

802.2(h)
802.1(c)

2001 MAR 27 7 4: 59

March 27, 2001

By Hand

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Verne:

This is to confirm the conversation [REDACTED] and I had with you on March 20, 2001, in which you agreed that the following transaction does not require a Hart-Scott-Rodino ("HSR") filing.

Company A is a wholesaler which recently lost a major customer. The customer decided to purchase its supplies from Company B, which now needs additional warehouse space.

Company A has agreed to sell Company B two warehouses (one leasehold, one fee), inventory (which it had planned to sell to the lost customer), and equipment within the warehouses, such as shelves. Company B will move its own computer system into the warehouses. Customers (other than the lost customer) which were served by Company A from the warehouses to-be-sold will be supplied from other warehouses of Company A.

The transaction amount exceeds \$50 million, and the parties meet the size-of-person test. Excluding either the warehouses or the inventory from the purchase price would result in a transaction valued at less than \$50 million.

Warehouses. The acquisition of a warehouse and incidental assets, except where the warehouse is to be acquired in an acquisition of a business conducted on the real property, is exempt from filing an HSR report pursuant to rules promulgated by the Federal Trade Commission ("FTC"). 16 C.F.R. § 802.2 (h). You concluded that a wholesale distribution business was not being acquired in the current transaction due to the absence of an assignment or sale of a customer base, e.g., supply contracts with

[REDACTED]

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customers or customer lists. Thus, the value attributable to the warehouse portion of the transaction can be deducted from the total transaction amount.

Inventory. FTC rules also exempt the acquisition of "current supplies" which is defined, in part, to include goods acquired and held solely for the purpose of resale, except when sold as part of an acquisition of an operating unit. 16 C.F.R. § 802.1(c)(1). "Inventory" is specifically listed as an example. You concluded that the inventory to-be-sold constitutes current supplies since it was held by Company A for purposes of resale and will be resold by Company B. That inventory is exempt from the HSR Act because it meets the definition of current supplies and because no operating unit is being acquired.

In sum, both the warehouses and incidental assets and inventory are exempt from an HSR filing.

Please telephone me or [REDACTED] prior to April 3, should you disagree with our conclusions.

Thank you very much for your assistance.

Sincerely,

[REDACTED]

AGREE. N. OVUKA CONCURS.
THIS DOES NOT CONSTITUTE THE ACQUISITION OF
A WHOLESALE DISTRIBUTION BUSINESS.
B. [REDACTED]
3/28/01

[REDACTED]

[REDACTED]