

[REDACTED]

7A(c)(1); 7A(c)(2); 802.1(b)

[REDACTED]

August 11, 1994

re Applicability of Exemption in 15 U.S.C. § 18A(c)(1)
to Sale of Assets Subject to Leveraged Leases

Richard Smith, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Smith:

I am writing to set forth my understanding of the advice which you gave me in the course of our telephone conversation on August 9.

Our client (the "Seller") is a [REDACTED] engaged in a variety of activities, including the [REDACTED] of assets through leveraged lease arrangements. The Seller has recently concluded an agreement pursuant to which it would transfer certain assets subject to such leveraged lease arrangements to a [REDACTED] (the "Purchaser"). The assets to be sold represent: (1) significantly less than 1 percent of the Seller's total assets; (2) approximately 7 percent (on a net receivable basis) of the Seller's total [REDACTED] of assets subject to leveraged lease arrangements; and (3) approximately 95 percent (on a net receivable basis) of the [REDACTED] assets. The [REDACTED] in [REDACTED] assets are not managed separately [REDACTED]

In the course of our telephone conversation, I understood you to say that the Seller was engaged in the [REDACTED] through leveraged lease arrangements, not in the business of [REDACTED] through leveraged lease arrangements, [REDACTED], the sale would not constitute the sale of all or substantially all of the assets of a division. I also understood you to say that the sale would therefore be exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), by virtue of 15 U.S.C. § 18A(c)(1), if the following conditions were also met:

- (1) the assets were subject to bona fide lease [REDACTED]
- (2) operational and managerial control of the assets would not change as a result of the sale;
- (3) the assets were subject to long-term leases or leases renewable at the option of the lessees;
- (4) the Purchaser was not a competitor of any of the lessees; and
- (5) the transaction was purely [REDACTED]

As we discussed and as I have reconfirmed with the Seller and Purchaser, all of these conditions are met. Accordingly, based on my conversation with you, I understand the sale of the assets to be exempt from the requirements of the HSR Act.

Please let me know by close of business on Monday, August 15 if I have misunderstood or mischaracterized the position of the Premerger Notification Office on the above points.

Sincerely,
[REDACTED]

VIA FACSIMILE

8/17/94 - called writer and advised that the proposed sale would be exempt under the criteria set forth in letter # 25 in the ABA Practice Manual. The PNO office would not view the sale of substantially all the leveraged leases for [REDACTED] as constituting the seller's selling of the lease financing business, as long as they were not all the assets of a subsidiary or division, which is not the case here. RJS:sm