

802.2(h)

Verne, B. Michael

From: [Redacted]
Sent: Friday, May 06, 2011 2:57 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: HSR Question re 802.2(h)

Mike, hope all is well with you. [Redacted] and I are working on a transaction and would appreciate your advice.

Factual Circumstances

My client, Company A, is engaged in the underground gas storage business and is acquiring [Redacted] client, Company B (by merger of a newly formed subsidiary of Company A into Company B, with Company B the surviving entity), a company also engaged in the underground gas storage business. The purchase price will be in excess of \$66.0 million. Company A and B meet the HSR size of person tests.

Company B stores natural gas for independent third parties through the injection of the customer's gas into depleted oil and gas reservoirs owned by Company B. B receives monthly payments from its customers in exchange for providing storage services in its underground storage facilities.

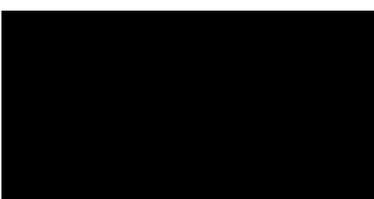
Company B does not store gas for itself other than to maintain a quantity of natural gas (pad gas) in the storage facility so as to provide sufficient pressure to permit the extraction of customer gas. Company B does not engage in trading activities with respect to the stored gas, nor does it permit third parties to borrow excess pad gas, although it has the right to do so.

HSR Analysis

In our view, this transaction is within the scope of FTC informal staff opinion letter 0805001 and would be exempt from an HSR filing on the basis of the warehouse exemption in 16 C.F.R. 802.2(h). Could you please advise if you agree with this interpretation?

Thank you for your assistance.

AGREE
BM
5/9/11



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