

August 11, 1988

Federal Trade Commission
6th Street and Pennsylvania Avenue N. K.
Washington, DC 20580
Room 303

ATTENTION: Richard Smith

Dear Mr. Smith:

We are writing to request a determination that the following

We represent (hereinafter a Massachusetts Corporation which is engaged in the supermarket business with net sales in excess of \$100,000,000 intends to purchase in excess of 15 percent of the (hereinafter and the corporations. Such assets include leasehold interests, leasehold improvements, equipment, fixtures, motor vehicles and inventory. Both entities are engaged in the supermarket business.

individual shareholders. The voting stock of the shareholders, two of whom are the owners of the

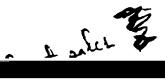
the voting stock of the Neither corporation owns 50 percent or more of the stock of any other corporation.

£3.000.000. and its net sales are less than \$25.000,000.

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\$5,000,000, and its (assets) exceed \$25,000,000.

subject to the notification requirements of Section 7A of the Act, and d nsidered the same person?

CONCLUSION



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the two entities are not under common control and are not deemed the same person within the meaning of the Act.

ISSUE II

Is either acquisition subject to the notification requirements of Section 7A.

CONCLUSION

THE LAW

Section 7A(a) provides that:

no person shall "acquire, directly or indirectly, any voting securities or assets of

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other person.

any other person, unless both persons...file notification...if

engaged in commerce or in any activity affecting commerce; ...

- (2) (B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more; or
 - (C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or_more: and

the acquiring person would hold

the acquired person, or

an aggregate total amount of the voting securities and assets of the acquired person in excess of **\$15,000,000**.

Regulation, Section 802.20, provides that:

[a]n acquisition which would be subject to the requirements of the [A]ct and which satisfies [S]ection 7A(a)(3)(A), but which does not satisfy [S]ection 7A(a)(3)(B) shall be exempt from

the requirements of the [A]ct if as a result of the acquisition the acquiring person would not hold:

- assets of the acquired person valued at more than \$15 million; or
- (b) voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of \$25 million or more.

DISCUSSION

is engaged in an activity affecting commerce; the assets of including the assets of its ultimate parent entities if two chareholders avende est one of

would not hold an aggregate total amount of the voting securities and assets of in excess of \$15,000,000

Were it not for the exemption under Regulation Section eng an this transaction would be subject to the notification requirements. However, since the acquisition satisfies the requirements of Section 7A(a)(3)(A) but not the requirements of Section 7A(a)(3)(B) and as a result of the acquisition would not hold assets of valued at more than \$15,000,000 or voting securities of China Je more from the transaction is exempt.

DISCUSSION

is engaged in an activity affecting/commerce; since is the ultimate parent entity and its assets do not equal \$10,000,000 and its net sales do not equal \$100,000,000, it does not

put would not hold an aggregate total amount of

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the voting securities and assets of in excess of \$15,000,000.

Assuming that this acquisition does in fact meet the notification requirements under the statute, it would nevertheless be exempt under Regulation Section 802(20). Thus, the acquisition satisfies Section 7A(a)(3)(A) of the Act but does not satisfy Section 7A(a)(3)(B), and as a result of the acquisition would not hold assets of valued at more than \$15,000,000, nor is acquiring voting securities of

Based on the above, we request a determination, at your earliest convenience, that neither the acquisition are subject to the notification requirements of Section 7A of the Clayton Act.

Thank you for your cooperation. We also want to express our appreciation for your telephone assistance in analyzing the statute.

Sincerely,

