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802.2(h)

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CONFIDENTIAL

December 3, 2007

VIA ELECTRONIC MAIL

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR Exemption for Warehouses and Incidental Assets

Dear Mike:

In follow-up to our conversation on November 27, 2007, I am writing to confirm my understanding that the proposed acquisition described below is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Proposed Transaction

Pursuant to a proposed transaction, Acquiring Person intends to purchase from Sellers various companies that are commonly controlled. The businesses to be acquired, the Target Businesses, collectively provide services including: stevedoring, temperature controlled and ambient warehousing, overland transportation, and import/export and FDA inspections. The businesses offer integrated logistics solutions so that clients do not need to negotiate and manage separate agreements for services such as stevedoring, warehousing and transportation services. However, clients can and do purchase from the Target Businesses services such as warehousing without the purchase of other services.

The value of the overall transaction exceeds $100 million. The Acquiring Person has conducted a fair market valuation with respect to the portion of the transaction that is exempt under the HSR Act's Warehouse Exemption, 16 C.F.R. § 802.2(h), and with respect to the portion of the transaction that is potentially reportable. Specifically, the Acquiring Person, for purposes of its fair market valuation, has categorized each business unit within the Target Businesses as either exempt or non-exempt. Under the fair market valuation, the non-exempt business units, those that would not consist solely of warehouses and assets incidental to the ownership of warehouses, will not in aggregate exceed $59.8 million, the HSR size-of-transaction threshold.

The Acquiring Person conducted its fair market valuation in the following manner. First, the Acquiring Person treated the fair market value of all of the Target Businesses taken together as equal to the purchase price given that this is an arm's length transaction and the Target Businesses are transferring at this price. Next, each business unit was valued based on a net present value, NPV, of

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cash flow expected to be generated by that business unit over a many year period. The NPV of each business unit was then divided by total NPV of all the business units to determine the percentage of the total value that each business unit comprised. The percentages were then summed for the non-warehouse components to determine the percentage of total value comprised by the non-exempt business units. The percentage of total value comprised by the non-exempt business units was then multiplied by the purchase price to determine the fair market value of the non-exempt components.

Acquiring Person performed its valuation on a business unit-by-business unit basis rather than on an asset-by-asset basis because it values the businesses based on the cash flows expected to be generated by them, not based on the value of individual assets. Had Acquiring Person performed the valuation on an asset-by-asset basis, it very well may have reached different warehouse versus non-warehouse values (although not necessarily a different conclusion as to reportability under the HSR Act).

The business units that Acquiring Person is treating as exempt offer various services associated with the warehouse in those business units including: freight handling (to load and unload trucks bringing freight to and from the warehouses), storage, blast freezing, freight consolidation, packaging, customs related services, FDA inspection services and USDA import/export inspection services.[1]

Conclusions

You confirmed the following:

- The transaction described above is exempt under the HSR Act.
- The fair market valuation methodology described above is an acceptable way to conduct the valuation for HSR Act purposes.
- The acquisition of warehouses described above is exempt from the HSR Act pursuant to 802.2(h), notwithstanding the exception in that exemption (to the effect that a warehouse acquisition is not exempt "when the ...warehouse is to be acquired in an acquisition of a business conducted on the real property"). The exception to the exemption does not apply where, as here, the business conducted on the real property is itself the operation of a warehouse and services incidental to warehousing. The various services offered by the warehouses – storage, blast freezing, freight consolidation, packaging, customs related services and FDA inspection services – are considered incidental to the warehouse business and do not change the exemption available for warehouses and incidental assets. We also

[1] We did not mention freight handling (to load and unload trucks bringing freight to and from the warehouses) and USDA import/export inspection services during our call but believe that the offering of these services by the warehouse businesses does not impact the HSR exemption.

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believe that freight handling (to load and unload trucks bringing freight to and from the warehouses) and USDA import/export inspection services offered by the warehouse businesses likewise are incidental to the warehouse business and do not change the exemption available for warehouses and incidental assets. Please let us know if you disagree.

- Exempt assets incidental to the ownership of warehouses include: lift trucks, fork lifts, refrigeration equipment, racks, assets for food preparation/packing services and customs related services. We also understand that exempt assets incidental to the ownership of the warehouses include other assets used to offer the various services described in the prior bullet point above.

- Pursuant to 16 C.F.R. § 802.4, the Warehouse Exemption remains applicable whether the transaction is structured as the acquisition of non-corporate interests (e.g., limited liability company interests or limited liability partnership interests) or the acquisition of voting securities.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

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AGREE
BN
12/3/07

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