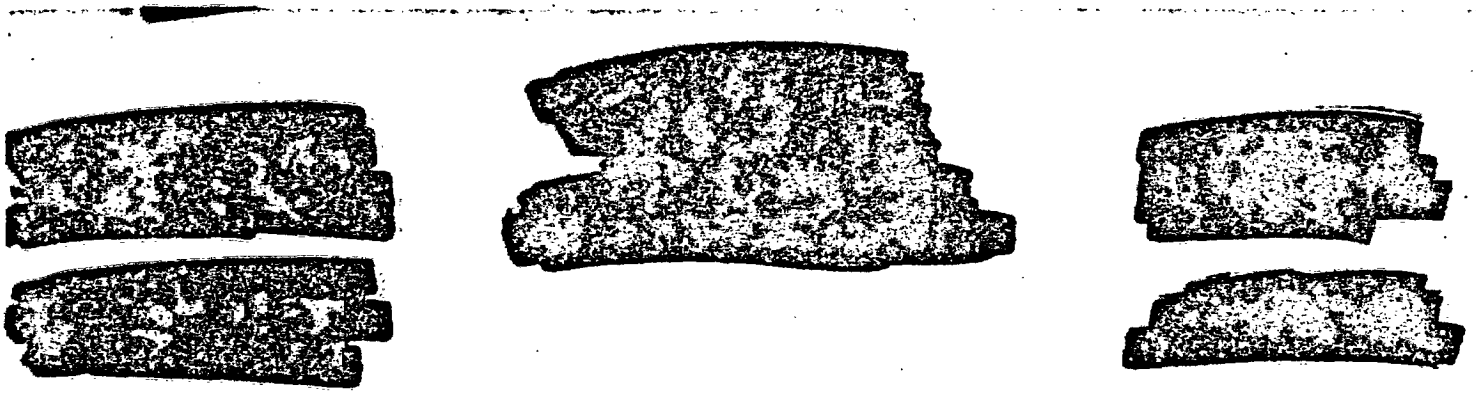

December 11, 1986

BY TELECOPY

Mr. John Sipple
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Mr. Sipple:

In accordance with our telephone conversation today, the following is a description of a proposed reorganization which ultimately results in the direct ownership by two family trusts (the "Trusts") of shares of voting common stock of a publicly held corporation having total assets and annual net sales in excess of $100 million ("Y Co.") which were previously held indirectly through the ownership of shares of voting common stock of a corporation ("X Co.") whose sole asset (other than miscellaneous assets, substantially all of which will be cash) is a number of shares of common stock of Y Co. equal to the number of shares to be held by the Trusts after completion of the proposed reorganization. The Y Co. shares held by X Co. have a value in excess of $10 million. The trustees of the Trusts currently anticipate that the Trusts will continue to hold the Y Co. shares indefinitely as an investment.

The trustees of the Trusts and the board of directors of X Co. are identical, and no individual trustee has the power to control either the Trusts or X Co. Each Trust owns

50% of the outstanding voting securities of X Co., whose sole asset (other than the cash described above) is approximately 14,000,000 voting shares of Y Co., constituting approximately 47.5% of the voting securities of Y Co. outstanding. Consequently, each of the Trusts is the ultimate parent entity of X Co. for purposes of the Act. It is proposed that Y Co. incorporate a newly formed subsidiary which will be merged with and into X Co. ("Merger One"), with X Co. as the surviving corporation. In Merger One the Trusts' voting securities of X Co. will be converted into shares of immediately convertible voting preferred stock of Y Co. having a number of votes equal to the number of shares held by X Co. prior to Merger One. The mechanism of convertible voting preferred stock is being proposed in the transaction because Y Co. does not have enough authorized but unissued common stock to otherwise accommodate the mergers.

Immediately after Merger One, X Co. will be merged into Y Co. in a short-form merger ("Merger Two"). As a result of Merger Two, Y Co. will own, as treasury stock, the approximately 14,000,000 shares previously owned by X Co. Immediately after the completion of Merger Two the Trusts will convert the preferred shares into exactly the same number of shares of Y Co. common stock that X Co. held prior to the series of transactions. The merger documents will mandate the conversion of the preferred stock. Thus, the effect of the transaction is the elimination of X Co. from the chain of ownership and the ownership by the Trusts directly of the same number of voting securities of Y Co. which they owned indirectly through X Co.

In our view, this transaction substantively results in no change of beneficial ownership of voting securities of Y Co. In this connection, we note that the structure of the transaction is imposed for reasons of tax planning and other business considerations. The same actual result could be reached in a manner exempt from the reporting requirements of the Act by distribution of Y Co. shares from X Co. directly to the Trusts, although this alternative would impose additional transaction costs. Since each Trust owns 50% of the X Co. voting securities, such a distribution would be an exempt intraperson transaction pursuant to Section 802.30 of the rules promulgated under the Act (assuming the transaction otherwise was subject to the Act).

Furthermore, we believe that inasmuch as there is no change in the pro rata percentage share of outstanding voting securities of Y Co. held by the Trusts, the proposed transaction should be regarded as eligible for the exemption afforded by Section (c)(10) of the Act, 15 U.S.C. 18A(c)(10). We acknowledge that the language of the statute exempts only acquisitions of voting securities which do not increase the acquiring person's percentage share of voting securities of a single issuer and that the elimination of X Co. in the proposed reorganization from the ownership chain results in a change in the issuer whose securities are held directly by the Trusts. Nonetheless, in our view X Co. should be disregarded in this particular situation, since its sole asset (other than cash) is voting securities of Y Co. and the board of directors of X Co. and the trustees of the Trusts are identical. At all stages of the transaction the Trust's proportionate ownership of the voting securities of Y Co. will remain identical, whether in the form of convertible preferred stock or common stock.

The proposed reorganization results in no change in the actual beneficial ownership by the Trusts of voting securities of Y Co. or in the identity of the persons entitled to vote such securities. Consequently, we believe that the substantive result is that no change in percentage ownership of Y Co. voting securities by the Trusts will have occurred as a result of the reorganization.

If you have any questions about the foregoing please feel free to call the undersigned, collect, at [redacted]

Very truly yours,

[redacted]

[redacted]

cc: [redacted]

Trusts already own [redacted]es through X + Y; no filing for acquisition of Y shares by trusts. However Y acquisition of X in a merger is reportable + so notified [redacted] 12/12/86