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[REDACTED]

December 27, 2002

HAND DELIVERY

[REDACTED]

James H. Ferkingstad, Esq.
Premerger Notification Office
Federal Trade Commission
Sixth & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

2002 DEC 30 A 11: 22

[REDACTED]


Dear Mr. Ferkingstad:

Thank you for your time earlier this week to discuss with me, [REDACTED] and [REDACTED] the interpretation of the Premerger Notification Office concerning the applicability of the Hart-Scott-Rodino Act reporting requirements to a particular technology licensing arrangement. This letter will confirm the substance of those telephone conversations.

My client, a U.S.-based specialty pharmaceutical company ("Company A"), proposes to enter into a "Development and Marketing Strategic Alliance Agreement" (the "Agreement") with U.S. and foreign subsidiaries of a foreign company focused on the development of prescription pharmaceuticals (collectively "Company B").

Under the proposed Agreement, Company B would grant Company A exclusive rights to brand, market and sell certain drugs under development. Specifically, Company B would grant to Company A during the term of the Agreement an exclusive license in certain territories, including the United States, under Company B intellectual property, to use, sell and offer for sale, certain pharmaceutical products currently under development, for certain target indications. In addition, Company B would grant to Company A during the term of the Agreement a non-exclusive license in certain territories under Company B intellectual property to enable Company A to perform its obligations under a proposed development program.

Importantly, under the proposed agreement, Company B would retain the right to manufacture the products and Company A and Company B intend to enter into supply agreements for Company B to manufacture, package, test, and provide quality assurance services for such products for sale to Company A. Only in the event of certain future events (termination for cause or in connection with a long term inability of Company B to supply) will a new license (a "New License") be granted under which Company A would have the exclusive right to develop, use, make, have made, offer for sale, sell, and import the products.


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You indicated, even assuming that size of person and size of transaction thresholds are met, that the above-described Agreement would not be reportable at the current time. We understand, however, that Hart-Scott-Rodino Act Notification and Report Forms may be required before a New License may be granted.

If this letter does not accurately summarize the advice that you gave us, I ask that you contact me promptly. Thank you again for your guidance and assistance in this matter.

Very truly yours,



Called 12/18/02
JF - Discussed with MJ
and Agree