7A(c)(1); 802.1(a)

[redacted]

[redacted]

February 3, 1994

VIA HAND DELIVERY

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Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 321
6th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: The Definition of "Realty" for Purposes of
<u>15 U.S.C. § 18 A(c)(1) and 16 C.F.R. § 802.1</u>

Dear Dick:

I am writing on behalf of [redacted]) to confirm the applicability of the ordinary course of business exemption to [redacted] proposed acquisition of an [redacted]

I. <u>The Building</u>

About ten years ago, the current [redacted] of the [redacted] commenced construction of the [redacted] The first [redacted] consists of about [redacted] It was completed in [redacted] and the [redacted] has been partially occupied by some B employees from time to time. However, this [redacted] has never generated any revenues. The second [redacted], a [redacted] to house [redacted] was constructed in [redacted] This [redacted] has never been used or generated any revenues. Indeed, it contains no productive equipment.

While the [redacted] was designed to be a class one, [redacted] (<u>e.g.,</u> its columns are positioned to minimize vibration), it was never completed, much less had the other capabilities and capacity to [redacted] The building has utilities, water and air conditioning; but many additional steps would have to be taken to qualify it as a class one, clean [redacted] For example, [redacted] would have to install a deionized water system, special utilities, special pipes to supply gases and specialty chemicals, <u>et alia</u>.

For these and other reasons, we do not believe that the [redacted] could be fairly characterized as unique. As an inchoate clean room, it could be utilized for a variety of applications ranging from the [redacted] Moreover, given the dynamic technology and production process for [redacted] the limited internal partitions currently in the [redacted] will have to be removed and repositioned to produce current generation [redacted] Finally, there are a number of other [redacted] around the country.

II. The Proposed Transaction

[redacted] is presently negotiating with B to acquire the [redacted] for a price in the $40-$50 million range. [redacted] would likely invest another $40 million to restore the [redacted] and bring it up to specifications. This includes removing and repositioning partitions, replacing and adding filtration systems, and installing special pipes for the requisite gases. In addition to the fact that the [redacted] was originally designed for production processes and products which are now obsolete, [redacted] will also reconfigure the [redacted] to produce a different size/type of [redacted] than the ones B had planned to manufacture.

In addition to this restoration and redesign, [redacted] will need to purchase all of the requisite equipment [redacted] In doing so, [redacted] will order all of its own equipment, rather than taking an assignment of any of B's purchase orders (assuming B ever had, much less still has, any such contracts). [redacted] estimates that this equipment will cost an additional $50-100 million.

III. Applicability of the Realty Exemption

I understand from our recent conversations, not to mention our on-going dialogue over the years, that we all agree that the [redacted] is a "nonproductive asset" and thus "realty" for purposes of 15 U.S.C. § 18A(c)(1) and 16 C.F.R. § 802.1. In reaching this conclusion, I further understand that you and John have relied on one or more of the following factors, although I do not concede that they are all apropos much less dispositive. First and most importantly, the [redacted] does not currently generate any revenues, nor to the best of my knowledge has it ever done so. Second, the [redacted] is not merely a turnkey facility. Rather, it will require more than a de minimus amount of additional capital investment; and the acquiring person will not merely assume the acquired person's contracts to complete the facility. Finally, the whole [redacted] was not "uniquely" designed for specific equipment, which a buyer would merely need to procure and install. Rather, the [redacted] would have to be restored and redesigned to fulfill the acquiring person's proposed use, or even the originally intended use, not to mention the fact that the [redacted] could alternatively be used to produce a variety of unrelated products.

IV. Conclusion

For the aforementioned sufficient reasons, th[redacted] is a nonproductive asset and thus realty for purposes of the exemptions contained in 15 U.S.C. § 18A(c)(1) and 16 C.F.R. § 802.1. As a result, [redacted] and B need not comply with the reporting and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, even if: (1) they satisfy the jurisdictional elements set forth in Sections (a)(1)-(3) of that Act; and (2) the proposed transaction is not in the ordinary course of their business.

Kindly contact me at your convenience to confirm that you and John still concur in this analysis and conclusion.

Very truly yours,

[redacted]

2/18/94 - advised author of letter that, based on the facts presented, [redacted] no filing need be made for the sale and purchase of the [redacted]

RBSmith