

801.10 assumption of order... course of business contracts to purchase raw materials I would

[REDACTED]

includes any premium paid to obtain the raw material contracts

January 3, 1991

Victor Cohen, Esq.  
Premerger Notification Office  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580

Dear Mr. Cohen:

[REDACTED] as counsel for a prospective seller and I as counsel for a prospective buyer have discussed with you our question concerning the availability of the \$15 million Rule 801.20(a) exemption under the circumstances described below.

The seller will sell substantially all of its assets (including inventory) for cash of approximately \$11.5 million. In addition, the buyer will assume existing contracts to purchase certain raw materials used in seller's manufacturing processes and contracts to sell manufactured products to purchasers.

The raw materials contracts require payments by seller which, in the aggregate exceed \$5 million and the manufactured products contracts obligate seller to deliver such products at a set price. These two sets of contracts are, in essence, "matched" such that they enable seller to buy raw materials at one price, process those materials, and sell them at a higher price. A portion of the purchase price to be paid by the buyer is allocable to these contracts, i.e., buyer views them as valuable assets. The contracts were entered into in the ordinary course of seller's business and specifically relate to the business that will be conducted by Buyer using the assets to be acquired.

The seller, which derives more than \$1 million in annual revenues from manufacturing operations, has total assets of less

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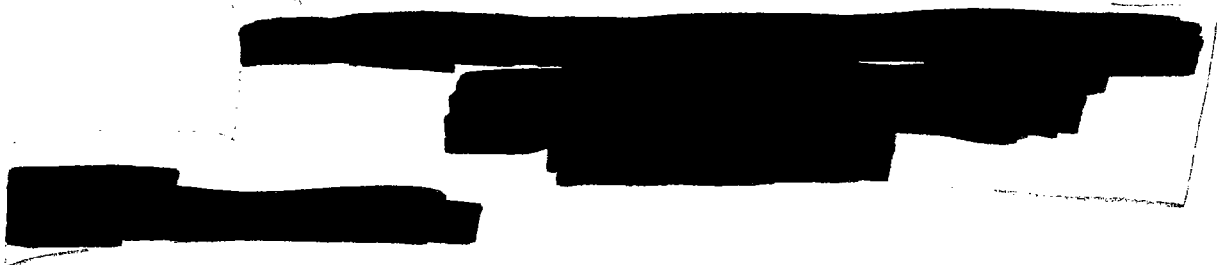
than \$10 million, but annual net sales exceeding \$10 million. The buyer has both total assets and annual net sales in excess of \$100 million.

We have each discussed with you the question whether the assumption by the buyer of seller's obligations under the purchase contracts and sales contracts would be deemed to be an assumption of liabilities that must be included as a part of the acquisition price in determining the value of the assets pursuant to FTC Rule 801.10.

You advised that where the contracts in question are ordinary course of business purchase and sale contracts related to the assets being acquired and are valuable in and of themselves, they would not be considered liabilities assumed for purposes of determining the purchase price.

Unless you advise that further information is required to substantiate this conclusion, or that my restatement of your advice is incorrect, we will proceed accordingly.

Very truly yours,

A large rectangular area of the document is completely redacted with black ink, obscuring the signature and any text that might have been present below the closing. The redaction covers approximately the bottom third of the page.