

802.2(g)

February 6, 2004

VIA E-MAIL: novuka@ftc.gov

Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Washington, DC 20580

Re: (Redacted) Acquisition of (Redacted)

Dear Nancy:

As we discussed with you today, this firm represents a limited liability company (the "Buyer") in connection with its proposed acquisition of the assets of an individual and those of his limited partnership (collectively, the "Seller"). This letter is provided to you to confirm the substance of our telephone conversation of today that the acquisition by the Buyer of certain inline egg production facilities and related support facilities owned by the Seller will qualify for the exemption from the Hart-Scott-Rodino Premerger Notification Filing Requirements provided by Section 802.2(g) of the regulations governing premerger notifications.

Background

The Buyer is a limited liability company ("Buyer") formed earlier this year which then acquired from the Seller a site that consisted primarily of four inline laying complexes, four pullet complexes, a hatchery, breeder layer facilities, breeder pullet facilities, a warehouse, maintenance building and feed mill along with related equipment, inventory and poultry. In addition, there was a minor amount of furniture, furnishings and fixtures, trucks, vehicles and trailers. All of the facilities are on land that was owned by the Seller that, in turn, was acquired by Buyer in an asset purchase. The facilities only produce and market eggs (and pullets) from the owned facilities. No eggs or pullets are acquired from others for resale or processing. All of the laying facilities produce shell eggs for the consumer market. None of these eggs are in any way processed further (they are not "cooked", blended, frozen or dried in any manner). The total contract price for inventory, equipment and all of the buildings was approximately \$26 million. The rooms in which the eggs are washed, sorted and put in packages are estimated to constitute less than 15% of the total purchase price. This acquisition is referenced herein as the "Completed Purchase".

The Seller also owns a second set of complexes and is currently engaged in final negotiations with the Buyer to sell all of the assets of this second set of complexes to the Buyer (the "Pending Purchase"). The physical facilities and assets of the Pending Purchase consist primarily of a 16 barn layer facility, a 14 barn layer facility, 2 pullet complexes (10 barns), pullet facilities, warehouse, a feed mill, along with

related equipment, inventory and poultry. In addition, there would be a minor amount of furniture, furnishings and fixtures, trucks, vehicles and trailers. The facilities only produce and market eggs from the owned facilities. No eggs or pullets are acquired from others for resale or processing. In one of the laying complexes there is a breaking machine (estimated to be worth under \$300,000). Eggs that are cracked, leaking, undersize or otherwise unmarketable at the laying sites in the complexes of this Pending Purchase are all taken to the breaking machine and then the eggs are broken and the liquid eggs are shipped to consumers of those products (companies that utilize eggs in their products). Nothing further is done with the liquid eggs (they are not frozen, mixed with anything or dried). Liquid eggs generate approximately less than 3% of the sales proceeds from the Purposed Purchase assets. The total purchase price allocable to the rooms and equipment in which the eggs are washed, sorted and packaged (or broken) are estimated to constitute less than \$6,000,000 in total or approximately 10% of the total purchase price (estimated to be approximately \$57 million for all assets, including birds and inventories).

The activities that take place at the various complexes (both at the Completed Purchase and the Pending Purchase) can be summarized as follows, most of which are accomplished by as much automation as is reasonably available:

1. Breeder Layer Facilities. Breeding quality hens produce fertilized eggs that are placed in the hatchery. Breeder pullet facilities raise breeding hens from a few days old to approximately 18 weeks of age when they are placed in the breeder layer facilities to produce the fertilized eggs.
2. Hatchery. The hatchery produces the baby chicks and the "hens" or pullets are then placed in the pullet complexes and the males discarded. In some cases (normally a small percentage), some of the baby chicks may be sold to other farmers with similar laying facilities.
3. Pullet Facilities. Future laying hens are received from the hatchery and placed in the pullet facilities to be grown from a few days old to approximately 18 weeks of age when they will be placed in the laying facilities.
4. Laying Facilities. The laying hens are placed in barns at the laying facilities where they are housed and fed, the eggs collected (via conveyor belts), the eggs are then washed, checked for damage, sized and placed in cartons (or boxes) for shipment to purchasers of the eggs. They are then placed in coolers until shipped. The liquid eggs that relate to damaged eggs at the proposed acquisition facility, following their washing and breaking, are placed in coolers and then, in turn, shipped to the purchasers.
5. Feed Mill and Related Warehouses. The feed mills provide feed for the birds. Feed is not sold to third parties. The warehouses and related support equipment is used to store things such as cartons for the eggs, and various farm chemicals and related items needed for the housing and care of the birds or the disposal of wash water and manure.

One hundred percent of the activity relating to the eggs being placed in cartons or broken for liquid eggs, as described, take place on the farm and are produced solely in relation to the farm's production.

The Buyer has obtained the necessary operating permits to operate the facilities.

Applicable Law

Consistent with numerous other agencies of the federal governmental (Department of Labor, FLSA, NLRA and others) it is our understanding that the Federal Trade Commission has exempted agricultural acquisitions from the requirements of premerger notice utilizing similar language to the other agencies. Section 802.2(g) of the regulations exempts acquisitions of agricultural property, assets incidental to the ownership of the property and associated assets integral to the agricultural business activity conducted on the property.

In particular Section 802.2(g) provides "Agricultural property. An acquisition of agricultural property and assets incidental to the ownership of such property shall be exempt from the requirements of the act. Agricultural property is real property that primarily generates revenues from the production of crops, fruit, vegetables, livestock, poultry, milk and eggs (activities within NAICS sector 11). 1. Agricultural property does not include either: (i) Processing facilities such as poultry and livestock slaughtering, processing and packing facilities; or (ii) Any real property and assets either adjacent to or used in conjunction with processing facilities that are included in the acquisition. 2. In an acquisition that includes agricultural property, the transfer of any assets that are not agricultural property or assets incidental to the ownership of such property (cash, prepaid taxes or insurance, rentals receivable and the like) shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition."

The 2002 NAICS Definitions provide under 112310 Chicken Egg Production that "This industry comprises establishments primarily engaged in raising chickens for egg production. The eggs produced may be used as table eggs or hatching eggs." It then provides under the references for Index Entries #112310 Chicken egg production; #112310 Chicken eggs (table, hatching) production; #112310 Cull hen production; #112310 Egg production, chicken; #112310 Eggs, chicken (table, hatching) production; #112310 Layer-type chicken production; and #112310 Started pullet production. #112340 provides for "Chicken hatcheries".

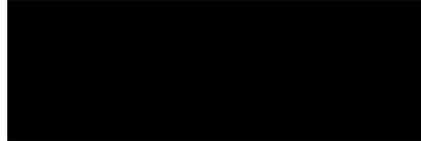
As noted under the factual portion of this letter, the portion of the real property and equipment devoted to packaging and shipping activity is small, and estimated to be approximately 10% of the total value in that the egg products are shipped within a day of being produced.

In summary, based upon the information provided regarding the assets and business to be acquired, we concluded based on your guidance and our application of the exemption to our facts that the agricultural property exemption of 16 C.F.R. 802.2(g) would apply to the proposed acquisition of the Seller's second egg laying facility (as well as the first acquisition). Accordingly, you advised that no HSR filing would be required in connection with the proposed transaction.

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We have written this letter to memorialize our conversation and request that you telephone or e-mail me to confirm the advice set forth in this memorandum. We thank you for your time, consideration and guidance in this matter.

Very truly yours,



2/9/04
Confirmed w/ writer by
telephone that 802.2(g)
exempts this transaction.

NMO

M. Verne concurs.