

802.2(h)

June 2, 2006

BY FACSIMILE AND U.S. MAIL

Nancy Ovuka, Esquire
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

7/11/06 11:12:07 AM
FACSIMILE TRANSMISSION

Dear Nancy:

I write to confirm our discussion on Wednesday of last week, in which you advised that the acquisition described below is not reportable under the Hart-Scott-Rodino (HSR) Act and regulations issued by the Federal Trade Commission.

Our client, Company A, is in the cold storage business. Company A operates public refrigerated warehouses within the United States, and provides refrigerated storage and distribution services to the food industry. Company A stores customer product against warehouse receipts (i.e., the customer delivers products to Company A and later collects the products or directs their delivery to third parties, but the customer does not contract for particular space within Company A's facilities). In other cases, Company A enters into multi-year storage agreements with customers (in which, again, the customer does not generally contract for particular space within Company A's facilities). In some cases, Company A leases specific space in its warehouses to customers. Company A's parent has investments in refrigerated warehousing and other industries around the world.

Company B is in the food processing industry and owns, among other assets, five cold storage facilities, which are current used exclusively for the storage of Company B's inventory. Company A proposes to acquire the five warehouses, for a sum that exceeds the minimum size of transaction HSR thresholds. As part of the proposed transaction, Company B will commit to continue to use a portion of the transferred facilities, and to pay Company A at agreed upon storage rates for such use. Company A plans to utilize the balance of the transferred facilities as public refrigerated warehouses, operating them in the manner in which it operates its other warehouses.

You advised us that the acquisition of Company B's warehouses by Company A, as described above, is not a reportable transaction, and that we may rely on the exemption for the acquisition of "warehouses and assets incidental to the ownership of ... warehouses" set forth in rule 802.2(h). We discussed the fact that the proposed transaction will include the concurrent transfer of other assets incidental to the maintenance and use of the transferred facilities (such as lift trucks, racking, and refrigeration

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equipment) and you advised that the transfer of those ancillary assets would also be exempt under rule 802.2(h).

Please call me promptly if the above does not accurately reflect the views of the Premerger Notification Office.

Sincerely yours,

[Redacted Signature]

*Agree
N. Ovuka*

[Redacted]