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June 22, 1994

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JUN 23 10 29 AM '94
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Re: Request for Staff Interpretation of Section 7A of the Clayton Act

Dear Ms. Ovuka:

This letter requests an interpretation of Section 7A of the Clayton Act, 15 USC § 18a, (the "HSR Act") as applied to the transfer of a used [redacted] having a fair market value in excess of \$15 million to a manufacturer of new [redacted] as an allowance

or by charter. The parties fulfill the size-of-persons criteria.

The question presented is whether the acquisition of a used [redacted] as a trade-in by a manufacturer of [redacted] is an "acquisition of goods...transferred in the ordinary course of business," within the meaning of Section 7A(c)(1) of the Clayton Act, 15 USC § 18a(c)(1), and therefore exempt from the requirement to file a Notification and Report Form.

The sale of [redacted] is addressed in a report on an FTC Staff Interpretation as Number 1, at ABA, Section of Antitrust Law, Premerger Notification Practice Manual 1 (1985). In Example A of that Interpretation the Staff first dealt with a sale by an [redacted] manufacturer of a \$16 million [redacted] to an [redacted]. The Staff concluded that such a transaction was in the ordinary

does not use [redacted] as an income-producing asset. The Staff

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[REDACTED] to another [REDACTED]. The Staff observed that even though
business of selling [REDACTED]. Rather, they use the [REDACTED] as
productive assets.

The Staff's key concept is use as a productive asset by the
seller. The concept serves the two purposes of the HSR Act,
i.e., (i) to afford antitrust enforcement agencies time to review
in advance combinations of going business enterprises in the
Clayton Act, (ii) to avoid burdening the process with reviews of
hundreds of ordinary-course sales of high-value [REDACTED]

[REDACTED] as a trade-in would serve neither of the HSR's purposes,
i.e., it is not the combination of going business enterprises

Therefore, we request confirmation that a Notification and
Report Form need not be filed with respect to the above-
described used-[REDACTED] trade-in. In view of the parties' desire
to consummate the transaction at the earliest possible time, we
would appreciate your giving this request priority.

[REDACTED]

[REDACTED]

*The transfer of a new [REDACTED] as a
trade-in or a new [REDACTED] is exempt in
the ordinary course of business. The parties
are not competitors. Also, used [REDACTED] has
been used as a corporate [REDACTED], not income
producing asset in this case. Apparently,
accepting trade-ins is not unusual for
[REDACTED] manufacturers. JS & RS concur.*