

Rule 802.63

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October 19, 1990

Mr. Dick B. Smith
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

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FEDERAL TRADE COMMISSION

Confirmation Letter

Dear Mr. Smith:

This letter is written to confirm our telephone conversation of October 18, 1990 regarding whether a proposed transaction is exempt from the filing requirements of the Hart-Scott-Rodino Act. Following our discussion of the proposed transaction, you informed me that the transaction described below would be exempt from the filing requirements of the Hart-Scott-Rodino Act pursuant to 16 CFR § 802.63 because it involves a bona fide sale/leaseback between non-competitors.

The proposed transaction involves the following facts:

Company A (Buyer) and Company B (Seller) each have assets in excess of One Hundred Million Dollars (\$100,000,000.00). Company B, a savings and loan association, proposes to sell an industrial building/warehouse to Company A for Thirty Five Million Dollars (\$35,000,000.00).

The proposed transaction involves a leaseback from Company A to Company B, as well as an option to purchase throughout the term of the lease. The transaction is a genuine sale and leaseback and involves a reasonable rate of return. The lease term is 15 years, with 11 five-year options to extend at a fair market rental rate. The option to purchase is based on fair market value.

The building was purchased by Company B in 1988 for use in its operations. The building has been substantially

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remodeled and Company B has recently commenced using portions of the building for its operations. The building includes no retail space. Company B has received no rental income and has no leases on the building. Company B is selling the asset in order to generate cash.

Company A is not a competitor of Company B. Company A's ordinary business involves owning and operating commercial buildings and Company A has previously engaged in sale/lease-back transactions. Therefore, Company A is involved in this transaction as part of its ordinary course of business.

In addition to concluding that a transaction based on these facts would be exempt from the filing requirements under § 802.63, you indicated to me that the parties should be aware that exercising the option to purchase may trigger filing requirements.

Upon your review of this letter, please call the undersigned to confirm that the proposed transaction described above is exempt from the filing requirements of the Hart-Scott-Rodino Act.

Very truly yours,
[Redacted Signature]

10/30/90 Received [Redacted]
that this transaction is exempt
from reporting requirements
under our interpretation of § 802.6
in that it is a bona fide
sale/lease back in the ordinary
course of business of Company A
and A and B are not
competitors.
RRL