

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Tuesday, November 28, 2023 12:56 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June  
**Subject:** FW: Request for Advice

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**From:** Whitehead, Nora <nwhitehead@ftc.gov>  
**Sent:** Tuesday, November 28, 2023 12:56:20 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Request for Advice

Based on the below, the assets aren't currently rented or held for rent, but are the sites on which the sellers/their affiliates operate a business. As a result, 802.5 is not available.

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**From:** HSRHelp <HSRHelp@ftc.gov>  
**Sent:** Monday, November 27, 2023 11:03 PM  
**To:** Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>  
**Subject:** FW: Request for Advice

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**From:** [REDACTED]  
**Sent:** Monday, November 27, 2023 11:02:23 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Request for Advice

Dear all,

I hope everyone is well and had a nice Thanksgiving holiday. We are evaluating a transaction involving the sale and leaseback of certain land interests (easements) on which sits certain infrastructure (towers) operated by affiliates of Seller.

The transaction will be structured as a sale of the Target Assets to Buyer. As noted above, the Target Assets consist of a portfolio of land interests (perpetual easements) on which sits certain infrastructure (towers) that are operated by affiliates of Seller. The infrastructure (towers) are not Target Assets and are not being sold as part of the transaction. In exchange, Seller Group will receive an upfront payment of cash that is greater than \$445.5 million.

In addition, Seller Group will receive a lease-back for the same land interests, which are necessary to enable the affiliates of Seller Group to continue operating the ground leases for the infrastructure (towers). In exchange for this lease-back, Buyer will receive as rent (i) an annual fixed revenue stream to be paid by Seller Group and (ii) the right to future payments from Seller Group equal to a fixed percentage of any new customer agreements with the affiliates of Seller Group for the operation of the infrastructure on the relevant land interests.

Buyer will not operate the towers on the Target Assets. Other than holding the easements and granting the lease-back to Seller Group (and receiving as rent the revenue streams outlined above), Buyer will not control any of the infrastructure.

Based on our analysis of the precedent to date, we understand this transaction would be an exempt acquisition of investment rental property under 802.5. (See <https://www.ftc.gov/enforcement/competition-matters/2015/07/hsr-rule-8025-investment-rental-property-exemption>; <https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/2104002>.)

Thanks in advance for the guidance and let us know if you have further questions.

Respectfully,

