An irrevocable proxy to vote shares does not, by itself, confer beneficial ownership of the shares + thus, the holder of the proxy does not [redacted] hold these shares even though they must be aggregated with shares the person does hold to determine if the person is in control of an issuer. [redacted]

801.1 (c) VC

April 12, 1994

VIA TELECOPIER

Victor Cohen, Esq.
Federal Trade Commission
Bureau of Competition
Premerger Notification Office
Sixth Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mr. Cohen:

This letter replaces my letter to you dated April 8, 1994 and is confirmatory of a telephone conversation among yourself, [redacted] and me on March 8, 1994. In that conversation, I described to you the following factual situation:

> There are 17.2 million outstanding shares of Issuer I's only class of voting securities. The principal holders of I's stock (directly or through the intermediaries described below) are Company A, Mr. B, and Company C.
>
> Company A directly owns 1.2 million shares of I's stock. A also owns 50% of the voting securities of Company J and is therefore an ultimate parent entity of J. Mr. B is the other ultimate parent entity of J.
>
> J owns 50% of Partnership P. Company C owns the other 50% of P.
>
> P owns 7 million shares of I's stock, which for HSR purposes are attributed to C through P and also attributed to A and B through P and J.
>
> Separately, C holds irrevocable proxies to vote 3.3 million shares of I's stock. (Note that P does not hold these proxies.)

C and J have a voting rights agreement in connection with their joint ownership of P. Under the voting rights agreement, C promises to vote its proxies in the same manner as J and C jointly determine to vote the shares of I's stock that are owned by P.

We asked you whether the Premerger Notification Office would view any of A, B or C as an ultimate parent entity of I.

You advised us that C is an ultimate parent entity of I because (i) the 3.3 million shares as to which C holds irrevocable proxies must be aggregated with the 7 million shares that C holds through P, and (ii) 7 million shares plus 3.3 million shares constitute more than half of I's voting securities. See Premerger Notification Practice Manual, Interpretation #65. You also said the staff's view is that C does not "hold" the proxy shares within the meaning of 16 C.F.R. § 801.1(c) and therefore that C's control of I does not enable C to rely on the intraperson exemption of 16 C.F.R. § 802.30 in connection with C's acquisition of any additional voting securities of I. Cf. Premerger Notification Practice Manual, Interpretation #74.

You further stated (i) that A is not an ultimate parent entity of I, because A holds less than 50% of I's voting securities (1.2 million plus 7 million shares), and (ii) that B is not an ultimate parent entity of I, because B holds less than 50% of I's voting securities (7 million shares). You indicated that the voting rights agreement between [redacted] does not create a factual situation that would cause the proxy shares to be imputed to A and B for HSR purposes. J + C

If the foregoing account of our conversation is inaccurate in any way, or if you believe that it misstates the views of the Premerger Notification Office, please let me know immediately. Unless we hear from you to the contrary, [redacted] and I will continue to advise our clients in accordance with the analysis set forth in the two immediately preceding paragraphs. Thank you for your attention to this matter.

Very truly yours

[redacted]

[redacted]