

802.1 (a)

June 22, 1999

**VIA HAND DELIVERY**


Richard D. Smith, Esquire  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Sixth Street and Pennsylvania Avenue, N.W.  
Room 303  
Washington, D. C. 20580

Dear Mr. Smith:

This letter serves to follow-up on a recent conversation you and I had regarding the definition of an "operating unit" as that term is used in 16 C.F.R. § 802.1. Specifically, I would like to confirm that the FTC staff would not consider the sale of a particular portfolio of leases by the Seller in the transaction described below to be the sale of an "operating unit" under § 802.1

The Seller in this particular transaction is a lease finance company which provides financing for the purchase and lease of numerous types of assets. The Seller is currently in negotiations to sell to another lease finance company a portfolio of computers (the "Computer Portfolio") currently on lease to a number of unaffiliated third parties.

For internal operating purposes, the corporate structure of the Seller is broken down into several divisions operating out of separate offices. The administration of the Computer Portfolio is the responsibility of a division of the Seller known as the Operations Center. There are approximately 60 employees currently assigned to the Operations Center all of whom work from the same office and report to the same division manager. In addition to the Computer Portfolio, employees working at the Operations Center are responsible for the administration of a number of other portfolios including portfolios of industrial equipment leases, office automation leases, fleet leases, photo finishing equipment leases, industrial process control equipment leases, material handling equipment leases, and telecommunications equipment leases.

  
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The Seller employs three individuals dedicated to the full time servicing of the Computer Portfolio (although the complete administration of the Computer Portfolio, including the accounting of revenues, etc., requires the input of at least a dozen employees). Of the employees dedicated to the Computer Portfolio, two are assigned to the Operations Center and work from its one office, and the other is assigned to a separate division that handles sales for the Seller, and works from his home. The Purchaser has made offers of employment to two of these individuals. Should these two individuals decide not to join the Purchaser, they are expected to remain employees of the Seller and continue working either for the Operations Center or some other division of the Seller as will the third employee. In addition, the other employees which have had responsibilities relating to the administration of the Computer Portfolio (as referred to in the above parenthetical) will remain assigned to the Operations Center and continue their work relating to other portfolios.

After this transaction, the Operations Center will remain in existence as a division of the Seller, will continue to operate out of its same location, will continue to service and administer a number of other portfolios including those portfolios listed above, and will continue to be assigned approximately 60 employees. And, the Seller will continue to be a lease finance company which provides financing for the purchase and lease of numerous types of assets. However, pursuant to a non-compete which is to be made part of this transaction, the Seller, with limited exceptions, will cease to provide lease financing for personal computers to unaffiliated third parties.

For accounting purposes, the revenue from the aforementioned lease portfolios owned by the Seller and administered by the Operations Center, including revenue from the Computer Portfolio, is aggregated onto one balance sheet. It is possible, however, to segregate the revenues generated by each particular portfolio.

I believe the last time you and I spoke about this issue with respect to this particular set of facts, you had agreed with me that the sale of the Computer Portfolio by the Seller in this transaction would not constitute the sale of an operating unit as that term is defined by § 802.1. I believe that this letter incorporates the details of the transaction which I described to you over the phone. I hope to receive additional confirmation from your office regarding the conclusions we have reached within the next ten days. However, if I do not hear from you, I will assume, based on our previous phone conversation, that this conclusion is correct, and I will advise the Seller that it may proceed with this transaction.

[REDACTED]  
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Please call me if you need any additional information or clarification as you analyze this issue.

As always, I appreciate your assistance in these matters.

Sincerely yours,  
[REDACTED]

6/23/99 Called writer and advised  
that sale of the computer lease portfolio would  
not constitute the sale of an "operating unit."  
RDS Smith