

801.11(b)(2)

RS

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October 30, 1990

[REDACTED]

This material may be subject to the automatic declassification provisions of

Federal Acquisition Regulation

Re: Coverage Under the Hart-Scott-Rodino Act

Dear Mr. Smith:

As we discussed several weeks ago, our client is a foreign corporation that plans to acquire a United States

advertising are in excess of \$100 million due to its accounting practices and thus, whether the transaction is covered under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act") and Federal Trade Commission regulations. 15 U.S.C. § 18a; 16 C.F.R. §§ 801.1-803.90.

Under the regulations implementing the Act, "annual net sales" are determined from financial "statements . . . prepared in accordance with the accounting principles normally used by such person." 16 C.F.R. § 801.11(b)(2). It is our understanding that under Generally Accepted Accounting Principles ("GAAP") normally used by U.S. firms engaged in the same business, the financial statement of the foreign company would not show annual net sales in excess of

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of such costs. Thus, depending upon the accounting methodology, the foreign company may or may not be covered under the Act.

Our question is whether the accounting methodology in a foreign country which is substantively different than GAAP should be the determining factor in whether or not a transaction is covered by the Act. In this case, if the foreign company were a U.S. company and used GAAP, it would not be covered. Therefore, it does not seem appropriate to

of the prophylactic purposes of the Act, nothing is gained by subjecting this transaction to review.

Thank you for your time and attention in considering this matter. If I can provide any further



11/2/90 Called [redacted] Advised

that you are regularly prepared financials, if prepared within 15 months of filing or acquisition, to determine its size. It cannot have such financials to accord with GAAP. The size-of-person test is a bright-line test and we cannot and will not change the requirements of Rule 801.11(b)(2). He states his understanding.
R. Smith