

802.2(c)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, September 10, 2009 7:21 PM
To: Verne, B. Michael
Subject: HSR Discussion re 802.2(c)

Mike,

Thank you for taking the time to speak with me today regarding whether an HSR filing will be required in connection with a proposed transaction. Below is a summary of the hypothetical fact pattern we discussed and my request for confirmation of the HSR analysis.

Our client, Company A, would like to acquire the assets that constitute a resort and casino project in [REDACTED] that was never completed. These assets are held by entities that are now in bankruptcy. Alternatively, Company A may seek to acquire the interests in the bankrupt entities that hold the assets that constitute the resort and casino project.

Company A would provide the bankrupt entities with debtor-in-possession financing that would provide funds for the administration of the bankruptcy estate and would permit the bankrupt entities to close up the property, so that the construction works that have already been done would be protected from the elements. Company A would then seek to buy either the assets held by the bankrupt entities or the interests in the bankrupt entities in a sale pursuant to Section 363 and 365 of the U.S. Bankruptcy Code (11 U.S.C. §§ 101 et seq.) or pursuant to a plan of reorganization under the U.S. Bankruptcy Code. For the purposes of this analysis, we assume that the size-of-transaction and size-of-person tests will be satisfied.

Eventually, Company A would complete the resort and casino project, but there is currently no plan or schedule for completion of the project, the timing of which will largely depend on the business conditions in [REDACTED] and the credit markets. Company A estimates that completion of the project will require additional investments of more than \$1 billion.

The proposed transaction would be exempt as an acquisition of "unproductive real property." The assets to be acquired (or the assets held by the entities to be acquired) are "unproductive real property, including raw land, structures or other improvements, [...] that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition." As a result, their acquisition is exempt from the requirements of the HSR Act under 16 C.F.R. § 802.2(c).

Under 16 C.F.R. § 802.4, the proposed acquisition would be exempt even if Company A were to acquire the interests in the bankrupt entities that hold the assets that constitute the resort and casino project and whose acquisition is exempt under 16 C.F.R. § 802.2(c), since these entities do not hold non-exempt assets with an aggregate fair market value of more than \$65.2 million.

Please let me know if this accurately reflects our discussion.

Thanks and best regards,

[Redacted]

*AGAEI
B
9/15/09*

[Redacted]

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