801.13(b)
c-1

[redacted]

October 24, 1990

[redacted]

Premerger Notification Office
Bureau of Competition
Sixth & Pennsylvania Avenue, N.W.
Room 303
Washington, DC 20580

BY TELECOPIER
(202) 326-2050

Attention: John Patrick Sharpe

Re: Pre-Merger Notification Requirements under the Hart-

Dear Mr. Sharpe:

Pursuant to our telephone conversation on Monday, October 22,

1. A division of seller (the "Selling Division") is engaged a manufactu
in the purchase and sale of certain types of goods.

by a division of our client ("Buying Division A") in the ordinary

is about to purchase substantially all of the operating assets of

4. Between now and the closing date, Buying Division A will continue to purchase the above goods from Selling Division in the ordinary course of business. The aggregate price of these goods will be approximately $20 million. These goods would have been purchased irrespective of the sale of assets. However, they will be priced somewhat higher than they normally would.

How much higher?

purchase of Selling

[redacted]

Called 10-31-90
(85)

[redacted]

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Buyer is acquiring $20.0mm of $25.0 mm in inventories or 80% of seller = "substantially all".

5. After the above transactions, Selling Division will be left with other types of goods having a value of approximately $5 [redacted]

Our question is whether the ordinary course of business exception set forth in Section 7A(c)(1) of the Clayton Act will be available with respect to the purchase of the inventories by [redacted]

Division A would have purchased the inventories in question in the ordinary course of its business whether or not the sale of assets to Buying Division B took place. Another [redacted]

your attention and assistance in this matter.

Rather than focusing on current [redacted]

Sincerely,

Assets $2-$3 $3.0 mm
Inven Held at $6-8 8.0 mm

[redacted]

Answer: Determined that buyer acquired [redacted]
VM:023
$2 mm in hard assets and $45.5 mm in inventories of which $6.0 to $8.0 mm will be held at the time of Consummation.

Note: I'm not sure what "substantially all" means but I know what it is when I see it — 80% is substantially all.

Based on the information given at the high end this will not meet the size of transaction. Advised that inventories are not in the ordinary course when connected with the sale of substantially all of the assets of a division irregardless of two separate agreements (see comment 14 of Premerger Practice Manual) (85) conferred with [redacted]