

7A(c)(1)

November 10, 2004

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition - Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Ordinary Course Exemption

Dear Mike:

I am writing to memorialize advice you provided during our telephone conversation on October 27, 2004 regarding the application of the ordinary course exemption of § 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to the transaction described below.

Seller, a large financial institution, proposes to sell its truck and trailer financing, leasing and rental operations through the sale of a majority of the assets of two of its wholly-owned subsidiaries and all of the assets (or the stock)¹ of a third subsidiary (collectively, the "Subsidiaries"). In addition to providing truck and trailer financing and leasing, the Subsidiaries provide working capital to trucking companies in the form of asset-based loans and factoring services and operate a trailer rental business which offers short, medium and long-term rentals.

The assets that are the subject of this transaction (including the assets of the Subsidiary whose stock is being sold) consist primarily of loans, accounts receivable, and trucks and trailers held for leasing or rental to customers. They do not include operations that offer ancillary services for customers, such as maintaining and servicing

¹ The form of the transaction has not yet been determined with respect to the third subsidiary.

[REDACTED]

rented equipment and servicing third-party loans. As part the transaction, the buyer will acquire the staff and facilities used by the Subsidiaries in servicing their portfolio of loans, accounts receivable and leased and rented equipment. After the proposed transaction, Seller, through other subsidiaries, will continue to offer construction equipment leases, loans and other financial services but will no longer hold or originate transportation equipment loans or leases.

As I understand the Staff's current position, where a buyer is acquiring a portfolio of loans, accounts receivable or leased equipment, that transaction will be exempt as a transaction in the ordinary course even if the seller will discontinue making loans or leases for certain types of equipment as long as the seller will continue to hold some existing loans or leased equipment or will continue to originate new loans or equipment leases. This exemption applies (i) whether the portfolio is acquired as an asset acquisition or through an acquisition of the voting securities of an entity holding the portfolio, and (ii) whether or not the buyer will also be acquiring staff and/or facilities servicing the portfolio. Activities other than servicing of the portfolio must be separately analyzed for potential reportability under the Act.

I pointed out that some of the trailers were held for short-term rental rather than long-term leasing and you advised that the duration of the rental/leasing term did not affect the availability of the ordinary course exemption to this type of transaction. Based on your advice, I concluded that the proposed transaction would be exempt from the requirements of the Act as a transaction in the ordinary course of business.

Please let me know if you think the above does not accurately reflect your advice.

Very truly yours,

[REDACTED]

AGREE -
B. [Signature]
11/15/09

[REDACTED]