

11.90 Lender is considered U.P.E.
NEWCO MUST file to acquire
TARGET.

(VC)

[REDACTED]

March 23, 1989

release under
Information Act

Mr. Victor Cohen
Federal Trade Commission
Bureau of Competition
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RECEIVED
10 52 AM '89
FEDERAL TRADE COMMISSION
OFFICE

Dear Mr. Cohen:

In accordance with your suggestion which you made in our telephone conversation on Wednesday, March 22, 1989, I am writing to request the advice of your office as to the transaction described below.

NEWCO a newly formed corporation with assets of

consummation of the merger which NEWCO will borrow from Lender. Under these circumstances, normally no filing would be required

satisfied. The merger would be consummated within a few weeks. However, Lender, which has agreed to provide financing for the

In order to avoid the delay observance of a waiting period would cause which is unacceptable to Lender

that after the acquisition (but as described below, only upon expiration of the applicable waiting period under the Act) Lender may designate a majority of the Board of NEWCO.

Under the circumstances described above, upon consummation of the acquisition of TARGET, no filing under the Act would technically be required since the acquiror, NEWCO, would have assets and sales of less than \$10 million, and since no

Mr. Victor Cohen
Federal Trade Commission
Bureau of Competition
March 23, 1989
Page 2

designation of directors by Lender would constitute an avoidance under Rule 801.90, if you advise that it is appropriate we would propose that before Lender could have a right to designate 50% or more of the Board of NEWCO, that a filing be made by Lender (as ultimate parent of NEWCO) and a waiting period be observed.

Although obtaining the contractual power to designate directors is

methodology would allow NEWCO to consummate the acquisition without observing a waiting period (which it could clearly do absent an agreement regarding designation of directors by Lender)

filing has been made and the waiting period has expired. If the

Commission believed the right to designate the majority of the directors should not be assumed for antitrust purposes than by designation by Lender.

We would appreciate your advice with respect to this matter at your earliest convenience so that we may proceed accordingly. Please call if you have any questions.

Very truly yours,

