it need not report intracompany transfers under Item 5 and can instead rely upon its consolidated revenue data which reflects sales to third parties.

I understand that the Premerger Notification Office does not generally confirm informal advice in writing. However, if this letter misconstrues our conversations or is inaccurate in any way, I would appreciate it if you would please contact me as soon as possible. As always, thank you for your advice and assistance.

Thanks,



11/3/05
Confirmed advice w/
writer.

N. Ovuka
M. Verne concurs