

6 802.2 (h)

July 31, 1996

VIA FACSIMILE: (202) 326-2624

Richard B. Smith, Esquire
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20530

Re: *Informal HSR Interpretation*

Dear Dick:

This will confirm the informal interpretation which we discussed earlier today.

I described a situation in which a large retail store was subject to a long term lease. The lessee wished to assign the lease to a new lessee, who would pay the lessee more than \$15 million in consideration. The result is an acquisition of an asset valued at more than \$15 million.

My question to you was whether assignment of the lease under these circumstances qualified for exemption under 16 C.F.R. §802.2(h), which exempts "an acquisition of retail rental space . . . and assets incidental to the ownership of retail rental space . . . except when the retail rental space . . . is to be acquired in an acquisition of a business conducted on the real property." I stated that the acquiring lessee did not intend to acquire the trade name, or any inventory of the old lessee, although it would acquire use of certain fixtures that would remain on the leased premises.

You told me that it is the position of the Premerger Notification Office, first, that assignment of a lease under these circumstances qualifies as an acquisition of "retail rental space" within the meaning of 16 C.F.R. §802.2(h). Second, you told me the fact that the new lessee will not acquire the trademarks or inventory of the old lessee is a very strong indication that the new

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lessee would not be making "an acquisition of a business conducted on the real property" within the meaning of that rule.

I also asked whether your advice that a new lessee was not acquiring "a business conducted on the real property" might be different if the new lessee were to acquire accounts receivable or customer lists or both from the old lessee, and you stated that it might.

Please let me know if my letter differs in any way from the advice you provided. Thanks again for your help.

Sincerely yours

[Redacted signature]

[Redacted]

[Redacted]

8/2/96 The writer advised that the "certain fixtures" referred to in TP three would include such items as lighting, carpeting, shelving, etc. bought by the lessee and affixed to the realty for the lessee's use in conducting its retail operations on the leased premises. Without a specific removal clause in lease, the fixtures become the property of the lessor at the expiration of the lease.

(Letter reviewed by Tom Hancock and Melba Eggs and we all agreed in the conclusions reached by the writer.)
R.B. Smith