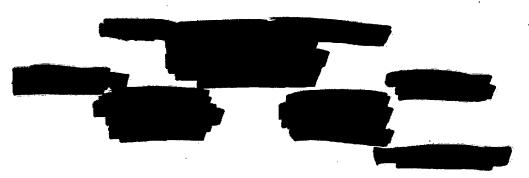
DEC 11 '92 11:53 0000 P.2/6



April 6, 1992

Mr. William Schechter
Staff Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission, Room 303
Washington, D.C. 20580

Dear Mr. Schechter:

fransaction between Buyer, a cooperative corporation primarily engaged in the

submitted to the Offited States Department of Justice and Federal Trade Commission under the premerger notification rules of the Hart-Scott-Rodino Antitrust Improvements Act.

The proposed transaction is structured as follows:

- I. Asset Disposition.
 - A. Buver will purchase for approximately Nine Million Dollars (\$9,000,000) the inventory in Seller's present distribution facility.
 - B. Buyer will sublease Seller's distribution facility for the remaining term of the lease, which expires on April 30, 1993. The distribution facility lease has two

transfer to Buyer all of Seller's rights under the distribution facility lease, including renewal options. At the present time, Buyer does not expect to use the

- C. Buyer will sublease Seller's fleet of distribution trucks for a term equal to the floring of the and of the remarking lease agreement, or the termination of the Supply Agreement.
- D. Seller will grant to Buyer a first refusal offer with respect to fourteen (14) of its torses. With respect to Soller's other stores, Seller will grant to Buyer a right of first offer. By this, it is meant that Seller must first

<u>fo gell the stores for the same on a constant o</u>ring. If harmone a lesse<u>n dei</u>se :

Supply Arrangement.

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not consider

If (1) Seller transfers any of its stores to third parties and such third parties are not supplied by Buyer, and (2) as a result, Seller's purchases from Buyer of stores litems is less than ninety percent (90%) of a set target for

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purchase from Buyer, Seller would be obligated to begin repayment of sixsevenths (6/7) of the advance

Seller may, at any time, elect to terminate the Supply Agreement; however, if the Supply Agreement is terminated by Seller, a prorated portion of the sum advanced must be repaid. Again, for simplicity, if Seller terminates on the first anniversary of the Supply Agreement, the sum mentioned in II. B above, must be repaid to Buyer.

D. Seller's repayment obligation as mentioned in II.B shall be secured by the

The consideration connected with the "assets," as described in Part I above, could not, under any rational analysis, approach \$15,000,000 (the Size of Transaction threshold). Thus, the transaction would be unmistakably exempt if the transaction only consisted of Part I. If the

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advance paid in connection with the Supply Agreement were somehow treated as the purchase

is used in Section 7 of the Clayton Act. This is simply an advance to secure an outlet for the sale of goods. The right to sell goods is neither property nor a property right which is subject to transfer.

nothing flows from the payee to the payor other than the payee's commitment to purchase a target amount.

Under the Supply Agreement, the Buyer will recoup its on the profits from the sale of the

The Supply Agreement is more akin to a loan of working capital than to a purchase of assets. Indeed, the Seller's financial condition is such that, without this or some other infusion of funds, the vitality of the entity as a participant in the market could be seriously

believes that, with the said infusion of funds, it can survive and be a vigorous competitor for the

We hope that the Federal Trade Commission can confirm our conclusion that the Supply Agreement, as described above, does not constitute an "asset" under the Clayton and Hart-Scott-

Commission will be able to respond to this request by Wednesday the 8th of April. If this will not be possible or if you require additional information, please notify us by telephone at the

consideration of this matter.

Very truly yours,