



February 25, 2009

801.10

VIA E-MAIL

Mr. James Ferkingstad
Federal Trade Commission
Bureau of Competition
Premerger Notification Office
600 Pennsylvania Avenue, NW
Room 303
Washington, DC 20580

Agree JMF
2/26/09

Dear Mr. Ferkingstad,

This letter will confirm our telephone conversation on February 24, 2009 regarding the issue of determination of purchase price in a sale of non-corporate interests.

Our client, the Buyer, is purchasing from the Seller all of the interests of an LLC (the "Target") whose assets include a manufacturing plant. Under the Purchase and Sale Agreement, the Buyer is paying a fixed cash purchase price. As a separate provision in the Agreement, the Buyer will also take assignment from and assume obligations under an executory supply contract between an affiliate of the Seller and a third party under which the affiliate is required to supply certain requirements of the third party, either from the plant or from another source. The Buyer will step into the shoes of the Seller's affiliate under this contract and be required to meet the supply obligations to the third party. We noted that the contract is unfavorable relative to the current market.

You confirmed on the call that no value should be placed on the assigned contract and that the assumption of the obligations under this contract would not factor into determining the purchase price under the size-of-transaction test. (For somewhat analogous rulings, see Premerger Notification Practice Manual Interpretations 105 and 113 and Informal Interpretation File #s 9910014, 8507013 and 8312007.)

If this letter accurately summarizes our conversation, please indicate your agreement by return email for our files.

Thank you again for your assistance in this matter.

Sincerely,

