

802.2(c)

FEDERAL TRADE  
COMMISSION  
PRE-MERGER NOTIFICATION  
OFFICE  
1999 JUN 11 A 8:39

June 10, 1999

VIA FACSIMILE

Ms. Melea R.C. Epps  
Federal Trade Commission  
New York Regional Office  
150 William Street, Suite 1300  
New York, NY 10038

Re: **Unproductive Real Property Exemption**  
16 C.F.R. § 802.2(c)(1)

Dear Melea:

I am writing to confirm our conversations of the last few days regarding the Pre-merger Notification Office's present position on the application of the Unproductive Real Property exemption, 16 C.F.R. § 802.2(c)(1). Our client is a timberlands company who, in this particular case, is an acquired person in an asset sale of timberland property. We are seeking confirmation for purposes of the current transaction and for purposes of drafting general guidelines for future transactions.

It is our understanding that the Unproductive Real Property exemption exempts unproductive real property, such as timberland, where the real property has not generated total revenues in excess of \$5 million during the 36-months preceding the acquisition. In applying this exemption, the parties must first determine whether the acquisition involves multiple parcels of real property or a single parcel of real property. If the acquisition involves multiple parcels of real property, the \$5 million test is applied to each parcel and not in the aggregate. After considering 16 C.F.R. § 802.2(c)(2), the value of all non-exempt parcels (i.e. all parcels exceeding the

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\$5 million test) and any other non-exempt assets, are aggregated to determine whether the size of transaction test is met.

In determining whether the acquisition involves multiple parcels, and if so, how they are defined, as a general rule, the Pre-merger Notification Office now applies a black and white test: if the real estate is contiguous it will be treated as a single parcel for purposes of applying the \$5 million test; if the real estate is not contiguous (i.e. it is separated by other unproductive real property, a road, river or similar line of demarcation), the property will be treated as two separate parcels for purposes of the \$5 million test and the revenues will not be aggregated.

Thank you for your assistance in helping us to clarify the application of this exemption.

Cordially,

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*Confirmed with the author that this is  
current PNO policy —*

[Redacted line]

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