

802.5

October 29, 2003

VIA FACSIMILE

Michael B. Verne, Esq.  
Federal Trade Commission  
Premerger Notification Office  
Bureau of Competition  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Telephone Conversations on October 23 & 24, 2003

Dear Michael:

This letter serves to confirm our telephone conversations of Thursday, October 23, 2003, and Friday, October 24, 2003. Pursuant to these conversations, we agreed that under the factual scenario described below, there would be no reporting obligation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act"), 15 U.S.C. §18a. In particular, we agreed that such a transaction would qualify for an exemption pursuant to §802.5 of the HSR Rules, 16 C.F.R. §802.5 (notwithstanding that the size-of-persons and size-of-transaction tests are met).

The facts we discussed are as follows:

Company A owns a number of facilities and leases those facilities to Company B. These facilities include real estate, buildings, and improvements, and are used by B in a service industry. B intends to exit the business it conducts at several of these facilities. B understands

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that A is unwilling to consent to B's subleasing the facilities (or consent to an assignment by B of the lease of the facilities) to third parties. Thus, in order to exit the business, B must purchase the facilities from A, which will enable B to sell them on to third parties. While B plans to sell the facilities to several third parties, B will not be in a position to close these divestitures simultaneously with the closing of B's acquisition of the facilities from A. Thus, B will own and operate the facilities for a period that is expected to vary by purchaser (from several weeks to over six months). Company B has already signed letters of intent to sell two of the facilities, and expects to sign another prior to closing on its acquisition of the facilities. (However, B does not expect that letters of intent will be signed in relation to all of the divestitures of the facilities before the closing of B's acquisition of the facilities from A.) B's purpose in purchasing the facilities is solely to facilitate the disposition of the facilities. For accounting purposes, Company B will reflect the facilities on its balance sheet as assets "held for sale."

Based on our call, I understand that you agree with our view that the acquisition by B (from A) is exempt under §802.5 of the HSR Rules, as B would hold the acquired assets "solely for rental or investment purposes."

I would greatly appreciate if you could call me at [REDACTED] to confirm that this letter accurately summarizes our conversation and your views on this issue. Thank you for your attention to this matter.

Very truly yours

[REDACTED]

AGREE.

*B. Verne*

10/30/03