

Re: Determining Annual Net Sales for Purposes of 16 C.F.R. 8 802 20(h)

Dear Victor:

This letter memorializes our discussion of December 16, 1996 regarding the determination of annual net sales for purposes of 16 C.F.R. § 802.20(b).

The transaction is structured as follows. S, a foreign person, is selling a worldwide group (the "T" group) of subsidiaries to C. another foreign person. T has one U.S. subsidiary. TUSA.

The remaining companies in the T group are foreign issuers that do not have assets or sales in

- 16 C.F.R. § 802.20(b) exempts transactions where the acquiring person does not acquire voting securities "which confer control of an issuer which, together with all entities which it controls,

TUSA prepared its last annual financial statements as of December 31, 1995. TUSA's financial statements included a consolidated balance sheet, a consolidated summary of

1 Not in his case movers the gree subsof TUSK reflection discontinued operations Luge 2

expenses of each of TUSA's divisions). The divisions are not separately incorporated, but are separately managed and are viewed as separate "profit centers." TUSA's financial statements were fairly summary in nature, as those of wholly-owned subsidiaries often are; they did not include notes. The financial statements were all prepared soon after the year-end according to

Because the W Division was sold prior to the end of TUSA's fiscal year, W Division's assets

were not excluded from TUSA's revenues as set forth on the consolidated summary of operations; however, the consolidating summary of operations clearly sets forth the revenues for the W Division.

Qn.its October 31 1996 halance sheet (THSA's most recent regularly prepared halance sheet)

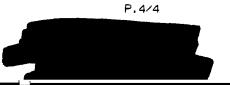
\$25 million and would allow the transaction to be exempted under 16 C.F.R. 8 802.20, so long

as the "annual net sales" of TUSA are also below \$25 million.

year ended December 31, 1995 were approximately \$8.0 million and "adjusted gross revenues" were also approximately \$8.0 million. If W Division's revenues are not included in TUSA's revenues for § 802.20 purposes, the gross revenues of TUSA are \$23.3 million and the

corrections) and "Intrabranch Assistance" (i.e., assistance billed by one TUSA division to another TUSA division).





rage 3

adjusted gross revenues are \$20.9 million. Thus, if the W Division's revenues are not included in the revenue of TUSA, the § 802.20 exemption will apply and no Hart-Scott-Rodino filing will be necessary.

Interpretation #158 in the Premerger Notification Practice Manual (ABA Section of Antitrust Law, 1991) is directly applicable to this situation. Interpretation #158 asks "Whether income from discontinued operations, separately stated on an entity's last regularly prepared annual statement of income and expense, must be included for purposes of the size-of-person test." The "Interpretation and Commentary" states that "... the FTC staff determined that ... income from discontinued operations ... could be excluded by all persons who have separately stated the revenues of the discontinued operations somewhere in their financials. The current FTC staff position is that revenues from 'discontinued' operations may not be excluded if the company still holds the assets of the business which generated those revenues."

In this instance, TUSA has "separately stated the revenues of the discontinued operations [the

from TUSA's revenues when determining the annual net sales of TUSA. Therefore, TUSA's annual net sales and total assets are both below \$25 million and the transaction is exempt under

If the foregoing does not comport with your recollection of the advice given, please contact me as soon as possible. If we do not hear from you we will proceed in reliance upon this advice

mank you for your efforts in this matter. Dest regards.

## Sincerely,

