

802.1

FI 15

[REDACTED]

[REDACTED]

[REDACTED]

October 5, 2001

2001 OCT 5 PM 19

VIA FACSIMILE

Mr. Michael Verne
Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, DC 20580

Re: Confirmation of Advice Regarding Asset Acquisition

Dear Mr. Verne:

I am writing to follow up on our conversation of October 4 with respect to a transaction between two parties to an existing LLC. Currently the parties are 50-50 owners in the LLC. In the contemplated transaction, Buyer will acquire all of Seller's interests in the LLC, so as a result of the transaction, Buyer will hold 100% of the interests of the LLC. We understand that, under Formal Interpretation No. 15, this is treated as Buyer's acquisition of all of the assets of the LLC, and for the size of transaction test, we look to the value of those assets as determined in good faith by Buyer's Board of Directors (or its delegee).

In addition to the acquisition of the LLC interest, Buyer will also acquire certain additional related assets from Seller. Again, we understand that in determining the size of the transaction, we must include the value of these assets, unless their acquisition is exempt.

Finally, Seller will retain a production facility, and Buyer will enter into a supply agreement with Seller with respect to the entire output of that facility. The terms of the supply agreement are at market rates. In that agreement, Buyer will also agree to purchase, over time, the existing inventory of Seller, whether located at the production facility or elsewhere. Although Buyer will be the only buyer for the inventory, the purchase of the existing inventory

Mr. Michael Verne
October 5, 2001
Page 2

will take place over time, with no agreed schedule, no "milestone" dates by which specified quantities must be purchased, and no specified end-date for completion of the purchases. Each purchase will be at market rates as of the time of purchase, and the risk of loss will remain with Seller.

Issues

1. LLC Interests. The acquisition of the LLC interest is potentially reportable, assuming that the size of transaction test is met. (The formation of the LLC was not a reportable event, and Buyer has not had previous occasion to file a notification with respect to control of the LLC.)

2. Other Assets. In determining the size of the transaction, we would include the value of the assets being acquired directly from the Seller (in addition to the value of the LLC assets).

3. Supply Agreement and Existing Inventory. The acquisition of current supplies under the Supply Agreement is exempt under 802.1(c)(1). Although the supply agreement will be formed at the same time as the acquisition of the LLC interest and other assets, the actual acquisition of goods will take place over time, at market rates, with Seller retaining the risk of loss until the goods are sold. Moreover, the Supply Agreement is consistent with the alternative (exempt) illustration given in Example 4 of 802.1.

If I have not correctly stated your understanding of the transaction, then I would appreciate a telephone call at your earliest convenience.

Very truly yours
[REDACTED]

AGREE - NOTHING REPORTABLE.

B. [Signature]

10/9/01