

7A(c)(1)

Verne, B. Michael

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From: [REDACTED]  
Sent: Monday, June 19, 2006 4:11 PM  
To: Verne, B. Michael  
Subject: Filing question

Dear Mike,

I want to confirm that the guidance contained in a prior informal staff opinion by you is still the position of the Premerger Office, and that I am applying it properly to the transaction before me. I refer to Informal Staff Opinion 0407004 dated August 11, 2004.

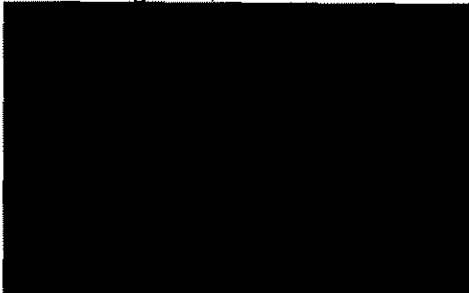
(<http://www.ftc.gov/bc/hsr/informal/opinions/0407004.htm>) In this opinion, you agreed with the author who stated that a company engaged in commercial leasing may sell one of its leasing businesses and still qualify for the ordinary course exemption as contained in 7A(c)(1) (and presumably in 802.1 as well).

The facts of my transaction are as follows: My client is in the business of transportation asset leasing and related services, and it leases aircraft and rail cars. The size of transaction and size of parties tests are met. It wishes to sell, via an asset transaction, nearly all of the airplanes associated with its aircraft leasing business to a buyer. (A small number of airplanes will be sold to a different buyer.) Other assets associated with this business may be sold as well, and some personnel may be transferred. My client leased these planes to third parties only, as set out in 802.1(d)(2). It is my understanding that the buyer will also lease the planes to third parties, as set out in 802.1(c)(1) and 802.1(d)(1).

My client will be exiting the aircraft leasing business, but will remain in the business of leasing rail cars. Given that my client will remain in the leasing business, it seems to me that the sale of the aircraft leasing business should not disqualify it from the ordinary course exemption. While the prior opinion contains no discussion of 802.1(a), the sale of an operating unit, I presume that the reasoning of your prior opinion would apply to the similar facts of this transaction, and you would not view this transaction as the sale of an operating unit.

Thus, I believe this transaction would be exempt from HSR filing requirements. Please let me know if you agree with my analysis.

Best regards,



AGREE -  
B. Michael  
6/19/06