

802.2(a)

Verne, B. Michael

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From: [REDACTED]  
Sent: Monday, April 23, 2007 12:03 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: HSR Advice - Follow up Question

Hi Mike - As noted below, you previously indicated that the 802.2(a) exemption would not be compromised if the only income from the sale of energy is produced "in connection with testing". We can represent that in a similar transaction between the parties, Company A will purchase additional wind projects from Company B and prior to closing, no income will have been produced by the wind farms, with the exception of income produced by the sale of energy generated in the ordinary course of performance testing, shake out testing, preventative maintenance, or equipment protection activities.

I would be grateful if you could confirm that this fact pattern is consistent with your earlier advice.

Thanks

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]  
Sent: Monday, September 25, 2006 9:00 AM  
To: [REDACTED]  
Subject: RE: HSR Advice

It could be exempt under 802.2(a) if Company B constructed the project with the intent to sell it. The exemption is not compromised if the only income was from the sale of energy produced in testing, but if the project becomes operational before closing, it is not available.

-----Original Message-----

From: [REDACTED]  
Sent: Monday, September 25, 2006 8:38 AM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: HSR Advice

Hi Mike - I would be grateful for your advice on the following fact pattern:

Company A will acquire 2 "wind projects " from Company B. At the time the acquisition agreement is signed, one of the projects will be operational. The other may still be under construction. Total consideration for the transaction is \$350 million. The value of the operational project is \$50 million. The value of the larger project, which may be under construction is \$300 million. It is possible that

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the larger project may sell energy generated in the testing process prior to completion (and prior to the closing) or it could be operational for a couple of weeks after completion, but before the closing.

Any possibility that there is an exemption here under 802.2?

I look forward to hearing from you. Thanks

[REDACTED]

[REDACTED]

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For more information about [REDACTED]

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Yes - this would be covered by the exemption.

Bm  
9/23/07