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\$01.90
7/0/11

[REDACTED]

[REDACTED]

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

[REDACTED]

MAY 31 3 00 PM '96

May 31, 1996

Mr. Victor Cohen
Staff Attorney
Federal Trade Commission
Premerger Notification Office
Bureau of Competition, Room 303
Washington, D.C. 20580

VIA FACSIMILE
AND REGULAR MAIL.

Dear Mr. Cohen:

We would like you to confirm that the following series of transactions does not present a reportable acquisition under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as amended:

non-merger

Our client, Company X, was formed in 1995 as a venture capital start-up company. Its last regularly prepared balance sheet shows \$1,000 in gross assets and no sales. It was formed in order to acquire seven separate companies located around the country that are engaged in a service industry. None is controlled by, or under common control with, any of the others. Attached hereto are the gross assets and net revenues of the seven companies on their last regularly prepared balance sheets. The companies are listed as A, B, C, D, E, F, and G.

Company X proposes to acquire the voting securities of each of the seven companies simultaneously with its initial public offering of common stock. Funds received from the sales of the securities as well as voting securities of Company X will be the consideration paid to the shareholders of the seven acquired companies. This type of transaction is commonly referred to as a "roll up."

Company X plans to start with the acquisition of Company A's voting securities and thereafter acquire the voting securities of Companies B, C, D, E, F, and G, in that order. The acquisition of Company A's voting securities is not reportable because the size-of-the-parties test is not met: Company X has no assets and no sales, and Company A's financial statement reflects assets of \$9.6 million and annual revenues of \$39.7 million. Proceeding then to Company X's acquisition of Company B's voting securities, pursuant to Section 801.11 of the Federal Trade Commission Rules Company X must do a proforma balance sheet including all entities within its person, which would then include Company A. Therefore Company X then would have assets of \$9.6 million and revenues of \$39.7 million while Company B's financial statements reflect assets of \$6.6 million and revenues of \$22.3 million. Therefore, the size-of-the-parties test is not met.

*offer cash
off hands
file*

[REDACTED]

✓

Mr. Victor Cohen

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May 31, 1996

Using the same analysis for each subsequent acquisition, Company X's acquisition of the voting securities of Companies C, D, E, and F would not satisfy the size-of-the-parties test. Following its acquisition of F, X's proforma balance sheet would indicate gross assets of \$25.2 million and net revenues of \$97 million. When Company X acquires Company G neither entity would have net sales or gross assets in excess of \$100 million. Therefore the transaction would not meet the size-of-the-parties test and would not be covered under the HSR Act.

I would appreciate your confirming that the Staff would recommend that no action be taken based on the above stated facts. We appreciate your attention to this matter.

Very truly yours,

[Redacted signature]

Attachment

When there are simultaneous transactions, we analyse them as if any one could proceed first in order to determine if the HSR size-of-person test is met. The pro-forma size is recomputed after each acquisition & size includes cash on hand to make acquisitions (after first acquisition to which \$01.110 applies). Company X will need to take this into consideration in determining its size for the acquisition of A-G in any order.

NOTE: THESE COMPANIES ARE NON-MANUFACTURING
+ REPORTING MAY NOT BE REQUIRED RE
SIZE REQUIREMENTS OF SEC 7A (a)

[Redacted]

	Gross Assets	Net Revenue
Company A	\$ 9,651,740	\$ 39,746,235
Company B	6,645,565	22,293,604
Company C	1,036,209	4,278,118
Company D	2,849,651	10,289,113
Company E	2,973,000	16,554,000
Company F	2,020,384	3,844,177
Company G	14,273,526	35,159,389
Total	\$39,450,075	\$132,164,636