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802-51

[REDACTED]

WRITER'S DIRECT NUMBER:  
[REDACTED]  
[REDACTED]

[REDACTED]

May 24, 2002

By Hand

Michael Verne, Esq.  
Premerger Notification Office  
Federal Trade Commission  
601 Pennsylvania Avenue, N.W.  
Washington, DC 20580

HSR Reportability of Acquisition of Foreign Assets and Voting Securities

Dear Mike:

Thank you for taking the time to talk with [REDACTED] and me yesterday about the reporting requirements for the sale of voting securities and assets of a foreign entity, and for your view that the transaction is not subject to notification pursuant to the Hart-Scott-Rodino Act. The following confirms the major features of the transaction structure that we discussed.

A foreign ultimate parent entity (Company A) and a US ultimate parent entity (Company B) have reached an agreement whereby Company A will acquire foreign voting securities and foreign assets of entities controlled by Company B. Specifically, Company A will acquire from Company B all of the voting securities of a Bahamian international business company ("Bahamian IBC") and all of the ownership interests of an Anguillan limited liability company ("Anguillan LLC") for approximately \$1.3 billion. Together, the Bahamian IBC and the Anguillan LLC own 100% of the interests in two Chilean "limitadas" (Chilean limited liability companies). These Chilean limitadas own two copper mines and a smelter and certain real estate holdings, all of which are located in Chile.

The Chilean limitadas do not make any sales directly in or into the United States. One of the limitadas produces copper concentrate and other copper commodity products that are sold in Chile to traders, who in turn re-sell those products to customers around the world,

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including the U.S. In addition, the Chilean limitada that owns the mines and smelter produces copper anodes, some of which are made to specification for a US customer for use in its refinery. These anodes are sold to the US customer in Chile. The Chilean limitada transfers title to the anodes to that customer in Chile, delivers the products to the shipper, and then makes arrangements for shipping. The value of the anodes sold to the US customer in the most recent year was \$57 million.

Under the HSR regulations, 16 C.F.R. §802.50 and §802.51, you indicated that the test for determining whether an acquisition of foreign assets or voting securities is subject to the reporting requirements turns on whether there were sales "in or into" the United States in excess of \$50 million. In the circumstance described above, you noted that the sales by the Chilean limitadas are not considered sales "in or into" the United States since title to the products they produce is transferred in Chile and the risk of loss is transferred abroad.

Please be advised that our conversation relates to the announced transaction between [REDACTED] and the ownership interests of [REDACTED] and the voting securities of [REDACTED]. These two entities in turn hold the interests in the Chilean limitadas, [REDACTED]. Last week, [REDACTED] had a more general discussion with James Perkingstad of the PNO regarding the overall interpretation of §802.50 and §802.51 in relation to the question of U.S. sales.

Thank you again for your attention to this matter. Please do not hesitate to call me or my colleague [REDACTED] if you should have any further questions.

Very truly yours,  
[REDACTED]

[REDACTED]

TITLE & RISK OF LOSS PASS OUTSIDE OF U.S. THIS DOES NOT CONSTITUTE SALES INTO U.S. N. OVUKA CONCNS.

[REDACTED]

B. [REDACTED]  
5/29/02

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