

March 15, 1989

VIA FEDERAL EXPRESS

Mr. Victor Cohen
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
7 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

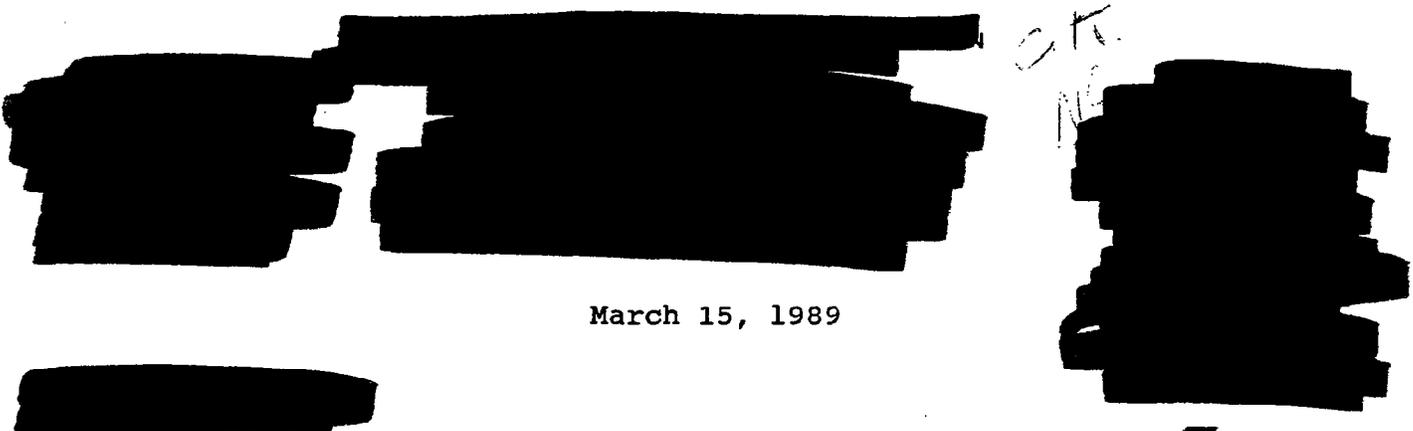
Dear Mr. Cohen:

This letter is to confirm the advice you gave the undersigned during a telephone conversation on Thursday, February 9, 1989, regarding the position of the staff of the Federal Trade Commission (the "FTC") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") and the regulations promulgated by the FTC thereunder (the "Regulations") with respect to the computation of the assets of an acquiring person who does not have a regularly prepared balance sheet.

Our client, Newco, is a newly-formed corporation which intends to issue common stock primarily to management employees and preferred stock to at least three venture capital funds. The common stock and preferred stock to be issued are voting securities. No entity will have the right to elect a majority of directors as a result of its holdings of the common stock or preferred stock, nor will any entity have any contractual right to select members of Newco's board of directors. As a result, no other entity could be deemed to be an ultimate parent entity of Newco. Prior to the transaction described below, Newco's assets will consist solely of the \$12 million in cash it will receive through the issuance of stock.

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[REDACTED] is a wholly owned subsidiary of [REDACTED] has over \$100 million in assets. As reflected on its balance sheet dated January 1, 1989, [REDACTED] has approximately \$56 million in assets and \$20 million in liabilities.

As sole consideration for its purchase of the assets of [REDACTED] Newco has agreed to assume certain liabilities, including those shown on [REDACTED] balance sheet. Newco will not pay out any cash consideration directly to [REDACTED] however we have been informed by Newco that more than \$2 million of its assets will be used to repay or substantially reduce between \$4 and \$7 million of [REDACTED] cash payables, capital equipment and installation costs, employment payments, and 90-day payables subsequent to the closing. The other source of payment for these liabilities will be the liquid assets acquired from [REDACTED]

Newco does not have a regularly prepared balance sheet since it is a newly-formed corporation. Section 801.11(e) of the Act provides that an acquiring person that does not have a regularly prepared balance sheet should not include cash that it will use as consideration in an asset acquisition in determining its size. Section 801.11(e) and the FTC's Final Rules do not clarify whether liabilities of the acquired person assumed by the acquiring person as part of the asset acquisition and paid off shortly thereafter are the equivalent of cash used in such asset acquisition.

Pursuant to our telephone conversation, we learned that the FTC takes the position that the liabilities of [REDACTED] that Newco will pay off after the closing of the transaction is the equivalent of cash used to make this asset acquisition, and, accordingly, Newco's total assets computed under Section 801.11(e) will be less than \$10 million. Therefore, since the "size of person test" is not met in this transaction, neither Newco nor [REDACTED] is required to file a Notification and Report Form under the Act.

We also understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the FTC's advice on such matters.

[REDACTED]

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Please know that, in reliance on your advice, the parties to the proposed transaction described above do not intend to file a Notification and Report Form with the FTC or the Justice Department in connection with the proposed transaction.

The parties would like to consummate the proposed transaction in the very near future. Accordingly, if you are unable to concur with any part of the foregoing summary, or if you have any questions or further comments, we would appreciate it if you would contact the undersigned not later than March 23, 1989. Thank you for your assistance.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]