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802.2(a)
802.2 (c)

May 27, 2005

Via Electronic Mail and FedEx

B. Michael Verne, Esq.
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telephone Call of May 26, 2005

Dear Mike:

I am writing to confirm the Hart-Scott-Rodino ("HSR") advice that you provided to [redacted] and me on Thursday, May 26, 2005. In our telephone call (and also in earlier, separate calls the preceding week), we posed the following scenario:

Buyer is purchasing a Facility, consisting of real property and equipment, from Seller. The size-of-transaction and size-of-parties thresholds under the HSR Act are exceeded. Seller had constructed the nearly-completed, but not yet productive, Facility for its own use (pharmaceutical production), but is now unable to use it for this intended purpose. Instead, Buyer will purchase the Facility, and employ certain of Seller's operational and maintenance employees at the Facility, to engage in the production of other, different pharmaceuticals.

Importantly, after Buyer purchases the Facility, Buyer will have to make significant capital expenditures in order to retrofit, modify and equip the Facility for Buyer's intended purpose. We discussed that, based on current estimates, Buyer would need to expend a minimum of approximately $31 million to have the Facility operational (consisting of approximately $24 million of direct construction and equipment costs, and approximately $7 million of indirect costs including design services, permits and fees, etc.). Buyer might also need to spend additional contingent amounts (of up to 20% more than the amounts indicated above) to reach an operational stage, and Buyer would need to expend additional amounts (possibly as much as $5 million more) to reach maximum production.

Our HSR discussion focused on the Section 802.2 exemption for Certain Acquisitions of Real Property. You indicated that the Facility would not be deemed exempt as a "new facility"

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under 802.2(a) because it was not constructed by Seller for resale. Based on the foregoing expenditures, however, you indicated that the Facility does qualify as "unproductive real property" under 802.2(c). More specifically, you agreed that the above-described scenario is substantially similar to Example 6 under 802.2, in which the exemption applied where a buyer was required to expend approximately $50 million in order to equip a purchased facility for use in its own production operations. Therefore, you advised us that the acquisition of the Facility, including both the real property and the equipment being acquired (and without requiring any separate valuation of the equipment), is exempt from HSR reporting requirements under 802.2(c).

I understand that the Premerger Notification Office does not generally confirm informal advice in writing. However, if this letter misconstrues our conversations or is inaccurate in any way, I would appreciate it if you would please contact me as soon as possible. As always, thank you for your advice and assistance.

Sincerely,

[redacted]

[redacted]

cc: [redacted]

AGREE-
B Michael
5/27/05

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