

Rule 802.63(a)

November 8, 1990

BY HAND

Richard B. Smith, Esq.  
Premerger Notification Office  
Federal Trade Commission  
6th and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Section 802.63(a) -- [REDACTED]

Dear Mr. Smith:

I am writing to confirm the substance of our telephone conversation on November 7, 1990 in which, based on the facts I provided you, which are outlined below, you concluded that a Hart-Scott-Rodino filing was not required for the described transaction.

Company A, a wholly-owned subsidiary of Company B, is a credit company and in the ordinary course of its business engaged in lease financing and other bona fide credit transactions with Company C. Company A holds a security interest in all of Company C's assets as collateral for its loans to Company C. Company C is in default on its repayment obligations to Company A. In lieu of foreclosing on these assets, Company A and Company C have arranged a bona fide debt work-out as follows: Company C will turn over and sell all of its assets to Company B, the UPE of Company A. Company C will thereupon be relieved of liability for the lease financing and other credit transactions.

Neither Company A nor Company B is a competitor of Company C. However, Company B intends to hold and operate the assets received from Company C as a going concern.

As we discussed, you concluded that the transaction was exempt under Section 802.63(a).

Because the parties are taking immediate steps in reliance on our conversation and the conclusion that the transaction described above does not require notification under the Act, I would appreciate receiving from you as soon as possible your

[REDACTED]

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confirmation that this letter accurately summarizes our conversation and the above-described transaction is exempt.

Sincerely,

[REDACTED]

[REDACTED]

SBP, at 32502, states that 802.63 exempts "acquisitions by creditors in bona fide credit transactions entered into in the ordinary course of the creditor's business, of collateral, in foreclosure or upon default."

11/8/90 - advised [REDACTED] that 802.63 applied and no request was necessary. However, if A or B were a competitor of C, a different result would occur. Our view is that a creditor cannot foreclose on the assets of a competitor in the ordinary course of its (the creditor's) business.

Richard Smith