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[REDACTED]

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:

Re: [REDACTED]

[REDACTED]

transaction between Buyer, a cooperative corporation primarily engaged in the [REDACTED]

submitted to the United 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. Buyer will purchase for approximately Nine Million Dollars (\$9,000,000) the [REDACTED] 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 charter of the end of the respective lease agreements or the termination of the Supply Agreement.

D. Seller will grant to Buyer a first refusal offer with respect to fourteen (14) of its stores. With respect to Seller's other stores, Seller will grant to Buyer a right of first offer. By this, it is meant that Seller must first

to sell the stores for the same or a greater price. If however, a lower price is

II. Supply Arrangement.

I do not consider

B. 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 items is less than ninety percent (90%) of a set target for

of the purchase price

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

C. 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 granting by Seller to Buyer of a first priority security interest in the furniture

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

APR 06 '92 16:12 0000

P. 4/4

April 8, 1992
Page 3

advance paid in connection with the Supply Agreement were somehow treated as the purchase of an asset, however, the value of the "assets" would exceed the Size of Transaction threshold

the supply agreement would not be considered payment for the purchase of an asset, as an asset 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 [redacted] on the profits from the sale of [redacted] to Buyer. Indeed, if, under certain circumstances, the target purchases are not satisfied, Seller must commence repayment of the funds advanced. If the Seller simply wants out, it can terminate the Supply Agreement, but, in that event, a prorated portion of the [redacted] must be repaid. This is clearly inconsistent with the concept of a purchase or other acquisition of a property right.

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 [redacted] market could be seriously

believes that, with the said infusion of funds, it can survive and be a vigorous competitor for the [redacted] in the region.

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,
[redacted signature]