

competitor is inconsistent with holding the US
as a passive investor. An exemption is determined
at the time of filing.

[REDACTED]

[REDACTED]

[REDACTED]

January 10, 1992

VIA FEDERAL EXPRESS

Victor Cohen, Esq.
Federal Trade Commission
Premerger Notification Office
Washington, D.C. 20580

Transaction Identification Number [REDACTED]

Dear Mr. Cohen:

On behalf of [REDACTED]

For the \$20,000 acquiring person filing fee (the "fee") paid by the Company in connection with the above-referenced transaction (the "Transaction"). Section 7A(c)(9) of the Act and § 802.9 of the Rules are collectively referred to herein as the "Exemption." The Company believes that, based exclusively upon the particular facts of the Transaction, the acquisition by the Company of the voting securities of [REDACTED]

to the Exemption and that, accordingly, the Company is entitled to a reimbursement of the Fee.

A. The Facts

Pursuant to a Purchase Agreement dated [REDACTED] (the "Agreement") among [REDACTED] (an

[REDACTED]

Victor Cohen, Esq.
Federal Trade Commission
January 10, 1992
Page 2

of [REDACTED] the Seller agreed to sell [REDACTED] and [REDACTED] [REDACTED]

shares of the publicly registered common stock of [REDACTED]

the potential coverage of § 801.2(e) of the Rules to the Company's and the Seller's receipt of such shares of common stock of [REDACTED] a Premerger Notification filing was made by the

the Seller's [REDACTED] and related assets, a Premerger Notification filing was made, the Identification Number of which was [REDACTED]. Early termination of the waiting period under the Act and Rules was granted for both acquisitions on [REDACTED]

In this firm's transmittal letter for the Company's Premerger Notification Form, we requested on behalf of the Company that the Commission reimburse the Fee based upon the

action had, a senior bank loan outstanding (the "Loan"). The lenders under the Loan hold a first security interest in all of the assets of the Company's operating subsidiary, [REDACTED] (which is the borrower under the Loan and is referred to herein as [REDACTED], including all of the assets of the Seller (the Seller is a wholly owned subsidiary of [REDACTED]). In accordance with the terms of the Loan

lease or all liens on the assets being sold pursuant to the Transaction, [REDACTED] and the Seller were required by such lenders to apply 100% of the proceeds received in the Transaction to pay down the Loan. The Commission is directed to Exhibit A hereto which are excerpts from the Loan. As indicated by paragraphs 1.9.4.1, 1.9.4.2 and 1.9.4.3 of Exhibit A, all proceeds from the Transaction (as well as proceeds from all future sales of assets) must be used to reduce the outstanding balance of the Loan.

[REDACTED]

Victor Cohen, Esq.

2. Furthermore, due to the fact that the consideration in the Transaction was securities of [REDACTED] in order to effect the pay down of the Loan, the Seller was required to promptly liquidate the [REDACTED] common stock in order to obtain cash proceeds with which to so pay down the Loan. The Commission is directed to Exhibit B hereto, which is a Bank Inducement Letter Agreement executed [REDACTED]

3. Moreover, following receipt of the shares of [REDACTED] common stock, neither the Company, Seller nor [REDACTED] was permitted to control the disposition of the [REDACTED] shares other than to sell such shares. The Commission is directed to Exhibit C hereto, which is a Letter of Instruction and Agreement among the lenders under the Loan, the Seller, [REDACTED] and [REDACTED]. Pursuant to this agreement, all shares of [REDACTED] common stock received by Seller were transferred, on the closing date of the Transaction, to [REDACTED] solely for purposes of resale. As described in paragraph 8 of this agreement, all [REDACTED] common stock were held exclusively for sale for the Seller's account; as described in paragraph 9, all proceeds therefrom were for the account of the lenders under the Loan (other than as provided in paragraph 10).

4. In point of fact, all [REDACTED] shares of [REDACTED] common stock delivered to Seller on the signing of the Agreement and all [REDACTED] shares delivered on the consummation of the Transaction were in each case sold by [REDACTED] within

B. Discussion

be "solely for the purpose of investment." In the July 31, 1978 Statement of Basis and Purpose (43 Fed. Reg. 33,450-33,556) (the "Release"), it is stated that the Exemption "provides that so long as a person does not intend to participate in the formulation of the basic business decisions

[REDACTED]

Victor Cohen, Esq.
Federal Trade Commission
January 10, 1992
Page 5

Seller's receipt of the [REDACTED] common stock, the mere fact that the Company and [REDACTED] may be competitors is not relevant: Even in light of the Commission's policy to generally deny the Exemption to the acquisition of a competitor's voting securities, in this case there never could have been any antitrust

was not permitted by contract to keep these securities.

We believe that the facts delineated above are sui generis so that a determination by the Commission to grant the Company the Exemption and reimburse the Fee will not be

competitors is, we believe, simply not determinative of the existence of investment purpose in a situation where the acquiring party must immediately sell the acquired voting securities due to contractual obligations to its senior bank lenders.

Based upon the foregoing, and on behalf of the Company, we request that the Commission determine that the Seller's, and the Company's acquisition of the voting securities of [REDACTED] satisfies the Exemption and, accordingly, reimburse the Fee to the Company.

Very truly yours,

[REDACTED]