

801.1

801.21

801.15

801.15

801.21

801.90

802.1

802.20

342-8576

February 29, 1984

BY HAND

Dana Abrahamsen, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Room 301  
Washington, D.C. 20580

*Not in normal course of business  
to sell superm. bts. & therefore*

*FOI can't apply.*

*Also, FOI only exempt cash  
& securities & not mention inventory*

Re: Ordinary Course of Business Exemption

Dear Dana:

*- #17 in PM Manual - most likely wrong  
advised given*

This is to confirm our conversations of February 27, 1984 relating to the applicability of the "goods and realty in the ordinary course of business" exemption of 15 U.S.C. § 18a(c)(1) to certain acquisitions of supermarkets. In the course of our discussions I informed you that a client had entered into a contract to sell a number of supermarkets which do not constitute "all or substantially all of the assets of an entity or operating division." The price established for the sale is a fixed amount less than \$15 million, plus an amount equal to the cash and cash equivalents on hand at the closing, plus the value at wholesale cost of the inventory in the stores at the closing. The sum of these figures will be in excess of \$15 million.

You concurred with me that the proper analysis of this transaction is as follows: 1) the cash and cash equivalents are not included in determining the size of the transaction (16 C.F.R. § 801.21); 2) the acquisition of the inventory is an exempt acquisition in the ordinary course of business (15 U.S.C. § 18a(c)(1), 16 C.F.R. § 802.1) and is not aggregated with any other acquisition (16 C.F.R. § 801.15); and 3) the acquisition of the su-

*per W/only - carrying on business in ordinary course of business*

Dana Abrahamsen, Esq.  
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permarkets for less than \$15 million is exempt under the minimum dollar value exemption (16 C.F.R. § 802.20) so long as no avoidance was intended (16 C.F.R. § 801.90). I further informed you that no avoidance was involved and that, in fact, when it was negotiated the parties had been unaware that the transaction might be exempt from the Act.

Following our initial conversation on this matter we spoke again, at which time you informed me that you had discussed the above analysis with Roberta Baruch, Assistant Director For Evaluation, and that she also agreed with your conclusion that the notice and waiting period requirements of Section 7A do not apply to the proposed sale of these supermarkets. The parties are proceeding on that basis.

Very truly yours,

[Redacted Signature]

11/10/90 - called [Redacted]  
[Redacted] advised that the  
advice given in their letter as to the  
exclusion of inventories is presently viewed  
as incorrect by the P&M [Redacted]. The  
sale of an ongoing supermarket is not done  
in "the ordinary course of business" and  
acquired should not be excluded from the  
transaction process.  
F. [Redacted]