

802.6
vc

Taking back of voting stock of debtor is
except under 802.63 as part of "upon default"

press or
work as long

[REDACTED] as a bona-fide debt
[REDACTED] as they are not
[REDACTED] arrangement was entered

competitors & credit

into VIA FACSIMILE
in normal course of business. *Jack* so indicate.
February 22, 1995

Mr. Victor Cohen
Premerger Notification Office
Federal Trade Commission
Washington, D.C.

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976

Dear Victor:

The purpose of this letter is to confirm our telephone conversation of yesterday in which we discussed the Premerger Notification Office's interpretation of 16 C.F.R. §802.63 of the regulations promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The situation of which we spoke involves an acquisition of the stock of a corporation ("Company") by a supplier of raw materials ("Supplier"). Company has for some time been experiencing financial difficulties and owes Supplier money for materials purchased from Supplier. Several months ago Supplier entered into an agreement with Company pursuant to which Supplier would continue to provide raw materials to Company under certain conditions. One of the stated conditions was that the stockholder of Company would pledge shares of Company stock as collateral for the debts owed to Supplier and would also give Supplier an option to purchase the shares of Company stock at a total exercise purchase of \$1 if Company had not paid down its debts by a certain dollar amount by a certain future date. Company has not been able to meet the required payment schedule and Supplier now wishes to acquire the shares of Company, preferably through exercise of the \$1 option.

In our discussions, you stated that the Premerger Notification Office no longer limits the application of 16 C.F.R. §802.63 to banks or other traditional lenders. You concluded that the exercise of the \$1 option would fall within the "an acquisition in foreclosure or upon default" language of 16 C.F.R. §802.63 as long as the option arrangement had been entered into in the ordinary course of Supplier's business. Supplier's business is to produce and sell raw materials of the type sold to Company. In conducting its business, Supplier reaches various payment terms and conditions with its various customers. Supplier's decision to continue to sell materials to Company was based upon the collateral and option arrangement reached with the stockholder of Company. Previously, when Company was held by another stockholder, Supplier entered into a similar collateral and option arrangement with that stockholder. Supplier considers entering into

Mr. Victor Cohen
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various collateral arrangements with customers, such as the one used here, as being in its ordinary course of business.

On the basis of our discussion and the facts outlined in this letter, Supplier intends to exercise the option without filing under the Act because it considers the exercise to be exempt under 16 C.F.R. §802.63. Please telephone me at [REDACTED] if you are not in agreement with my restatement of our conversation concerning the Premerger Notification Office's interpretation of 16 C.F.R. §802.63 or its application to these facts.

Very truly yours,

A rectangular box containing a completely redacted signature, consisting of several thick black horizontal bars.