[redacted]

Acquisition of real property which is exempt is allowable even though transaction of all [redacted] the [redacted] constitutes sale really to the [redacted] not aggregate with [redacted] + since they are valued at less than $15MM, no premerger filing is required.

802.1 (b)

See #222 in Premerger Notification Practice Manual

December 9, 1994

VIA FACSIMILE

Mr. Victor L. Cohen
Premerger Notification Office
Federal Trade Commission, Room 310
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Cohen:

This letter serves to confirm our telephone conversation of Wednesday, December 7, 1994. During that conversation, you and I discussed the "ordinary course" exemption set forth in 7A(c)(1) of the Clayton Act (the "Act"), as specified to a transfer of interests in undeveloped [redacted] e facts we discussed are as follows:

B has entered into a contract to purchase substantially all of the assets of S, a limited partnership, for an aggregate acquisition price of $15,966,200. Both B and S are engaged in th[redacted]he assets being purchased consist of producing [redacted] non-producing acreage. Prior to contacting Hart-Scott-Rodino counsel, B and S agreed upon the following allocations for the various types of assets:

Producing [redacted] easehold	$11,708,721
Non-Producing Leasehold	$ 4,257,479

The allocated value of the non-producing leasehold was further broken down into approximately 80 separate values given to particular acreage positions. The value of this non-producing leasehold is economically separate from the producing properties.

The non-producing properties being purchased by B relate t[redacted] interests which have value based on the possibility of [redacted] These non-producing properties are not now, and, to our

[redacted]

knowledge, have never been, revenue-producing. While these acreage positions may be contained in a lease that includes producing properties, the portion of allocated value for the non-producing leasehold has been assigned t[redacted] ch cannot b[redacted]

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 Section 7A(c)(1) of the Act and therefore that B may, pursuant to 16 C.F.R. Section 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 $11,708,721 and thus does not meet the size-of-transaction test.

B recognizes that, pursuant to 16 C.F.R. Section 801.10, the value of assets to be acquired is the greater of the acquisition price or fair market value. Given that the transaction was the culmination of an auction process, there is no reason to believe that the fair market value would diverge from the acquisition price of this transaction.

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 December 31, 1994, 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.

[redacted]

[redacted]