



802.2(b)

April 30, 2007

Mr. B. Michael Verne
Federal Trade Commission
Premerger Notification Office
Room 303
600 Pennsylvania Avenue, NW
Washington, DC 20580

Via E-mail & Regular Mail

Re: Availability of 802.2(b) Exemption for Lease Buyout

Dear Mike:

Thank you for speaking with me today concerning the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") to my client's plan to buy out a lease from its current lessor. I am writing to summarize the facts I presented to you and to confirm your conclusion that no Premerger Notification and Report Form is required under the HSR Act.

As I described this morning, our client, Company A, filed for approval under the HSR Act to purchase a number of existing power plants in 1999. The HSR waiting period expired without action. Immediately before closing, Company A transferred the right to obtain legal title to two of the plants to Company B, an entity engaged in the business of entering into lease financing arrangements. Company A has therefore been the sole lessee of those plants since 1999. In addition, Company A has consistently and exclusively operated and possessed the two plants and has made all necessary regulatory filings on behalf of those plants.

Company B is now in bankruptcy. Accordingly, Company A, as the lessee, plans to buy out the lease from Company B. Prior to 1999, the facility was owned and operated by a party other than Company A or Company B.

This morning we discussed the applicability of 16 C.F.R. § 802.2(b) (certain acquisitions of real property assets; used facilities) to the proposed transaction. In particular, we discussed whether the exemption was available to the transaction I described even though Company A, the current lessee, was not the operator of the facility when it originally went into service but has been the operator of the facility continuously since 1999.

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Based on the facts described above, you agreed that the transaction would qualify as exempt from Premerger Notification and Report filing under the HSR Act because the proposed transaction was in the spirit of the exemption provided under § 802.2(b) of the HSR Regulations, 16 C.F.R. § 802.2(b).

Thank you very much for your time, and please let me know at your earliest convenience if I have summarized our conversation incorrectly or if you have any concerns regarding the applicability of the HSR Act to this transaction. I can be reached at 202-828-5847.

Very truly yours,



AGREE -
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