801.1(b)

[redacted]

[redacted]

March 25, 2014

Mr. B. Michael Verne
Ms. Kathryn E. Walsh
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Ultimate Parent Entity - Rule 801.1(b)(2)

Dear Mr. Verne and Ms. Walsh:

We are writing you in order to see if you agree with our view as to who would be the ultimate parent entity of Company X. Company X has entered into a definitive agreement whereby the voting securities of Company X will be acquired by a purchaser. For the purpose of this inquiry please assume all HSR size thresholds (size of person and size of transaction) are met and that the transaction is reportable.

Here are the pertinent facts that relate to the question of who is the ultimate parent entity of Company X :

- The individual shareholders of Company X and their respective equity ownership are as follows:

  1) LP I, organized as a limited partnership under the laws of Delaware: 33%

  2) LP II, organized as a limited partnership under the laws of Delaware: 27%

  3) Company III, formed as a S.A.R.L. under the laws of Luxembourg: 26%

  4) Various current and former officers of Company X and other individuals: 14%

[redacted]

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- No person or entity currently holds 50% or more of the voting securities of Company X. It should be noted that if the holdings of LP I, LP II and Company III were taken together, they would in the aggregate hold more than 50% of the voting securities of Company X.

- All of the shareholders of Company X are party to a Shareholders Agreement whereby the shareholders have agreed to vote their shares to elect a board of directors consisting of one individual designated by LP I, one individual designated by LP II and such other individuals as may be designated by the holders of a majority of the shares held by LP I, LP II and Company III (ie., designated by any two of those three entities)

- Each of LP I and LP II are their own ultimate parent entities under the HSR Act because, for each of these investment funds, no person or entity is entitled to 50% or more of its profits, or 50% or more of its assets in the case of dissolution.

- The ultimate parent entity of Company III is Mr. R, a natural person.

- Each of LP I and LP II have different general partners who direct the investment decisions (GP I and GP II, respectively).[1]

- Although LP I and LP II have different general partners, both GP I and GP II have the same general partner; that entity (as well as Company III) are ultimately controlled by a common entity which is controlled by Mr. R.

- The officers of GP I and GP II are also employed by a common entity that is controlled by Mr. R.

We believe that Company X would be its own ultimate parent entity. Our view that Mr. R does not have the contractual power to designate 50% or more of the directors of Company X under Rule 801.1(b)(2) is premised upon our reading of Informal Staff Interpretations Nos. 0503004 dated March 2, 2005 and 0512019 dated December 30, 2005. In Interpretation No. 0503004, the shareholders of Newco I were individuals and investment funds, several of which had a common general partner. Although the investment funds held in the aggregate 50% or more of voting

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[1] GP I and GP II's primary fiduciary responsibility is to direct the business and affairs of their respective limited partnership. The Amended and Restated Agreements of Limited Partnership for both LP I and LP II (the "Agreements") state in part "*.... the General Partner will have full control over the business and affairs of the partnership consistent with its fiduciary duties arising under the Delaware Partnership Act. The General Partner will have the power on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings which, in its sole discretion, are necessary or advisable or incidental thereto, including the power to acquire or dispose of any security (including Marketable Securities).*"

securities of Newco I, the PNO agreed Newco I was its own ultimate parent entity. In Informal Staff Interpretation No. 0512019 the shareholders of Topco were seven partnerships, each having the same general partner who had the power to appoint more than 50% of the Board of Topco, in the aggregate. The author cited the following paragraph from Interpretation No. 05030904 in support of his position that Topco was its own ultimate parent entity:

> "Messrs. (redacted) inquired as to whether the result would be different if, hypothetically, the Investment Funds were managed by a common person or entity other than the general partner of any of the Investment Funds but that is nevertheless under common control or otherwise affiliated with all of the general partners of the Investment Funds, and whether such an arrangement would vest in the manager the contractual power to designate 50 percent or more of the directors of Newco I under Rule 801.1(b)(2), and you advised that the PNO would not view such an arrangement as conferring control of Newco I."

The staff agreed that Topco was its ultimate parent entity. We believe the facts and circumstances pertaining to Company X as set forth above, although not identical (LP I and LP II have different general partners), are very similar to the facts set forth in both of the above-cited informal staff interpretations.

Regarding the Shareholders Agreement mentioned on page 2 of this letter it is our position that a Shareholders Agreement in which the shareholders agree to vote their shares in favor of designated board representatives selected by the multiple investment funds holding in the aggregate more than 50% of voting securities of the Company X would not confer the contractual power to designate 50% or more of the directors upon any party. Our view is premised upon our reading of Informal Staff Interpretation 0503004. In this opinion the shareholders of Newco I entered into a Shareholders Agreement in which the shareholders agreed to vote their shares in favor of Board representatives selected by investment funds which in the aggregate held a majority of the voting securities of Newco I. The PNO agreed that Newco I was its own ultimate parent entity as long as no single investment fund acting independently would have the power to designate 50% or more of the directors. The PNO further advised the author of this informal staff interpretation that their position would not be different even if the investment funds were in all likelihood acting together (it is our understanding that in Informal Interpretation No. 43, appearing in the ABA Section of Antitrust Law's Premerger Notification Manual (4th Edition, 2007), the PNO agreed that a group does not constitute an entity under the HSR Act). We believe the precedent contained in Informal Staff Interpretation 0503004 and Informal Interpretation No. 43 supports our view that the Shareholders Agreement among the shareholders of Company X does not confer the contractual power to designate 50% or more of the directors upon any single party.

Based upon our description of the facts and circumstances as described above, would you agree with our view that Company X is its own ultimate parent entity?

[redacted]

Agree -
B
3/26/14

KW concurs