

801.11.

[REDACTED]

[REDACTED]

[REDACTED]

August 26, 1991

Re: Annual Net Revenues Under the
Hart-Scott-Rodino Antitrust

Patrick Sharpe
Premises Notification Office

Via telecopy (202) 326-2050

Dear Mr. Sharpe:

As we discussed on August 15, 1991, on behalf of our client, [REDACTED]

[REDACTED] company (together with all the entities which it controls [REDACTED])

Assuming that the tests set forth in Sections 7A(a)(1) (the "commerce test") and 7A(a)(3) (the "size-of-the-transaction test") of the Clayton Act would be met in a

requirements of the Act would be determined by Section 7A(a)(2) of the Clayton Act (the "size-of-the-parties test"). [REDACTED] has informed us that it has less than \$100 million in total assets. Therefore, assuming that the Target has less than \$100 million in annual net sales and total assets, whether the Proposed Transaction would be subject

to the reporting requirements of the Act would be determined by [redacted] level of annual net sales in accordance with Section 801.11 of the Premerger Notification Rules.

Whether [redacted] annual net sales equal or exceed \$100 million depends upon what constitutes annual net sales for the purposes of the Act and the Premerger Notification Rules. According to [redacted] Consolidated Profit and Loss Account for 1990 (the "Consolidated Income Statement", a copy of which is attached hereto as Exhibit A), [redacted] had "turnover" ("Turnover") in 1990 of 237,203,000 guilders or approximately \$121,680,000^{1/}. The Consolidated Income Statement also reflects that of the 237,203,000 guilders of Turnover, 93,288,000 guilders or approximately \$47,754,000 of such Turnover was "Subcontracted work and other suppliers' costs" (the "Conduit Payments"). Therefore, by subtracting the Conduit Payments from Turnover, the net turnover (the "Net Turnover") of [redacted] and its consolidated entities would be 144,415,000 guilders or approximately \$73,926,000.

With respect to the character of the Conduit Payments in the Consolidated Income Statement, [redacted] has informed us of the following:

1. All of the amounts reported under the heading "Subcontracted work and other supplier's costs" are pass-through charges (a) which [redacted] [redacted] and (a) out of which [redacted] receives no benefit.

and reflects the constituent amounts reported as Conduit Payments by type of subcontracted work or suppliers' cost and the [redacted] entity which incurred such amounts on behalf of its customers;

The Conduit Payments are not shared by [redacted] its costs of [redacted]

4. Only one entity which [redacted] controls (within the meaning of the [redacted])

^{1/} All currency conversions herein are based upon currency exchange rates as of August

in *The Wall Street Journal* on August 14, 1991.

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5. [REDACTED] is not active and has no revenues.

You have informed me that, in the past, the Staff has taken the view that

This is not an offer

~~annual net sales of a construction company is equivalent to such company's~~
[REDACTED]
consulting company that accounts for its revenues much like a construction company. [REDACTED] believes that the Conduit Payments it makes on behalf of its customers which are reported under the heading of "Subcontracted work and other suppliers' costs" are not part of its annual net sales. Therefore, [REDACTED] believes that its annual net sales is its Net Turnover of approximately \$73,926,000. If [REDACTED] annual net sales are equal

test would not have been met.

You have also informed me that, in the past, when the Staff has taken the view that the annual net sales of a construction company are equivalent to its Net Turnover, the last regularly prepared statement of income and expenses of such

applicable in The Netherlands, it does not have a line item reflecting either gross or net sales or revenues. Even so, [REDACTED] believes that its annual net sales are as stated on its

and subcontracted work and other suppliers' costs and items are provided in the

that from both a substantive and technical perspective, its Net Turnover is its annual net sales for the purposes of the Act and the Premerger Notification Rules.

We respectfully request, on behalf of [REDACTED] your assistance in determining the Staff's view with respect to whether the Net Turnover of approximately \$73,926,000 is the amount of [REDACTED] annual net sales for the purposes of determining whether the reporting requirements of the Act are applicable to the Proposed Transaction. If it is possible, we would appreciate a letter confirming the Staff's view with respect to the same. [REDACTED] is in the process of negotiating the terms of the Proposed Transaction and hopes to consummate such transaction by the end of next month (assuming that its

This is not comparable to net sales

[REDACTED]

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Thank you for your assistance in this matter. If you have any further questions regarding the foregoing, please call me at the number noted above.

[REDACTED]

cc:

[REDACTED]

You do not deduct costs (including subcontracted work) from gross revenues (turnover) in order to derive a figure comparable to net sales. Net sales are gross sales minus returns and allowances - not minus cost and expenses. Use the turnover figure for the size-of-person test called [REDACTED]

(PS)

(JS) - covers PS