

802.2(c)
802.3
802.4

[REDACTED]
ATTORNEYS AT LAW
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

November 13, 2001

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This correspondence is a follow-up to our conversation of November 2, 2001 concerning a proposed transaction, the structure of which is as outlined in Enclosure A of this letter.

The factual circumstances described were as follows. Company G is acquiring all of the stock of Companies C, D, and E. A major portion of our discussion focused on the question of whether Companies C, D, and E would qualify as "foreign issuers" under the HSR regulations and we were ultimately advised that they would be viewed as domestic issuers.

The second part of our discussion focused on whether Company G's acquisition of Companies C, D, and E ("Contract One") would be exempt under 16 CFR § 802.4, an exemption which covers acquisitions of voting securities of issuers holding certain assets, the direct acquisition of which is exempt under other exemptions such as the unproductive real property exemption set forth in 16 CFR § 802.2(c) (the "Unproductive Real Property Exemption") and the exemption concerning acquisitions of carbon-based mineral reserves set forth in 16 CFR § 802.3 (the "Oil and Gas Exemption"). In that regard, we provided the following factual information with respect to Company C. First, Company C's assets primarily consist of interests in two production sharing contracts which provide rights to (i) develop and drill gas in offshore waters of a foreign country, and (ii) receive a share of the production from such drilling activities. The gas field in question (the "Field") is quite large and is estimated to contain a producible reserve of around 5 trillion cubic feet of dry gas and several hundred million barrels of condensate. At the present time two platforms are operating in the Field, with a total of five wells producing on a current basis.

[REDACTED]

We understand the following from our discussion with you:

1. Company C's ownership interests in the production sharing contracts will be viewed, for HSR purposes, as the equivalent of ~~ownership~~ of the underlying gas reserves in the Field. To the extent that reserves in portions of the Field have not yet generated any revenues, such reserves will be treated as falling under the Unproductive Real Property Exemption, while those reserves which are currently developed and producing will qualify for the Oil and Gas Exemption (assuming the latter's aggregate value is under \$500 million).
2. In applying the Unproductive Real Property Exemption to Company C's interests in the non-producing properties in the Field, it is not necessary to determine whether, for purposes of 16 CFR § 802.2(c)(2)(iii), such properties are or are not "adjacent to or used in conjunction with real property that is not unproductive real property" as long as any other such adjacent properties are otherwise exempt under the Oil and Gas Exemption. That is, if certain unproductive real property in the Field is adjacent to productive real property in the Field which is part of the transaction but qualifies for the Oil and Gas Exemption, the unproductive real property still qualifies for the Unproductive Real Property Exemption.
3. In determining whether the terms of the Oil and Gas Exemption are met, Company G need focus only on the value of Company C's interests in the developed and producing reserves in the Field. In other words, the \$500 million figure in the Oil and Gas Exemption relates only to the target company (Company C) and not to aggregate assets of the acquiring and acquired entity.
4. On the basis of the foregoing, Company G may acquire all of the voting securities of Company C in reliance on 16 CFR § 802.4 and without the need to make an HSR filing if it is determined by Company G, or its designee, in compliance with the HSR regulations at 16 CFR § 801.10, that: (i) a portion of Company C's assets consists of ownership interests in production sharing contracts which relate to gas properties which have not yet generated any revenues and therefore fall within the Unproductive Real Property Exemption; (ii) another major portion of Company C's assets consists of ownership interests in production sharing contracts which relate to developed and producing oil and gas properties, as to which the value of the reserves, rights and associated exploration or production assets relating to such properties does not exceed \$500 million; and (iii) to the extent that there are any remaining direct or indirect assets

RIGHTS TO

AGREE

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of Companies C, D, and E which do not qualify as exempt assets for purposes of 16 CFR § 802.4, such remaining assets, when taken together with the assets of the LLC owned by Company F, are valued at less than \$50 million.

Although not discussed in our telephone conversation, please be advised that in a separate contract involving Company G and an entity, the ultimate parent of which is also Company A ("Contract Two"), Company G will be acquiring a fifty percent interest in an LLC which owns a ninety percent interest in another LLC which, in turn, owns a methanol production plant. Contracts One and Two are contingent on each other. We understand that (i) no filing need be made for the Contract Two contract since it involves the acquisition of less than 100 percent of each of two LLC's, and (ii) any non-exempt assets related to the methanol plant would not be aggregated with Company C, D, and E's indirect interest in the liquid petroleum gas processing plant for purposes of determining the availability of the exemption in 16 CFR § 802.4 with respect to Company G's acquisition of the voting securities of Company C, D, and E (see numbered paragraph 4 above).

AGREE.

Please contact me as soon as possible at [REDACTED] if you should disagree with any of the views expressed above.

Thank you very much for your assistance.

Sincerely yours,

[REDACTED]

Enclosure

INFORMED THE WRITER THAT I AGREE WITH
HER CONCLUSIONS.

B. Michael Verne
11/15/01

Companies Being Acquired: C, D, and E

Issues:

1. Issuer Status
2. Foreign Issuer Status
3. Exemptions

