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802.3

October 17, 2006

By Facsimile Transmission

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

The purpose of this correspondence is to follow up on our conversation of October 16, 2006 concerning the purchase of certain interests in limited liability companies which own coal reserves and other related assets. The factual circumstances are described below.

Company A is entering into an agreement ("Agreement 1") with Company B to acquire Limited Liability Company ("LLC") 1, LLC 2, LLC 3, and LLC 4. Mr. X is the controlling shareholder of Company B. The sole assets of LLC 1 and LLC 2 are reserves of coal or rights to reserves of coal within the meaning of 16 C.F.R. § 802.3(b). The reserves have not generated any revenues to date. The sole assets of LLC 3 and LLC 4 are what is referred to as "transportation infrastructure." This consists of conveyor belt lines and a short haul railroad spur of two miles which, once the property is producing, will move the coal from the coal preparation plant to either barges or railroads which will then transport the coal to customers. In step 1, coal will be removed from the mine to a coal plant where it is washed and cleaned. In step 2, the coal will move from the plant to the conveyor belt line. In step 3, the coal will be moved down the conveyor belt line to barges or railroads. Company A will not be involved in processing the coal. Company A will not own any equipment or transportation assets associated with steps 1 and 2. Company A does not currently own any of the coal reserves but after the closing of Agreement 1 will own the coal acquired under that Agreement 1 while steps 1 and 2 are occurring.

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Company A is also going to enter into a Second Agreement ("Agreement 2") with Company B to acquire LLC 5 and LLC 6. A draft of this Agreement will be attached as an Exhibit to Agreement 1. When Agreement 1 is closed later this year, Agreement 2 will be signed. Agreement 2 will then close some 12 to 18 months later. The sole assets of LLC 5 are coal reserves, similar to LLC 1 and LLC 2. These reserves have not generated any revenues to date. The sole assets of LLC 6 are "transportation infrastructure" similar to LLC 3 and LLC 4 above.

In the past, Mr. X sold some coal assets to a third party and receives a royalty payment per ton of coal sold. Company A is entering into an agreement ("Agreement 3") with Mr. X under which this contractual royalty interest will be assigned to Company A. Agreement 3 will be entered into and closed on the same date as Agreement 1.

Company A and Company B will also enter into a final agreement ("Agreement 4"). Agreement 4 will be signed at the closing of Agreement 1. It outlines certain circumstances in which Company B will be required to provide business opportunities to Company A in the future and related matters.

Based on our discussion, it is my understanding that:

1. The acquisition of the LLC's owning solely coal reserves, i.e., LLC 1, 2, and 5, will be exempt under the unproductive real property exemption in 16 C.F.R. § 802.2(c).
2. The acquisition of the LLC's owning solely the "transportation infrastructure" will be exempt as "associated exploration or production assets" under the carbon-based mineral reserves exemption set forth in 16 C.F.R. § 802.3(b), subject to the \$200 million cap in that exemption.
3. The assets being acquired under Agreement 3 will be exempt under the carbon-based mineral reserves exemption set forth in 16 C.F.R. § 802.3(b), subject to the \$200 million cap in that exemption.

4. Agreements 1, 3, and 4 must be aggregated for HSR purposes including application of the carbon-based mineral reserves exemption in 16 C.F.R. § 802.3(b) and its \$200 million cap. Agreement 2 need not be aggregated with Agreements 1, 3, and 4 for purposes of the carbon-based mineral reserves exemption in 16 C.F.R. § 802.3(b) or for any other purpose.

If the understandings outlined above should be incorrect, please let me know. In that regard, I can be reached at [REDACTED]

Thank you for your assistance in this matter.

Sincerely yours,

[REDACTED]

AGREE -
Burchell
10/17/06