

7A(c)(1); 802.1(b)

November 18, 1991

Richard B. Smith, Esq.  
Premerger Notification Office  
Room 312, Headquarters Building  
Bureau of Competition  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Applicability of "Ordinary Course of Business"  
Exemption To Proposed Sale of Lease Receivables

Dear Mr. Smith:

This letter is to confirm the advice you provided in our telephone conversation of this date respecting the "ordinary course of business" exemption under Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). As we discussed, our firm represents [REDACTED]

[REDACTED] a wholly-owned subsidiary of [REDACTED] and a third-tier subsidiary of [REDACTED] is engaged in financing and leasing a variety of commercial and industrial equipment, including such equipment as trucks and trailers, computers, railcars and medical equipment. From time to time, [REDACTED] has purchased lease and loan receivables from other financial organizations and it has also on occasion sold and/or brokered portions of its holdings of such receivables to other financial organizations.

[REDACTED] is presently considering the sale of a portfolio of [REDACTED] lease receivables. These leases all involve trucks. The proposed Acquiring Person is another firm engaged in commercial financing (including the financing and leasing of trucks). The value of the consideration to be paid for these lease receivables would be approximately [REDACTED] million and the Size of Person Test would be met. We are advised that, as part of its financing business, the

[REDACTED]

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Acquiring Person purchases and sells lease portfolios of the type involved here with some frequency.

As we discussed, the proposed acquisition involves the transfer of [REDACTED] rights in bona fide financing arrangements, including its security rights in the underlying collateral consisting exclusively of trucks. The identity of the account lessees (i.e., the users of the trucks) will not change upon sale of this portfolio. Taking into account the type of equipment financed, these leases are considered to be long term, rather than short term leases. As is the case in all [REDACTED] leases, the lessees have the right to purchase the leased assets at the end of the lease term at a fixed price which may be below its then fair market value.

We are further advised that neither the Acquiring Entity nor any other entity within the Acquiring Person is a common carrier or contract carrier. Finally, the proposed acquisition would not result in the Acquiring Person holding all or substantially all of the assets of Equipment Leasing or any operating division thereof. Based upon September 30, 1991 financials, the lease receivables in question account for less than [REDACTED] of the assets of [REDACTED] and only about [REDACTED] of [REDACTED] portfolio of [REDACTED] leases. Further, Equipment Leasing continues to engage in [REDACTED] leasing and the leasing of trucks from its headquarters in [REDACTED] and from certain other sales offices in the U.S.

Based upon the foregoing facts, it is our understanding that the staff of the FTC Premerger Office is of the view that the proposed acquisition is exempt from the premerger reporting requirements of the Act by virtue of the "ordinary course of business" exemption set forth in Section 7A(c)(1) of the Act. Should you have any questions, or if our understanding respecting the applicability of the exemption is incorrect, I would very much appreciate your contacting me as soon as possible as the sale of the portfolio by [REDACTED] is presently expected to occur on [REDACTED]. If we do not hear from you, we will assume that our understanding of the FTC staff's view is correct.

As always, we very much appreciate your assistance and guidance.

Sincerely yours,

11/19/91 - called [REDACTED] Advised that since sale involved less than all of Equipment Leasing's rights in bona fide financing arrangements (and buyer does not engage in commercial trucking activities, although it may use some trucks in its day-to-day business) the transaction is exempt under sections 7A(c)(1) and 802.1(b).