[redacted] [redacted] [redacted]

801.11(c)(2), Sec. 7A(a)(2)(B)

June 8, 1999

VIA FACSIMILE

Richard B. Smith, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Smith:

Our client, the acquiring person, has assets in excess of $100 million. The acquired person, a non-manufacturer, had assets at the end of its last fiscal year, July 31, 1998, of $8.9 million. Even for its own internal use, the acquired person prepares balance sheets only at the end of each fiscal year. Thus, the July 31, 1998 balance sheet is "the last regularly prepared balance sheet" of the acquired person. The size-of-the-transaction threshold is crossed.

At the request of our client, the acquired person had an accountant prepare a special financial statement as of February 28, 1999. The balance sheet in that statement showed assets of $11.7 million. We do not believe that this was a "regularly prepared balance sheet," and, therefore, we believe that the size-of-the-parties threshold is not crossed. See item 160 in Premerger Notification Practice Manual (ABA 1991): "a balance sheet prepared for purposes of a particular transaction usually is not regularly prepared."

We would appreciate your informal opinion as to whether our analysis is correct. My direct line [redacted] Many thanks.

Sincerely [redacted]

RMB/nal

6/8/99 - Advised writer that the "special financial statement" prepared by the to-be-acquired person at the direction of the acquiring person for purposes of the proposed transaction is not regularly prepared. Under 801.11 [illegible] of [illegible] the 7/31/98 balance sheet is the beginning of the 15 month period. If closing occurs after end [illegible] date, a pro forma balance sheet must be prepared. If the 7/31/99 balance sheet is [illegible] before closing, it must be used to determine size of acquired person. Writer will confirm that acquired person did not have [illegible] of the last financial statement. [illegible]
R.B. Smith