

Haynes, Lanea

From: Whitehead, Nora
Sent: Monday, July 17, 2017 11:27 AM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Storm, Evan; Gillis, Diana L.; Carson, Timothy; Shaffer, Kristin
Subject: RE: HSR Reportability Question - 802.2(c) and Billboards

Correct.

Nora Whitehead
(202) 326-3262

From: [REDACTED]
Sent: Monday, July 17, 2017 11:23 AM
To: Whitehead, Nora
Cc: Walsh, Kathryn E.; Berg, Karen E.; Storm, Evan; Gillis, Diana L.; Carson, Timothy; Shaffer, Kristin
Subject: RE: HSR Reportability Question - 802.2(c) and Billboards

Thank you, Nora. Could you possibly clarify why 802.2(c) would not apply to billboards that have been in use if they meet the revenue and other thresholds in 802.2(c) (generate less than \$5 million in revenue in last 36 months and not adjacent to non-exempt real estate)? Are billboards considered "non-manufacturing facilities" under 802.2(c)(2)(ii)?

[REDACTED]

[REDACTED]

[REDACTED]

From: Whitehead, Nora [<mailto:nwhitehead@ftc.gov>]
Sent: Friday, July 14, 2017 4:31 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Storm, Evan; Gillis, Diana L.; Carson, Timothy; Shaffer, Kristin
Subject: RE: HSR Reportability Question - 802.2(c) and Billboards

We understand the [1211006](#) informal and update are not clear, and we will update further, but it does not apply to your issue. The exemption in 802.2(c) is not available for real property assets associated with billboards that have been in use in the past 12 months.

Nora Whitehead
(202) 326-3262

From: [REDACTED]
Sent: Tuesday, July 11, 2017 9:58 AM
To: Berg, Karen E.
Subject: HSR Reportability Question - 802.2(c) and Billboards

Hi Karen. We have a reportability question concerning the sale of all the assets of a billboard advertising business and whether the real estate assets may be exempt under the 802.2(c) exemption for unproductive real property.

Since the 2015 informal interpretation on 802.5, the acquisition of real estate used for billboards clearly does not fall under the exemption for investment rental property (<https://www.ftc.gov/news-events/blogs/competition-matters/2015/07/hsr-rule-8025-investment-rental-property-exemption>). There are, however, some interpretations concerning the applicability of 802.2(c): <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1211006>. The original 2004 correspondence indicated that the PNO's position was that 802.2(c) applied (assuming that the requirements of 802.2(c) are met); the 2012 comments from the staff suggest that where all the assets of a business are being acquired, you cannot exempt real property that is part of that business; but, the 2014 update does not list 802.2(c) as one of the parts of 802.2 to which the qualification of "acquiring real property in connection with acquiring a business operated on the property" applies.

Could you please clarify the PNO's current position on the applicability of the 802.2(c) exemption to the acquisition of real property assets that are part of a billboard advertising business where the entire business is being sold?

Many thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]