

801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 30, 2008 4:59 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Dutch NV

Mike,

Thanks for speaking with us earlier today about our transaction involving a Dutch NV ("DutchCo") that has two boards—a Supervisory Board and a Management Board. You indicated that the PNO has generally taken the position that the Supervisory Board of a Dutch NV with this type of two-tier board structure, rather than the NV's Management Board, is the board that is more akin to the board of directors of a U.S. corporation and is therefore the pertinent entity to consider for purposes of the control test under section 801.1(b)(2). We believe this is the correct approach in DutchCo's case but wish to confirm this and accordingly have outlined below per your request additional facts concerning the responsibilities and composition of DutchCo's Supervisory and Management Boards.

The general duty of DutchCo's Supervisory Board is to supervise the Management Board and the general course of affairs of DutchCo. There currently are no DutchCo executives among the ten members of the Supervisory Board. The Management Board is required to report to the Supervisory Board regarding the strategic policy, general and financial risks, and management and control systems of DutchCo. The Supervisory Board approves DutchCo's operating budget, capital budget, and business plan. The approval of the Supervisory Board is also required for (among other things): expenditures that exceed the budget by more than 5%; salaries, bonuses, and other compensation of the officers of DutchCo; proposals for the appointment or removal of DutchCo's auditor; commencing any litigation or arbitration proceeding or settling any such proceeding; proposals for statutory mergers or demergers; and exercising the voting rights on shares held by DutchCo in other companies. The Management Board, which is composed of four DutchCo executives, is entitled to make decisions that are not reserved for the Supervisory Board and that do not otherwise require shareholder approval.

Given the broad rights exercised by the Supervisory Board, in particular the right to approve business plans and budgets of DutchCo, we believe the Supervisory Board is more akin to a U.S. board of directors and is therefore the appropriate board to look to in order to determine control of DutchCo for HSR purposes. Please let us know whether you concur with this analysis. If you need any additional details, we would be happy to provide them.

Thanks.

[REDACTED]

AGREE -
BM
7/1/08

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