801.10

[redacted]

[redacted] [redacted]

August 26, 1988

This material may be subject to the [illegible] Section [illegible] of [illegible] Act [illegible] under the Freedom of Information Act

Victor Cohen, Esq.
Federal Trade Commission
Sixth Street & Pennsylvania Avenue, N.W.
Room 301
Washington, D.C. 20580

Dear Mr. Cohen:

I am writing to confirm the advice that you gave me yesterday over the telephone concerning the following transaction.

Company A has a business which produces a line of products called X. Company B is acquiring from Company A specified assets of this business, except for the plant, land, personnel and equipment used to manufacture X, for $13 million, and an option to buy for $1.00 certain equipment at the end of the supply agreement referred to below. These assets include technology (including patents and trademarks), customer and supplier lists and files, and most assignable contracts. In addition, Company B is purchasing $1.5 million in finished inventory. Company A will, in connection with the sale, sign a covenant not to compete.

Since Company B is not buying the plant and equipment used to manufacture product X, it desires to enter into a supply contract, pursuant to which Company A will manufacture most of X for Company B for a period of at least one year. It is expected that the total revenues to Company A from this supply agreement will be approximately $10 million. All of the finished goods supplied pursuant to this agreement will be newly manufactured products and will not include any finished inventory that existed at the time of the original sale agreement. At the end of the one-year term of the agreement (unless extended), Company A will sell to Company B all remaining raw materials and intermediates. It is expected that the purchase price of these materials will be less than $500,000.

Acquiring side's board of directors should determine fair market value to make sure, price is below $15 MM.

Based on these facts, you confirmed that so long as Company A is delivering true economic value in manufacturing X for Company B, the revenues which Company A receives under the supply agreement would not be included in determining the size of transaction. In that case, the total acquisition price for the assets being purchased would be less than $15 million and the transaction would not be reportable.

Thank you for your assistance and advice on this matter. If I have misunderstood or misstated your advice, please let me know immediately.

Sincerely,

[redacted]