

802.5

Johnson, Janice C.

From: [Redacted]
Sent: Thursday, August 10, 2006 1:29 PM
To: Johnson, Janice C.
Cc: Grossi, David P.
Subject: Exemption under Section 802.5

Dear Ms. Johnson,

We spoke on the telephone yesterday regarding the following fact situation which my client is facing: My client, which is a Massachusetts corporation (which has a United Kingdom corporation as its ultimate parent entity (the "UPE")) (the "Buyer") is acquiring the interests of a Delaware LLC (the "Target"). The Target owns or leases approximately 240 pieces of real estate in the U.S. on which are located communication towers. The Target leases space on such towers to cell phone companies, such as Sprint or Nextel. Neither the Target nor the Buyer is in the cell phone business. The Buyer, like the Target, will use the communication towers to lease space to third parties, such as Spring and Nextel. You advised me that this acquisition would be exempt from reporting under the HSR Act pursuant to 16 CFR Ch. 1, Section 802.5, which exempts acquisitions of investment rental property assets. You and I compared the above described fact pattern to the fact pattern in example #2 set forth in Section 802.5, which reads, in pertinent part, "'X' intends to buy from 'Y' a development commonly referred to as an industrial park. The industrial park contains a warehouse/distribution center, a retail tire and automobile parts store, an office building, and a small factory. The industrial park also contains several parcels of vacant land. If 'X' intends to acquire this industrial park as investment rental property, the acquisition will be exempt pursuant to Section 802.5. If, however, 'X' intends to use the factory for its own manufacturing operations, this exemption would be unavailable." We also discussed that the acquisition price of the target is approximately \$135 million and that the UPE has \$100 million (as adjusted) or more in annual net sales or total assets.

Please confirm by return email that the above accurately reflects the content of our telephone conference, or, in the alternative, advise me of any misstatement. Also, I asked if I or one of my partners might be able to call you to discuss this matter further. You told me that we could call you at your direct line which is [Redacted]. Thank you for your assistance in this matter. [Redacted]

The buyer will lease space on the communication towers to third parties, not to entities included within the buyer. This transaction is exempt under 802.5 of the HSR Rules.

J. Johnson / M. Brown
concur

Communications from our firm may contain or incorporate federal tax advice. Under recently promulgated US Internal Revenue Service standards (Circular 230), we are required to inform you that only formal, written tax opinions meeting the requirements of Circular 230 may be relied upon by taxpayers for the purpose of avoiding tax-related penalties. Accordingly, this communication is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

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