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7A(c)(1); 801.15; 801.10

February 19, 1992

Richard Smith, Esq.
Premerger Notification Office
Federal Trade Commission, Room 303
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

VIA TELECOPIER

Dear Dick:

This letter serves to confirm our telephone conversation of Tuesday, February 18, 1992. During that conversation, you, [redacted] and I discussed the "ordinary course" exemption set forth in § 7A(c)(1) of the Clayton Act (the "Act"), as applied to a transfer of interests in undeveloped oil and gas reserves. [redacted] are counsel to the seller, and [redacted] and I are counsel to the buyer. The facts we discussed are as follows:

> B (a person meeting the $10 million size test) has entered into a contract to purchase certain assets from S (an entity controlled by a person meeting the $100 million size test) for an aggregate acquisition price of $15,250,000. Both B and S are engaged in the oil and gas business. The assets being purchased consist of producing oil and gas wells, non-producing properties, gas gathering and processing interests, oil field inventory, and seismic data. Prior to contacting Hart-Scott-Rodino counsel, B and S agreed upon the following allocations for the various types of assets:

Wells	$9,000,000
Non-Producing Properties	$1,000,000
Gas Plant and Gathering System	4,500,000
Inventory	744,000
Seismic Data	6,000

The allocated value of the non-producing properties was further broken down into approximately 68 separate values given to particular interests.

All of the producing and non-producing properties relate to a single basin in [redacted] The oil and gas reserves in that basin generally lie in several distinct formations, each at a different depth below the surface. The non-producing properties being purchased by B relate to non-producing reserves identified by formation and corresponding surface acreage. The non-producing properties are not now, and have never been, revenue-producing.

There is at least one producing well on each of the 640-acre sections involved in the transaction. In some instances the non-producing properties are in formations other than the formation from which a given well is producing. In other instances a well is extracting oil or gas from a formation that is the same formation in which B is acquiring non-producing reserves. However, regulations promulgated by the [redacted] establish spacing units to assure each propertyholder's opportunity to obtain his fair share of production.

S will transfer the non-producing interests to B by way of lease assignments that will typically encompass both producing and non-producing interests in a single instrument of assignment. However, the respective interests are economically segregable and can be conveyed separately (indeed, comparable interests often trade separately), and in this transaction B and S have, in fact, economically differentiated the producing interests from the non-producing ones.

Over time, B plans to develop the non-producing properties. This will entail drilling additional wells and, in some cases, "re-completing" existing wells into non-producing formations (i.e., modifying them to permit extraction of reserves from a formation other than the one originally exploited).

The assets being sold by S do not constitute all or substantially all of its assets or those of an operating division of S.

Given the facts set out above, it is my understanding that the Federal Trade Commission's Premerger Notification Office concurs with B's position that the acquisition of the non-producing interests is exempt under § 7A(c)(1) of the Act and therefore that B may, pursuant to 16 C.F.R. § 801.15, subtract the allocated value of the non-producing properties from the total acquisition price before determining whether the acquisition price exceeds

$15,000,000. On that basis, the acquisition price is $14,250,000 and thus does not meet the size-of-transaction test.

B recognizes that, pursuant to 16 C.F.R. § 801.10, the value of assets to be acquired is the greater of the acquisition price or fair market value. B's management has informed me orally that they are not aware of any reason why the fair market value would diverge from the acquisition price in this transaction. Nevertheless, B will proceed to make a formal determination of fair market value in accordance with 16 C.F.R. § 801.10(c)(3). In so doing, B may disregard the fair market value of the non-producing properties. Assuming that the value as determined does not exceed $15,000,000, the overall transaction will not be reportable.

Since B is not purchasing substantially all of the assets of an entity or of an operating division thereof, neither the last proviso of Interpretation 24 in the Premerger Notification Practice Manual (1991 ed.) nor 16 C.F.R. § 802.1(b) is even arguably pertinent to the analysis set forth above.

If this letter does not correctly reflect our conversation or misstates the views of the Premerger Notification Office, please contact me as soon as possible, since this transaction is scheduled to be closed on April 1, 1992, and if a filing is required it will have to be made promptly. Unless I hear from you to the contrary, I will continue to advise my client, B, in accordance with the analysis set forth above. Thank you very much for your consideration.

Sincerely yours,

[redacted]

cc: [redacted]

2/21/92 Advised [redacted] that the PMN office was of the view that the $1MM paid for non-producing properties could, under § 802.15, be excluded from the acquisition price since, in our view, such properties had not produced a stream of income and thereby qualified as "realty".

R B Smith