

802.2(e)

802.2(f)

February 23, 1999

**VIA FACSIMILE  
AND FEDERAL EXPRESS**

Ms. Nancy Ovuka  
Federal Trade Commission  
Premerger Notification Office  
6<sup>th</sup> and Pennsylvania Avenues N.W.  
Washington, DC 20580

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FEB 23 1999  
FEDERAL TRADE COMMISSION

Re: Nonreportability of Transaction

Dear Nancy:

This letter will confirm our conversations during the last few weeks regarding the nonreportability of the following transaction under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act"), as codified at 15 U.S.C. Section 18a, and the rules promulgated thereunder:

Company A is the concessioner under a 30 year concessions contract with a governmental entity that provides it with the right to operate hotel facilities and provide related services on specified land within a national park. The concessions contract will expire on December 31, 2002. Company A operates two hotels and other improvements on the land and holds a

"possessory interest"<sup>1</sup> in the buildings and improvements. In the event that the government does not renew the concession contract, the contract and federal statutory (16 U.S.C. § 20e) provisions provide that the government will pay the concessioner (or the concessioner's successor, as the case may be) the fair value of the buildings and improvements, as determined by the majority vote of a board of three appraisers. Each hotel contains a restaurant as well.

Outside the park, on land owned by Company A, is a golf course. The golf course contains a pro shop and a restaurant.

Company A also owns a campground consisting of heated cabins that are rented on terms similar to that of a hotel and recreational vehicle facilities. The value of the campground is approximately \$5 million, of which a significant portion is attributable to the cabins.

Company B proposes acquiring all of Company A's interest in the hotel, golf course, and campground, including the ancillary operations, for total consideration of approximately \$50 million. There is no premium being paid to Company A for the value of the concession contract.<sup>2</sup>

As we discussed, the acquisition of the assets relating to the hotels (including the restaurants) and the cabins on the campground would be exempt under 16 C.F.R. § 802.2(e). Moreover, the acquisition of the golf course, including the pro shop and restaurant, would be exempt under 16 C.F.R. § 802.2(f). The campground itself, including the recreational vehicle facilities, would not be exempt. There is no premium being paid toward the concession contract; therefore, the value of the contract would not be included in the valuation of the transaction for HSR Act purposes. Since the total value of the nonexempt assets is less than \$10 million, the transaction does not meet the size-of-transaction test and need not be reported under the HSR Act.

<sup>1</sup> A possessory interest can be pledged as security, may be transferred as part of a transfer of a concessions contract, is not extinguished by contract expiration or termination, and may not be taken for public use without just compensation.

<sup>2</sup> In addition, Company B will be acquiring from Company A a public utility company that services Company A's facilities and adjacent residential properties, a supermarket, and three gasoline stations that combined are valued at

[REDACTED]  
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Please let me know immediately if I have in anyway misunderstood your advice regarding the nonreportability of the above transaction. As always, I appreciate your prompt and courteous advice. Best regards.

Sincerely,  
[REDACTED]  
[REDACTED]  
[REDACTED]

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under \$5 million. Although these assets are non-exempt for HSR Act purposes, they are well below the size-of-transaction threshold.