

802.1(d)(3)

Verne, B. Michael

From: [Redacted]
Sent: Thursday, June 07, 2012 11:02 AM
To: Verne, B. Michael
Cc: [Redacted]
Subject: 802.1 Question

Mike:

Thanks for calling back this morning. I was trying to find a time where both [Redacted] and I could return the call. Are you free between 1:00 and 3:00 this afternoon? We could do the call anytime in that window that works for you.

In the meantime, we thought it might help to send you our fact pattern and analysis. It may even obviate the need for a call. We'll leave that up to you.

Here is the fact pattern and analysis:

Company A is looking to sell a fixed number of commercial aircraft (the "Company A Aircraft"). Company B is interested in acquiring the Company A Aircraft from Company A. We are seeking confirmation of our analysis that, on the facts described below, Company B's acquisition of the Company A Aircraft will be exempt from the prior notification and waiting requirement under the HSR Act pursuant to 802.1(d)(3).

Company A and Company B are both commercial airlines and operate commercial aircraft. Each has total assets and annual net sales in excess of \$136.4 million. The aggregate purchase price for the Company A Aircraft will exceed \$68.2 million. At the time of the proposed acquisition of the Company A Aircraft by Company B, each of the Company A Aircraft will have a useful life of greater than one year.

Company A presently intends to enter to into an agreement to acquire by way of a lease arrangement a larger number of commercial aircraft from Company C (the "Company C Aircraft") prior to closing on the sale of the Company A Aircraft to Company B. The aggregate seat capacity of the Company C Aircraft will exceed that of the Company A Aircraft. Company A will take delivery of the Company C Aircraft over a six month period following execution of the agreement between Company A and Company C.

The Company A Aircraft are "used durable goods" within the meaning of 802.1(d) because they each have a useful life of more than one year. Assuming that Company A goes forward with its intended transaction with Company C, Company A will have "in good faith executed a contract to replace within six months after the sale . . . all or substantially all of the productive capacity of the [Company A Aircraft]" because the Company C Aircraft will have an aggregate seat capacity in excess of that of the Company A Aircraft. There is no requirement that Company A operate the Company C Aircraft on any of the routes previously served by the Company A Aircraft. The acquisition of the Company A Aircraft by Company B is therefore exempt from the prior notification and waiting requirement under the HSR Act pursuant to 802.1(d)(3).

If you think a call would be helpful, please let us know the best time for you. If you are comfortable with this as presented, we are happy to resolve it by email

Thanks for your help.

Best regards,

[Redacted]

AGNEE -
[Handwritten Signature]
5/7/12