§ 802.2(c)

[redacted]

June 28, 1996

VIA HAND DELIVERY

Melea R. Epps, Esq.
Staff Attorney
Premerger Notification Office
Federal Trade Commission
Room 301
6th and Pennsylvania Avenues, N.W.
Washington, DC 20580

Dear Melea:

This letter confirms our conversation regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act, codified at 15 U.S.C. § 18a (1990) ("H-S-R Act"), and the rules promulgated thereunder, codified at 16 CFR § 800 <u>et</u> <u>seq</u>. ("H-S-R Rules"), to the following potential acquisition[1]:

> Company A, a manufacturer of small engines for a variety of consumer and industrial applications, currently owns and operates a manufacturing facility and the real property upon which the manufacturing facility is located. Company A derived revenues in excess of $ 5 million from the engines produced at that facility last year. Company A proposes selling to Company B the manufacturing facility and real property, but, prior to the closing, will remove its assembly lines from this facility and reinstall the fixtures and equipment at another facility. Company A and Company B do not compete with each other and Company B will not be producing the same type of engines from that facility. Company B will, after the closing, install its own equipment to produce its own products from that facility.

Based on our telephone conversation, it is my understanding that this transaction would not be deemed reportable under 16

[1]For purposes of this letter, please assume that the size of the parties and the size of the transaction tests are met.

[redacted]

C.F.R. § 802.2(c), which exempts the acquisitions of unproductive real property. Even though Company A derived revenues in excess of $ 5 million during the 36 months preceding the trnasaction from the facility, it was not the real property from which these revenues were derived. The production machines and equipment which produced these products are being removed from the manufacturing premises and will not convey to Company B. Rather, Company A will deploy this equipment to continue manufacturing the same products at another facility. Thus, for purposes of Section 802.2(c), these revenues will not be attributed to the real property and the assets that will be conveyed will be deemed "unproductive" for Hart-Scott-Rodino purposes.

Please let me know as soon as possible if I have in any way misunderstood your guidance regarding the nonreportability of this transaction. As always, I appreciate the assistance of the staff of the Premerger Notification Office.

Sincerely,

[redacted]

I called the author on 6/28 and indicated that under these particular set of facts the 802.2(c) exemption applied. If, however, the facility contained specialized fixtures that could only accommodate equipment used in a particular industry, and the facility were being sold to a competitor, the exemption may not apply —