

7A(c)(1)

[Redacted]

[Redacted]

[Redacted]

December 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 Sale of Lease and Loan Receivables

Dear Mr. Smith:

This letter is to confirm the advice you provided in our telephone conversation of today, in which [Redacted] also participated, 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, [Redacted] and its subsidiary, [Redacted] (collectively "Seller") are engaged in financing and leasing a variety of commercial and industrial equipment.

Seller is presently considering the sale of a portfolio of 27 [Redacted] under lease to the operators thereof, together with the leases thereof, and the assignment of rents under leases of an additional 19 [Redacted]

[Redacted] held currently by [Redacted] and [Redacted]

The proposed Acquiring Person is also engaged in commercial leasing. The value of the consideration to be paid for the portfolio in question is approximately \$70 million and the Size of Person Test will be met. We are advised that the Acquiring Person frequently and routinely purchases portfolios of equipment and receivables arising from leases thereof.

Richard B. Smith
December 18, 1991
Page 2

The lease receivables in the portfolio arise, with one exception, from true leases in which Seller retains ownership of the underlying assets and the end-users of the assets are truly lessees. One of the leases has been accounted for as a loan/conditional sale. The identity of the account lessees (i.e., the users of the [REDACTED] 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. We are also advised that neither the entity making the acquisition nor any other entity within the Acquiring Person competes with operators of [REDACTED]

The proposed acquisition will not result in the acquisition of all or substantially all of the assets of [REDACTED] or any operating division thereof. Indeed, only a small portion of the assets of [REDACTED] and of [REDACTED] (individually and together) will be acquired, and, in any event, these units are not separately incorporated nor does either constitute an "entity" as that term is defined in Section 801.1 (a) (2) of the Rules implementing the Act. Moreover, each of these units has been customarily referred to by Seller as a "group" rather than a "division." We note also that neither [REDACTED] nor [REDACTED] is exclusively related to either entity within Seller, and both [REDACTED] and [REDACTED] may write leases and loans on behalf of [REDACTED] or [REDACTED]

Seller will continue after the acquisition to engage in the leasing and financing of various types of equipment from their headquarters in California and from certain other sales offices in the U.S. Seller would be willing in the future to engage in the leasing or financing of [REDACTED] assuming the economic terms of any such proposed arrangements fit Seller's then-existing financial requirements.

Based upon the foregoing facts, it is our understanding that the FTC staff 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. If our understanding is incorrect, we ask that you advise me or [REDACTED] of this fact no later than December 27, 1991. As we discussed, closing of the subject acquisition is presently scheduled to occur on or before December 31, 1991.

[REDACTED]

Richard B. Smith
December 18, 1991
Page 3

As always, we are grateful for your assistance and guidance.

Very truly yours,

[Redacted signature]

[Redacted line]

[Redacted line]

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[Redacted] advises that the [Redacted] are built by a German firm. [Redacted] purchases them and arranges leases with persons needing equipment. Lessee uses this approach rather than purchasing itself. Lessee insures the [Redacted] and has full responsibility for all maintenance and repairs. [Redacted] has the tax advantage of depreciating the asset and Lessee does not need to come up with down payment (which it may not have) to pay for [Redacted] up front. When title reverts to purchaser, it will acquire depreciation benefits. Advise that sale fits within our criteria for exemption of lease financing arrangements under 7 d(e)(1).

RBS

[Redacted line]