

02/03

802.2(g)

ATTORNEYS AT LAW

SENDER'S DIRECT DIAL

OUR FILE NUMBER

August 17, 1999

VIA FACSIMILE: 202-326-2624

Alice Villavicencio, Esq.
Federal Trade Commission
Bureau of Competition
Premerger Office
Room 301
Washington, D.C. 20580

100 2 11 1999 10 00

Re: 16 CFR §802.2(g)

Dear Ms. Villavicencio:

Per my call I sometimes represent clients who are in agricultural businesses. The question has come up whether or not certain sales or acquisitions of agricultural property, which would otherwise require pre-merger notification, would be exempt from pre-merger notification under 16 CFR §802.2(g).

The real estate and improvements in question (the property being either bought or sold) in each case produce agricultural crops under SIC Major Group 01 and 02. The farms and buildings on the farms being bought or sold are being used exclusively to produce revenue through sale of agricultural crops in SIC Major Groups 01 and 02.

The question presented is whether the apparent exemption under 16 CFR §802.2(g) is limited or eliminated because these agricultural properties may include as part of the real estate a packing shed or building devoted to packing and shipping of the agricultural commodity being grown on the real estate.

The packing and shipping I am describing consists of putting fresh fruits or vegetables in boxes or other containers for shipping and delivery. As an example, fresh fruits or vegetables grown on the real property may, in a packing shed on the property, be sorted, put in sacks or boxes, and shipped. No freezing, cooking or canning is involved. The portion of the

Ms. Villavicencio, I have written the letter to you. The question is whether the exemption under 16 CFR §802.2(g) is limited or eliminated because these agricultural properties may include as part of the real estate a packing shed or building devoted to packing and shipping of the agricultural commodity being grown on the real estate.

Ms. Alice Villavicencio

August 17, 1999

Page 2

real property devoted to this packing and shipping activity is small, probably less than 10% of total value. In that the produce involved, at least in the case of most fruit and vegetables, is perishable, the purpose of packing the produce is to protect and store the produce while getting it to market.

It seems that in interpreting premerger rule §802.2(g), a packing shed, as I describe above, would be like a barn, greenhouse or enclosed vegetable growing facility, and would be considered an "associated agricultural asset." Its acquisition or sale as part of the agricultural property would be exempt.

If you can give me guidance on this issue, or confirm whether or not the presence of a fruit or vegetable packing shed at the farm will affect the exemptions, I would appreciate it.

Very truly yours,

[Redacted signature]

Called Writer on August 29, 1999.

The listing of the fruits and vegetables in the barn in [redacted] deemed to be an "associated agricultural asset" and is thus exempt under 16 C.F.R. § 802.2(g)