

SENT BY [REDACTED]

: 2-19-92 :10:01AM :

2023262050:0

7A(c)(1); 801.15; 801.10

February 19, 1992

VIA TELECOPIER

Richard Smith, Esq.
Premerger Notification Office
Federal Trade Commission, Room 303
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Dick:

This letter serves to confirm our telephone conversation of Tuesday, February 18, 1992. During that conversation, you, [REDACTED] and I discussed the "ordinary course" exemption set forth in § 7A(c)(1) of the Clayton Act (15 U.S.C. § 77c(1)) as applied to a transfer of interests in undeveloped oil and gas reserves

[REDACTED]

(\$100 million size test) for an aggregate acquisition price of \$15,250,000. Both B and S are engaged in the oil and gas business. The assets being purchased consist of producing oil and gas wells, non-producing properties, gas gathering and processing interests, oil field inventory, and seismic data. Prior to contacting Hart-Scott-Rodino counsel, B and S agreed upon the following allocations for the various types of assets:

Wells	\$9,000,000
Non-Producing Properties	\$1,000,000
Oil Field Inventory	1,000,000
Seismic Data	6,000

SENT BY [REDACTED]

: 2-18-92 10:01AM :

2023282050:8

The allocated value of the non-producing properties was further broken down into approximately 68 separate values given to particular interests.

All of the producing and non-producing properties relate to a single basin in

identified by formation and corresponding surface acreage. The non-producing properties are not active and have never been revenue producing.

in the transaction. In some instances the non-producing properties are in formations other than the formation from which a given well is producing. In other instances a well is operating all or part from a formation that is the same formation in which B is acquiring non-producing reserves. However, regulations promulgated by the [REDACTED] establish spacing units to assure each propertyholder's opportunity to obtain his fair share of production.

S will transfer the non-producing interests to B by way of lease assignments that will typically encompass both producing and non-producing interests in a single instrument of assignment. However, the respective interests are economically

non-producing formations (i.e. modifying them to permit extraction of reserves).

The assets being sold by S do not constitute all or substantially all of its assets or those of an operating division of S.

Commission's Premerger Notification Office concurs with B's position that the acquisition of the non-producing interests is exempt under § 7A(c)(1) of the Act and therefore that B may,

[REDACTED]

[REDACTED]
Richard Smith, Esq.
February 19, 1992
Page 3

\$15,000,000. On that basis, the acquisition price is \$14,200,000 and this does not meet the

acquired is the greater of the acquisition price or fair market value. B's management has

Since B is not purchasing substantially all of the assets of an entity or of an
Notification Practice Manual (1991 ed.) nor 16 C.F.R. § 802.1(b) is even arguably pertinent

If this letter does not correctly reflect our conversation or assistance in terms
of the Premierer Notification Office, please contact me as soon as possible, since this

client, B, in accordance with the analysis set forth above. Thank you very much for your
consideration.

Sincerely yours
[REDACTED]

rl + the

cc: [REDACTED]

2/21/92
PMN office was of the view that the
1MM paid for non-producing properties could,
under § 802.15, be excluded from the
acquisition price since, in our view, such properties
had not produced a stream of income and
thereby qualified as "realty."
R.B. Smith