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October 24, 1990

[REDACTED]

Premerger Notification Office
 Bureau of Competition
 Sixth & Pennsylvania Avenue, N.W.
 Room 303
 Washington, DC 20580
 Attention: John Patrick Sharpe

BY TELECOPIER
 (202) 326-2050

Re: Pre-Merger Notification Requirements under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976

Dear Mr. Sharpe:

Pursuant to our telephone conversation on Monday, October 22, this will confirm our request for an opinion from the staff as to whether a premerger notification is required to be filed in the following circumstances:

1. A division of seller (the "Selling Division") is engaged in the purchase and sale of certain types of goods. *not a manufacturer*
2. Most of these goods are purchased from Selling Division by a division of our client ("Buying Division A") in the ordinary course of its business on an ongoing basis.
3. A different division of our client ("Buying Division B") is about to purchase substantially all of the operating assets of Selling Division other than its inventories of goods (which are excluded from the transaction), for a price in the range of approximately \$2 to \$3 million.
4. Between now and the closing date, Buying Division A will continue to purchase the above goods from Selling Division in the ordinary course of business. The aggregate price of these goods will be approximately \$20 million. These goods would have been purchased irrespective of the sale of assets. However, they will be priced somewhat higher than they normally would.)

*Why are they price higher?
 Answer: A \$3 million premium is being paid that is related to the purchase of "Selling Division" assets.*

[REDACTED]

called 10-31-90
(85)

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Buyer is acquiring \$20mm of \$25.6
mm in inventories or 80% of seller =
"substantially all".

5. After the above transactions, Selling Division will be left with other types of goods having a value of approximately \$5 million, which will not be purchased by our client.

Our question is whether the ordinary course of business exception set forth in Section 7A(c)(1) of the Clayton Act will be available with respect to the purchase of the inventories by Buying Division A so that the sale of assets will not meet the \$15 million threshold. Although we have reviewed Letter No. 14 in the Practice Manual and the accompanying commentary, we believe that our facts are distinguishable because, as stated above, Buying Division A would have purchased the inventories in question in the ordinary course of its business whether or not the sale of assets to Buying Division B took place. Another distinguishing fact is that the Selling Division will retain significant inventories subsequent to the consummation of the purchase transactions described above.

Your prompt response would be appreciated. Thank you for your attention and assistance in this matter.

Rather than focusing on current and future inventories you should determine asset purchases (including inventories) according to 801.13(b)(2)(ii) "throw back" rule.

Answer: Determined that Buyer acquires \$2 mm in hand assets and \$45.5 mm in inventories of which \$6.0 to \$8.0 mm will be held at the time of consummation.

Sincerely,	Assets \$2-\$3	\$30 mm
[Redacted]	Taxes held at	8.0 mm
	(801.13) consumption 6-8	.2 mm
	Premium paid for current invent.	3.0 mm
		\$ 14.2

Note: I'm not sure what "substantially all" means but I know what it is when I see it - 80% is substantially all.

Based on the information given at the high end this will not meet the size of transaction. Advised that inventories are not in the ordinary course when connected with the sale of substantially all of the assets of a division in regardless of two separate agreements (see comment 14 of Premerger Practice Manual) (85) reconfereed with [Redacted]