

7A(c)(1)

[REDACTED]
ATTORNEYS AT LAW

May 12, 2004

Michael B. Verne, Esq.
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

2004 MAY 12 P 4: 17

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

Dear Mr. Verne:

I am writing to confirm our telephone conversation on April 8, 2004, during which I requested your advice as to whether a contemplated transaction was subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

As I advised you, my client is principally a manufacturer of transportation equipment. It also has two financing operations. The first is a "commercial financial services" business which primarily engages in the financing of equipment manufactured by third-parties. The second, and more substantial, financing operation provides financing to purchasers of equipment and other products manufactured by my client.

My client proposes to sell substantially all of the assets of its commercial financial services business to another company that is engaged in the provision of financial services. No assets of the operation engaged in the financing of my client's own equipment will be sold. It is anticipated that the size of the transaction will exceed \$200 million, so the size of persons test of §7A(a)(2)(B) is not applicable. Nevertheless, were it applicable, the size of persons test would be met.

It is expected that the assets of the commercial financial services business to be sold will consist of the following:

1. The "Portfolio Assets" (described below);
 2. A limited amount of tangible personal property used in the operation of the business;
 3. Potentially, certain contracts for the purchase of services related to the business; and
 4. The goodwill of the business.
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In turn, the Portfolio Assets to be transferred will consist of the following:

- A. All lease contracts (including both financing leases and operating leases), loan agreements, promissory notes, financing agreements, security agreements, and chattel paper (the "Financing Assets");
- B. All equipment and other property leased to a lessee-obligor under a lease contract;
- C. Certain assets held for sale or lease (primarily equipment repossessed by or returned to my client at the end of a customer's lease term);
- D. All security interests in collateral granted for the purpose of securing payment under a Financing Asset; and
- E. Each partnership interest, membership interest, shares or other ownership interest in any special purpose entity which is (i) a lessor under a lease contract; (ii) a lender under a loan agreement; or (iii) provides a credit facility to an obligor.

We discussed whether or not the acquisition of the Portfolio Assets would be subject to the reporting requirements of the Act. You advised me that such an acquisition would be exempt from the requirements of the Act pursuant to §7A(c)(1) which exempts "acquisitions of goods or realty transferred in the ordinary course of business." You also advised that such an acquisition would not be subject to the limitation of §802.1(a) of the Regulations because my client will not be divesting all of its financing operations.

If I have not accurately summarized our conversation or have misunderstood your advice, please contact me immediately. Thank you very much for your assistance in this matter.

Sincerely,

AGREE -

B. Verne

5/13/04

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