

802.2
802.3
802.4

August 22, 2007

BY E-MAIL

Mr. B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington DC 20580

Re: *Exemptions Available for Producing and Non-Producing Oil and Gas Properties and Entities Holding Those Assets*

Dear Mr. Verne:

The purpose of this letter is to confirm the understanding of [REDACTED] and I with respect to certain exemptions from filing under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (as amended the "HSR Act") and regulations thereunder (the "Regulations") that are available for producing and non-producing oil and gas properties and entities holding those assets.

Company A proposes to acquire all of the voting securities of Company B for approximately \$875 million. Company B is an oil and gas exploration company, and its assets consist of real property interests in oil and gas properties in the United States (the "Oil and Gas Properties"). The value of the interests in the developed and producing portion of the Oil and Gas Properties, along with associated exploration and production assets related to such properties, is less than \$500 million. The value of all assets of Company B other than reserves of oil and natural gas, rights to reserves of oil and natural gas, and associated exploration and production assets, if any, is less than \$59.8 million.

You agreed that the proposed acquisition would be exempt under the HSR Act and confirmed our understanding of the HSR Act and applicable Regulations as follows:

1. Company A's acquisition of Company B would fall under the exemption set forth in 16 C.F.R. § 802.4 concerning acquisitions of voting securities of issuers holding certain exempt assets (the "Voting Securities Exemption") based upon applying the unproductive real property exemption set forth in 16 C.F.R. §

802.2(c) (the "Unproductive Real Property Exemption") and the exemption concerning acquisitions of carbon-based mineral reserves set forth in 16 C.F.R. § 802.3 (the "Oil and Gas Exemption").

2. To the extent that certain properties and reserves in portions of the Oil and Gas Properties have not yet generated any revenues, such properties and reserves, along with associated exploration and production assets, will be treated as coming within the Unproductive Real Property Exemption, regardless of dollar value, while those properties and reserves, along with associated exploration and production assets, that are currently developed and producing will qualify for the Oil and Gas Exemption, assuming the aggregate value of such developed and producing properties does not exceed \$500 million.
3. Associated exploration and production assets that would qualify for the Oil and Gas Exemption would include field pipelines that exclusively serve reserves being acquired as a part of the transaction.
4. In applying the Unproductive Real Property Exemption to Company B's interests in the non-producing properties of the Oil and Gas Properties, it is not necessary to determine whether, for purposes of 16 C.F.R. § 802.2(c)(2)(iii), such properties are or are not "adjacent to or used in conjunction with real property that is not unproductive real property" as long as any other such adjacent properties being acquired are otherwise exempt under the Oil and Gas Exemption. Therefore, if certain unproductive properties of the Oil and Gas Properties are adjacent to productive properties of the Oil and Gas Properties that are part of the transaction but qualify for the Oil and Gas Exemption, the unproductive properties still qualify for the Unproductive Real Property Exemption. In addition, within a particular oil and gas lease, a portion of such lease may include productive property that is exempt under the Oil and Gas Exemption and may also include unproductive property that is exempt under the Unproductive Real Property Exemption.
5. In determining whether the transaction falls within the terms of the Oil and Gas Exemption, Company A need focus only on Company B's assets. In other words, the \$500 million figure in the Oil and Gas Exemption relates only to Company B and not to the existing assets of Company A, assuming Company A did not acquire its currently held assets from Company B within the time period and manner that would require aggregation under 16 C.F.R. § 801.13(b).
6. To the extent that a related oil and gas asset does not qualify as an exempt associated exploration and production asset, such as a processing plant or a non-exempt pipeline, the location of such asset on or adjacent to oil and gas reserve properties being acquired does not affect the applicability of the Unproductive Real Property Exemption or the Oil and Gas Exemption to the acquisition of those oil and gas properties and any associated exploration and production assets.

7. Based on the foregoing, Company A may acquire all and hold all of the voting securities of Company B in reliance on the Voting Securities Exemption without the need to make a filing under the HSR Act assuming it is determined by Company A, or its designee, in compliance with 16 C.F.R. § 801.10, that: (i) a portion of Company B's assets consists of ownership interests in oil and gas properties that have not yet generated any revenues and therefore come within the Unproductive Real Property Exemption; (ii) another major portion of Company B's assets consists of ownership interests in developed and producing oil and gas properties, as to which the fair market value of the properties, reserves, rights and associated exploration and production assets relating to such properties does not exceed \$500 million; and (iii) to the extent that there are any remaining direct or indirect assets of Company B that do not qualify as exempt assets under the HSR regulations, such remaining assets have a fair market value that does not exceed \$59.8 million.
8. If certain persons are delegated by the board of directors of a corporation (or, if unincorporated, by officials exercising similar functions) to execute documents and/or otherwise take appropriate or necessary action to consummate a transaction, any such person would be considered a delegee for purposes of 16 C.F.R. §801.10, even if the resolution or other authorization does not explicitly mention the HSR Act or the conducting of a fair market valuation. Further, for purposes of the second paragraph of the Analysis of Informal Interpretation 87 in the Premerger Notification Practice Manual (4th ed. 2007), a de facto delegee can be the chief financial officer, or any financial officer with direct responsibility for the proposed transaction, of the entity entering into the proposed transaction or of the ultimate parent of such entity.

Please confirm that our understanding is correct. Thank you very much for your assistance.

Sincerely,



AGREE
[Signature]
8/23/07

cc: 

