

802.2(c)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, December 19, 2013 10:22 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Exemption Regarding Timberland

Mike,

I am writing to confirm my understanding of a telephone conversation with you on December 16, 2013 concerning a basis for non-reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") to the proposed transaction discussed below.

Proposed Transaction

Pursuant to a proposed transaction (the "Proposed Transaction"), Company A intends to acquire from Company B several hundred thousand acres of timberland for an acquisition price of hundreds of millions of dollars.

Not all of the acreage is contiguous and there are a large number of parcels being acquired that are physically separated from one another. The land being sold has generated revenue from timber and to a much lesser degree by fees received by letting hunters hunt on the land.

Two of the larger tracts being acquired are subject, at least in part, to timber deeds. Under the timber deeds that were executed in 2011, Company B sold all the timber rights on the lands covered by the timber deeds to a third party for 20 years. The sales price for each of the two timber deeds exceeded \$5 million. While some of the trees on the land covered by the timber deeds are mature and some harvesting has occurred under the timber deeds, some of the trees located on the lands are currently unmerchantable – that is some of the trees are too young to have any timber harvest value other than for scrap until the trees mature.

While the timber deeds have over 17 years remaining, the grantee under the timber deeds can if it chooses release property back to the fee owner of the lands earlier, such as when it completes any timber growing or harvesting it intends to do on certain parts of the land. The grantee under the timber deeds has no obligation to replant any trees after cutting the timber from the lands. Company A's present intent is to use the lands subject to the timber deeds for livestock grazing once the deeds expire or as land is released back to it.

Conclusions

Based on our conversation, my understanding is as follows:

1) In applying 16 C.F.R. § 802.2(c) to determine if a contiguous parcel of land generated more than \$5 million in total revenue in the last 36 months before closing, the land covered by the timber deeds qualifies as unproductive real property despite the revenue received for the timber deeds. The consideration paid for the timber deed acquisitions does not count for purposes of the unproductive real property exemption as revenue generated by the real property being acquired by Company A since (1) the rights that may have made the land productive based on timber related revenue were

sold for a 20 year period and the land is being acquired by Company A subject to the timber deeds such that Company A is not acquiring current timber rights on that land covered under the timber deeds; and (2) the payments received in 2011 by Company B for the timber deeds were not specifically for timber harvested in the last three years but convey rights to timber, some of which may not be harvested for many years to come.

2) To the extent that Company A is acquiring from Company B contiguous property part of which is and part of which is not covered by a timber deed, this does not change the conclusion that the land covered by the timber deed, as well as the contiguous property being acquired that is not covered by the timber deed, are all unproductive real property assuming the contiguous land not covered by the timber deed did not generate in excess of \$5 million in revenue in the 36 months prior to closing.

3) To the extent that the land covered by the timber deeds generated timber related revenue for Company B in the last 36 months prior to closing but before the timber deeds were executed, that revenue would not count toward the \$5 million threshold under Rule 802.2(c) since Company A is not acquiring the timber rights assets that generated that revenue for the remaining 17 years left on the timber deeds unless property is released earlier upon harvesting.

4) The fact that some of the land subject to the timber deeds may have and may continue to generate revenue for Company B (and will do the same for Company A after closing) from hunting fees does not change the conclusion that the land subject to the timber deeds and the contiguous property not covered by the timber deeds are unproductive real property, assuming that the total revenue from the hunting fees in the last 36 months prior to closing on land covered by a timber deed combined with the total revenue in the last 36 months prior to closing from other land being conveyed that is contiguous to but not covered by a timber deed does not in aggregate amount to over \$5 million in total revenue.

5) The fact that the grantee under the timber deeds has already clear cut and released back to Company B some of the land under the timber deeds (which released land is part of the land Company A will acquire under the Proposed Transaction) does not change any of the above conclusions that the land covered by the timber deeds and the contiguous property to the land covered by the timber deeds are HSR exempt unproductive real property.

6) In applying 16 C.F.R. § 802.2(c), each of the following count as a distinct, physical separation between parcels allowing each parcel to be looked at separately in terms of whether a parcel is exempt unproductive real property: a public road (for example, a county or state road) whether paved or not, a river, a lake, or railroad tracks.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.
Best regards,



AGREE -
BIM ✓
12/19/13