

[REDACTED]

April 22, 1993

By Telecopy to (202) 326-2050

Thomas F. Hancock, Esquire
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Hancock:

I am writing this letter to memorialize our conversation of this morning concerning the applicability to the following transactions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the FTC's implementing regulations (collectively, "Hart-Scott").

1. Person A is a [REDACTED] that controls the [REDACTED] generated by R, a retailer. R has an option under the agreement with A to purchase the [REDACTED]. R desires to switch its future credit relationship and existing accounts receivable to B, another [REDACTED]. Accordingly, R will assign its purchase option to B, and B will then acquire the existing [REDACTED] from A. A will remain in the [REDACTED]. B will consolidate the acquired [REDACTED] with new [REDACTED] generated by R, and this transaction would be in the ordinary course of business of both A and B. All applicable size-of-person and size-of-transaction tests would be met.

You indicated that the transaction described above would constitute the acquisition of [REDACTED] in the ordinary course of a creditor's business, in a bona fide [REDACTED] transaction, and thus would be exempt from filing requirements under 16 C.F.R. § 802.63. If this does not accurately reflect the advice you provided, please call me immediately.

2. I also asked whether the transaction would remain exempt if it were structured in the following manner: Instead of

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assigning its purchase option to B, R would acquire title to the [REDACTED] from A and immediately and simultaneously convey the [REDACTED] to B. Pursuant to agreement between R and B, B--and not R--would bear the risk of any defaults, and the right to receive any payments, on the accounts during the moment that R held record title. The substance of the transaction--an ordinary course of business [REDACTED] between creditors--would remain the same as the first transaction described above. While R would hold record title for an instant, at that instant it would also have the unconditional obligation to convey the [REDACTED] to B.

I expressed the view that under this second form of transaction, R would appear never to possess [REDACTED] ownership, rendering the transaction exempt under § 802.63. You indicated that you wanted to consider the issue further before providing advice and requested that I draft this letter presenting the relevant facts.

Please give me a call when you have formulated your advice as to the Hart-Scott implications of the second form of transaction described above.

Thank you very much for your time and helpful assistance.

Very truly yours,
[REDACTED]
[REDACTED]