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March 11, 1991

Mr. Richard B. Smith
Federal Trade Commission
Premerger Notification Office
Room 303
6th Street and Pennsylvania Avenue
Washington, D.C. 20580

PREMERGER
NOTIFICATION
OFFICE

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Re: Timberland transaction

Dear Mr. Smith:

This letter will confirm our telephone conversation regarding a proposed sale of timberland by our client and the availability of an exemption for that transaction from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and the related Rules (the "Rules").

As we discussed, our client proposes to sell a significant amount of timberland to an unrelated third party for a total purchase price of [REDACTED]. This real estate is contained in more than [REDACTED] separate and distinct tracts spread over numerous counties in [REDACTED] states. The sale is an arms-length transaction between a willing seller and a willing buyer.

It is our understanding that a filing under the Act will not be required for this transaction because a substantial part of the transfer is exempt from the Act under the provisions of section 7A(c)(1) of the Act regarding the transfer of goods or realty in the ordinary course of business, and the remainder of the transaction is below the minimum dollar value provisions of Section 7A(a)(3)(B) of the Act and section 802.20 of the Rules.

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After discussions with you, it is our understanding that timberland is considered to be income-producing realty not covered by the 7A(c)(1) exemption if there have been timber cutting and sales activities on that land. Because of the difficulty of determining whether there have ever been any timber sales from a particular tract, we understand the Federal Trade Commission Premerger Staff has taken the position that if it can be established that no timber has been harvested on a certain tract within the last five years, that tract will be deemed not to be income-producing and will be covered by the 7A(c)(1) exemption. We also understand that when a sale of timberland or other real estate involves certain tracts that are deemed to be income-producing and others that are not, the purchase price may be allocated between the income-producing realty and the non-income-producing (exempt) property for purposes of testing whether the transaction is below the minimum dollar value limitations of the Act and the Rules.

The proposed transaction involves the purchase and sale of timberland by two parties that hold significant amounts of such property, and the sale does not involve all or substantially all of the seller's total assets or of the seller's timberland. (Less than [REDACTED] of the seller's assets are being sold.)

We have received detailed information from the seller regarding timber sales from the tracts to be transferred. The seller has only identified [REDACTED] worth of tracts on which it can establish that harvesting has taken place in the past five years. In fact, the seller's records show that there are at least [REDACTED] separate tracts involved in the sale on which no timber harvesting has occurred since the time these tracts were acquired by the seller, and all of these tracts have been owned by the seller for at least five years. Well over [REDACTED] of the purchase price can be allocated to these non-income-producing tracts. This means that, at most, just over [REDACTED] of the realty would be deemed to be income-producing. It seems clear from the above information that the assets to be transferred that are not exempt from the Act have a fair market value of substantially less than \$15,000,000 (perhaps as little as [REDACTED]).

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Based on the foregoing, it is our understanding that the proposed transaction is exempt from the filing requirements under the Act. Therefore, neither party to the transaction intends to file a Notification and Report Form with regard to the transaction. If any of our understandings outlined in this letter are incorrect based on the facts described herein, please contact me immediately.

We appreciate your assistance and cooperation.

Sincerely yours,

[REDACTED]

[REDACTED]

3/18/91 - advised [REDACTED]

that consideration being paid for non-income producing tracts can be excluded from size of transaction if such tracts are separate and distinct from income producing tracts. He said they were.
RBSmith