

Verne, B. Michael

802.4  
802.3

From: [REDACTED]  
Sent: Wednesday, March 30, 2005 5:38 PM  
To: Verne, B. Michael  
Subject: HSR Guidance

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Dear Mr. Verne,

I am writing for guidance in determining whether a transaction is reportable under the Hart-Scott-Rodino Act.

Company A, a foreign corporation with its principal place of business located outside the U.S., is a holding company with subsidiaries organized both within and outside the U.S. The subsidiaries of Company A are engaged in mining, transporting, trading and marketing coal. Company A and its subsidiaries collectively hold less than \$50 million in assets located in the U.S. but had more than \$50 million of sales in or into the U.S. in the most recent fiscal year.

Companies B and C, U.S. and foreign corporations, respectively, are competing bidders in a voluntary sale of all of the outstanding capital stock of Company A. The size of person test would be met by either bidder.

It appears the acquisition does not qualify for the exemption provided by Regulation 802.51(a) or (b) because the \$50 million limitation of that section is exceeded. However, Regulation 802.3(b) exempts acquisitions of coal reserves and associated exploration or production assets not exceeding \$200 million in the aggregate. All of the reserves and associated assets of Company A and its subsidiaries are located outside the U.S. Assuming the total acquisition price for the stock of Company A is less than \$200 million, would this exemption be available?

Thank you kindly for your assistance.

Regards,



ADVISED THIS WOULD BE  
EXEMPT AS LONG AS  
THE ISSUER DID NOT  
HOLD OTHER NON-EXEMPT  
ASSETS VALUED IN  
EXCESS OF \$53.1 mm

B. [Signature]

3/30/05