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CERTIFIED MAIL

SEP 11 2 08 PM '64

September 6, 1964

Bureau of Competition
Attention: Wayne Kaplan
Federal Trade Commission
301 FOC Building
Washington D.C. 20580

Re: Request for Interpretation of Definition
of "Entity" Under the Hart-Scott-Rodino
Antitrust Improvement Act of 1976

Dear Mr. Kaplan:

Pursuant to our oral conversation on September 4, 1964, I am writing to request confirmation of your preliminary determination that under the fact situation described below, a voting trust does not constitute an "entity" under the Hart-Scott-Rodino Antitrust Improvement Act of 1976:

The Company has no individual shareholders owning 5% or more of the voting shares. A group of shareholders, collectively owning 57% of the voting shares of the Company, have entered into a voting trust agreement and have deposited their share certificates with several voting trustees. The trustees themselves are among the shareholders depositing their shares. A majority of the trustees decide how to vote the deposited shares. The trustees have the power to exercise all rights and powers of the owners of the shares, including the right to elect directors, and amend the Articles of Incorporation and Bylaws. The trust is terminable upon consent of 65% or more of the shares of stock of the Company subject to the voting trust agreement. In any event, the voting trust will terminate 15 years after the date of execution of the voting trust agreement.

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Bureau of Competition
September 6, 1984
Page 2

The question with respect to the foregoing is whether this voting trust constitutes an "entity" under 16 C.F.R. § 801.1(a)(2) for purposes of determining the "ultimate parent entity" pursuant to 16 C.F.R. § 801.1(a)(3).

You indicated in our conversation that this voting trust is not an "entity" because the trustees collectively vote the shares of the stock. Furthermore, the trustees are acting only as agents of the shareholders, even though the trust is not revocable for 15 years or earlier upon the consent of 85% of the shareholders subject to the voting trust agreement. Your comments indicate to me that implicit in the definition of the word "entity" is the requirement that one person control at least 50% of the power of the entity.

Furthermore, 16 C.F.R. § 801.1(a)(2) originally included in the definition of "entity," the concept of a "group organized for any purpose." In 1983, this language was deleted from the rules. This is an indication that any group, such as a voting trust, is no longer covered in the definition of "entity."

I greatly appreciate your consideration of the foregoing fact situation. If I do not receive a response within the next two weeks, you have indicated to me that the Federal Trade Commission agrees with your preliminary determination of September 4, 1984, and shall take no further action on my request.

Sincerely,

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