

November 2, 2005

HAND DELIVERY

Ms. Nancy Ovuka
Senior Compliance Specialist
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th and Pennsylvania Ave. NW
Washington, DC

Re: Assumption of lease for open and closed stores

Dear Ms. Ovuka:

I am writing this letter to confirm oral advice provided to me on November 2, 2005 regarding the assumption of leases for stores that are both open and closed as part of a proposed acquisition of a retail business.

FACTS:

Our client proposes to acquire an on-going business that includes several retail stores. It is in fact stepping into the shoes of the current owner of the business. As part of the proposed transaction, the purchaser agrees to assume the leases and to make the lease payments as part of the ordinary course of business operations. There is no payment of a premium to the seller in order to assume the leases and the leases will not use up the economic life of the realty.

HSR INTERPRETATIONS:

It is my understanding that the premerger notification office's position regarding the assumption of a leasehold under the above noted conditions is not considered to be either an acquisition of the underlying realty or the assumption of a liability. Therefore, no amount is added to the purchase price of the assets based on this assumption in order to determine the total price pursuant to section 801.10(c)(2) of the HSR rules of practice.

Regarding the proposed transaction, one or more of the retail stores are closed or will be closed; however, the obligation to pay rental amounts continues and will be paid when due in accordance with the terms of the lease. In our discussion, you agreed that the premerger office does not view open or closed stores differently and that the assumption of the leaseholds under the facts presented are not considered to be a liability for HSR purposes and therefore, need not be considered in determining the total purchase price of the business.



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REQUEST:

I hereby request that you confirm this advice in writing by making a notation on this letter. I intend to request a copy thereof in accordance with the Freedom Of Information Act. If you have any questions or comments on the accuracy of this letter, please telephone me at [REDACTED]

Sincerely,



11/3/05

Confirmed advice w/
writer.

H. Drake

M. Verne CONCURS