

802.1. When property is no longer rented + the building must be demolished
it is equivalent to acquiring raw land + except under 802.1
legally required to [redacted] condition must be imposed
by 3rd person such as a zoning board

April 3, 1991

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[Redacted]

Dear Victor:

This letter confirms our discussion this morning regarding the informal interpretation of Section 802.1 of the Commission's Rules implementing Section 7A(c)(1) of the Hart-Scott-Rodino Act (the "Act"). Section 7A(c)(1) of the Act and Section 802.1 of the Rules exempts an acquisition from the requirements of the Act if the acquisition is of goods or realty transferred in the ordinary course of business. This letter confirms our mutual view that the proposed acquisition by [redacted] of certain real property comes within this exception.

A/D

As you recall, the subject transaction involves the acquisition of two blocks of property in [redacted] (the "Property"), which are bisected by [redacted] currently a private roadway. [redacted] are the trustees under nine recorded trusts (the [redacted] which own the fee simple interests in the Property. [redacted] purchased the fee interest to [redacted] on February 4, 1991.

On August 17, 1989, [redacted] entered into an option agreement and, on October 12, 1990, entered into a first amendment to the option agreement ("the Option Agreement") pursuant to which [redacted] was given the right to acquire, pursuant to a tax free exchange under Internal Revenue Code Section 1031, a fee interest in a portion of the Property, including certain street widening parcels (the "Fee

Victor Cohen, Esq.
Page Two
April 3, 1991

Parcels") as well as a leasehold interest in the remaining portion of the Property (the "Leasehold Parcels"). On October 12, 1990, [REDACTED] exercised its rights under the Option Agreement and [REDACTED] have agreed to close the transaction on July 1, 1991 (the "Closing Date"). Because the Property is currently subdivided into many parcels, on the Closing Date, the Property and [REDACTED] will be consolidated and resubdivided into the Fee Parcels and the Leasehold Parcels. At closing, the [REDACTED] will each convey their respective interests in the Fee Parcels to [REDACTED] and [REDACTED] will convey, to each of the various [REDACTED] Haseko's fee interest in a portion of [REDACTED]. In addition, [REDACTED] will convey additional property (the "Exchange Property") to the [REDACTED]. As of the date of this letter, the Exchange Property has not yet been identified. Finally, [REDACTED] will convey the street widening portions of the Fee Parcels to the City and County of [REDACTED] at a later date.

Presently, the Property supports a variety of establishments including commercial offices, retail shops, restaurants and automotive repair shops. However, pursuant to the Option Agreement, [REDACTED] is required to demolish all existing improvements and to complete a new development which will include, at the minimum, a residential condominium, a commercial office building and a retail shopping center. All tenants currently occupying the Property have been notified that all leases will expire on June 30, 1991, and that, on July 1, 1991, [REDACTED] will be permanently closed in preparation for the demolition of all structures and redevelopment of the Property.

B/L

During our conversation we concluded that the acquisition is of realty in the ordinary course of [REDACTED] business and does not raise any substantive antitrust concerns. Our conclusion was based on the consistent application of the Section 802.1 exemption by the FTC staff to acquisitions of raw land and partially developed income-producing property, such as retail shopping centers, which are not generating an income stream at the time they are acquired. Since all of the leases will expire prior to the Closing Date and the Property will, therefore, not be generating an income stream, and since the terms of the transaction require the demolition of all existing improvements, the acquisition resembles the acquisition of raw

Victor Cohen, Esq.
Page Three
April 3, 1991

land, or at most, a partially developed shopping center. Thus, ^{per} since the Property will not be generating an income stream at the time of its acquisition by [REDACTED] the purpose and intent underlying the Section 802.1 exemption will be satisfied if the exemption is applied to this acquisition.

Thank you for taking the time to discuss the applicability of the Section 802.1 exemption to this transaction. If this letter misstates our discussion or the FTC Staff's application of the exemption, please call me as soon as possible since the Closing Date is, for various reasons, a firm date which cannot be rescheduled.

Once again, thank you for your help and guidance with this matter.

Very truly yours,

[REDACTED]
[REDACTED]

A/D