

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

November 18, 1991

Richard B. Smith, Esq.  
Premerger Notification Office  
Room 312, Headquarters Building  
Bureau of Competition  
Federal Trade Commission

Re: Applicability of "Ordinary Course of Business"

This letter is to confirm the advice you provided in our telephone conversation of this date respecting the "ordinary course of business" exemption under Section 7A(c)(1) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). As we discussed, our firm represents [REDACTED]

[REDACTED] a wholly-owned subsidiary of [REDACTED] and a third-tier subsidiary of [REDACTED] is engaged in financing and leasing a variety of commercial and industrial equipment, including such equipment as trucks and trailers, computers, railcars and medical equipment. From time to time, [REDACTED] has purchased lease and loan receivables from other financial organizations and it has also on occasion sold and/or brokered portions of its holdings of such [REDACTED]

[REDACTED] is presently considering the sale of a portfolio of [REDACTED] lease receivables. These leases all involve trucks. The proposed Acquiring Person is another firm engaged in commercial financing (including the financing and leasing of trucks). The value of the consideration to be paid for these lease receivables would be approximately [REDACTED] million and the Size of Person Test would be met. We are advised that, as part of its financing business, the

[REDACTED]

Richard B. Smith

BEST AVAILABLE COPY

Acquiring Person purchases and sells lease portfolios of the type involved here with some frequency.

As we discussed, the proposed acquisition involves the

account lessees (i.e., the users of the trucks) will not change upon sale of this portfolio. Taking into account the type of equipment financed, these leases are considered to be long term.

lessees. The lessees have the right to purchase the leased assets

We are further advised that neither the Acquiring Entity nor any other entity within the Acquiring Person is a

or substantially all of the assets of Equipment Leasing or any operating division thereof. Based upon September 30, 1991

[REDACTED] portfolio of [REDACTED] leases. Further, Equipment [REDACTED] and the leasing of [REDACTED]

Based upon the foregoing facts it is our understanding [REDACTED]

the applicability of the exemption is incorrect, I would very much appreciate your contacting me as soon as possible as the sale of the portfolio by [REDACTED] is presently expected to occur on [REDACTED]. If we do not hear from you, we will assume that our understanding of the FTC staff's view is correct.

As always, we very much appreciate your assistance and guidance.

11/19/91 - called [REDACTED] Advised that since sale involved less than all of Equipment Leasing's rights in bona fide financing arrangements (and buyer does not engage in commercial trucking activities, although it may use some trucks in its day-to-day activities) the transaction is exempt under sections 7A(c)(1) and 802.1(b).

Sincerely yours,

[REDACTED]