

66 802.1(a); 802.1(a)(1)

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June 10, 1996

VIA FACSIMILE
ORIGINAL VIA FEDERAL EXPRESS

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

Re: Reportability of Acquisition of Equipment Leases

Dear Mr. Smith:

We very much appreciate your time and assistance during our May 30, 1996 conference call. Pursuant to your invitation, we are writing to confirm the substance of that conversation.

We represent a U.S. corporation which is a subsidiary of a major U.S. industrial company and engaged in a variety of financial service activities, including the equipment financing business ("seller"). The seller is actively negotiating, and expects to execute immediately, an agreement with the U.S. subsidiary of a [redacted] corporation, which also engages in the equipment financing business ("buyer"), to sell a portfolio of equipment leases and installment sales contracts. Pursuant to 16 C.F.R. § 803.30, we have requested an informal interpretation from the Staff confirming that this transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

[redacted]

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The size-of-parties and the size-of-transaction test are satisfied in the subject transaction. The issue is whether the transaction is exempt under section 7A(c)(1) of the Act and Section 802.1 of the Rules, as recently amended, because it is "in the ordinary course of business."

First, you advised us that the acquisition is not disqualified from the statutory exemption by virtue of § 802.1(a), because it is not the "acquisition of all or substantially all the assets of an operating unit" The buyer will acquire all of the business and assets (except for certain accounts which by agreement will not be transferred) of the seller's "custom vendor finance" group. The "custom vendor finance" group provides financing (by means of leases and retail installment sales contracts) for relatively small (\$5,000 - \$250,000) items of equipment manufactured by parties other than the seller or an affiliate of the seller. This includes items such as [REDACTED] equipment, and currently represents less than 5% of the revenue of the seller. None of the leases or installment sales contracts which are to be sold relate to consumer goods or transactions. The seller will remain in the equipment financing business, including the financing of business machine products manufactured by its parent corporation and affiliates and a wide variety of "larger ticket" products manufactured by others (e.g., [REDACTED]).

No real estate is being transferred as part of this acquisition. Initially, for an interim period of approximately six months, the buyer will occupy space in offices of the seller pursuant to an administrative services agreement, but the buyer currently expects to relocate the business to its own premises thereafter. The seller will continue to do business from this location for the other +95% of its business. Approximately 14 employees of the seller who currently spend all or part of their time on matters relating to the "custom vendor finance" group are expected to be hired by the buyer.

Because the goods which are the subject of the leases and other financing contracts are also being acquired as part of this transaction, we also discussed in our conference call with you the application of § 802.1(d), concerning used durable goods. That section provides that an acquisition of used durable goods is an acquisition in the ordinary course of business if the goods are not acquired as part of the sale of an operating unit and if any of four specified criteria are met. In this case, subsection (d)(1) would apply. That subsection applies to "goods [which] are acquired and held solely for the purpose of resale or leasing to an entity not within the acquiring person" The buyer in this case is in the equipment financing business, and will acquire the underlying goods solely for the purpose of leasing to persons or entities not within its person.

We understand that, under the facts and circumstances set forth above, it is the position of the Staff that this transaction is exempt from the reporting obligations of the Act

[REDACTED]

Richard D. Smith, Esq.

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pursuant to § 7A(c)(1) of the Act and § 802.1. Please confirm this conclusion as soon as you are able to confer with your colleagues in the Premerger Office. We request that this letter and the information disclosed in our telephone conference be treated as confidential under applicable law and regulations.

Thank you for your consideration and assistance. If you have any questions or require any assistance, please feel free to call (collect) me at the number listed on the letterhead or my partner [REDACTED]

Very truly yours
[REDACTED]

cc: [REDACTED] (via facsimile)

6/12/96 Advised writer that no "operating unit" of the seller appears to be sold. Seller will continue to ~~sell~~ lease and finance business machine products which it will produce as well as large ticket items ~~and~~ produced by others. No specific facility or location is being transferred. Consequently, 802.1 (d)(1) [and perhaps (d)(2)] would apply and exempt transfer to buyer which will continue to lease or hold the assets subject to the retail equipment sales contracts. (Writer advised that there is no problem in making the seller, in appropriate form, available to the public through normal FOIA channels.)
R.D. Smith