7A(c)(1)



June 22, 1994

<u>Via Fax (202) 326-2050</u>

Ms. Nancy Ovuka Compliance Specialist Federal Trade Commission Premerger Notification Office 6th and Pennsylvania Ave., N.W. Washington, DC 20580

Clayton Act

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Request for Staff Interpretation of Section 7A of the مَي

Dear Ms. Ovuka:

This letter requests an interpretation of Section 7A of the Clayton Act, 15 USC § 18a, (the "HSR Act") as applied to the transfer of a used having a fair market value in excess of \$15 million to a manufacturer of new from the same manufacturer. The manufacturer is not engaged in the business of providing transportation for hire, either regularly scheduled or by charter. The parties fulfill the size-of-persons criteria.

The question presented is whether the acquisition of a used as a trade-in by a manufacturer of "acquisition of goods...transferred in the ordinary course of business," within the meaning of Section 7A(c)(1) of the Clayton Act, 15 USC § 18a(c)(1), and therefore exempt from the requirement to file a Notification and Report Form.

The sale of is addressed in a report on an FTC Staff Interpretation as Number 1, at ABA, Section of Antitrust Law, Premerger Notification Practice Manual 1 (1985). In Example A of that Interpretation the Staff first dealt with a sale by an manufacturer of a \$16 million to an The Staff concluded that such a transaction was in the ordinary course of the manufacturer's business because the manufacturer does not use as an income-producing asset. The Staff contrasted that situation with the sale by one

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to another The Staff observed that even though buy and sell frequently, they are not in the productive assets.

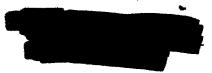
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The Staff's key concept is use as a productive asset by the seller. The concept serves the two purposes of the HSR Act, i.e., (i) to afford antitrust enforcement agencies time to review in advance combinations of going business enterprises in the transportation industry that might violate Section 7 of the Clayton Act, (ii) to avoid burdening the process with reviews of hundreds of ordinary-course sales of high-value

Requiring Notification for a manufacturer's receipt of an as a trade-in would serve neither of the HSR's purposes, i.e., it is not the combination of going business enterprises in the transportation industry, and it would unduly burden the process of trading-in used on new

Therefore, we request confirmation that a Notification and Report Form need not be filed with respect to the above-described used—trade-in. In view of the parties' desire to consummate the transaction at the earliest possible time, we would appreciate your giving this request expedited treatment.

Respectfully submitted,



The transfer of a used as a trade-in or a rew is exempt in the ordinary course of trisiness. The parties are not corrections. Also, used has been used as a corporate of not income producing asset in this case. Apparently, accepting trade-ins is not unusual for manufacturers. J3 & R3 corcur.