

802.1(d)

802.2(h)

January 7, 2008

Michael Verne  
Federal Trade Commission  
Bureau of Competition  
Premerger Notification Office  
600 Pennsylvania Avenue, NW  
Room 303  
Washington, DC 20580

Via Email

RE: HSR Exemption Pursuant to 802.1(d)(4)

Dear Mr. Verne:

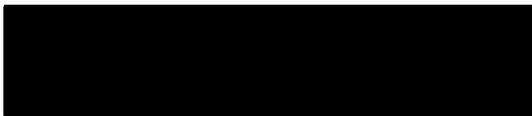
This letter is to confirm our conversation of today. Our client, X, a foreign corporation, intends to purchase certain assets from Y, a U.S. corporation. The size-of-the-transaction exceeds \$200 million (as adjusted) and therefore the size-of-the-parties test does not apply (though it would be met in any event). The assets being purchased from Y are primarily used computers, computer processors and servers. X is also acquiring from Y various contracts, primarily with shipping companies.

The assets have heretofore been used by Y to provide certain internal logistics services. That is, Y would use these assets to coordinate and monitor the shipment and storage of its products internally, for example from a manufacturing facility in one country to a storage facility in another country.

Y will now be outsourcing these logistics services to X pursuant to an agreement executed between the parties. In addition, X and Y have entered into an Employee Matters Agreement, as X will be assuming responsibility for certain of Y's employees who previously provided these logistics services. Although the acquired assets will be used primarily to provide logistics services to Y, X will likely use the assets to provide similar services to third parties, although no such third party customers have been yet identified.

X will not be providing any marketing or distribution services to Y. Indeed, it is our understanding that the acquired assets were not used for marketing or distribution purposes. However, X is acquiring certain leases to warehouses, which warehouses will be used for storage attendant to distribution, but these leases are not considered assets.

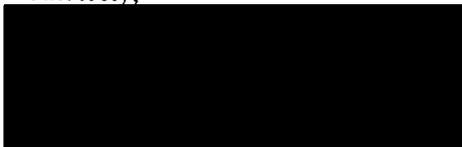
It is our understanding that the above-transaction will fall within the exemption provided by 802.1(d)(4). The acquired assets – largely computers and computer equipment – are used durable goods which are designed to be used repeatedly and have a useful life of greater than one year. In addition, the goods have been used to provide management and logistics support services for the acquired party's business operations. While the sort of logistics



services described above do not fall cleanly within one of the examples provided by the exemption (i.e., accounting, legal, purchasing, payroll, billing, and repair and maintenance), they are the sort of services covered by the exemption and are not tantamount to distribution. In addition, as required by the exemption, the acquired party will now be outsourcing these services to a third party, in this case the buyer, X. To the extent there are assets attendant to distribution being acquired, the value of such assets falls below the size-of-the-transaction threshold assuming the managerial and administrative assets being acquired are exempted. Thus, no HSR filing will be required.

Thank you for speaking with us today. To the extent this does not reflect the substance of our conversation, please call me to discuss.

Sincerely,



AGREE - EXCEPT  
LEASES FOR WAREHOUSES  
ARE ASSETS, BUT ARE  
EXEMPT UNDER 802.2(h)

*BM*  
1/8/09

