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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, March 28, 2006 10:19 AM
To: Verne, B. Michael
Subject: HSR Issue

Mike:

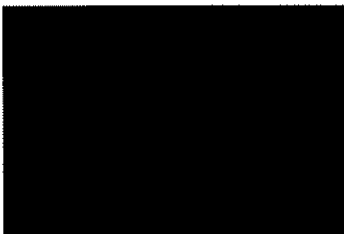
I have a question concerning the HSR implications of a pharmaceutical co-development agreement. Under the terms of the draft agreement, the parties to the agreement (two pharmaceutical companies) would license their current intellectual property (know-how, patents) concerning a particular pharmaceutical-related technology to each other on a non-exclusive basis (the licensor would continue to have full rights in the intellectual property). As the parties work together to develop compounds based on the licensed technology and new technology that the parties will mutually develop, they will each continue to have equal rights in the cross-licensed and the newly developed intellectual property.

Each of the parties will make independent determinations as to whether it wishes to participate in the development and marketing of any new compound that may be developed through the co-development agreement. To the extent that one of the parties opts-out altogether from developing, manufacturing and marketing a new compound, then the other party will be deemed to have an exclusive license to all relevant intellectual property relating to that new compound (including the intellectual property originally contributed by the other party as part of the co-development agreement) insofar as the intellectual property relates to the new compound. Also, if either party declines to market a new compound in a particular geographic region, then the other party will be deemed to have an exclusive license to the intellectual property to manufacture and commercialize the new compound in the geographic region in which the other party has opted-out.

It appears to me that the execution of the co-development agreement would not be a potentially reportable event under the HSR Act given that no exclusive rights are being transferred at the time the agreement is signed. Please let me know if you agree with my assessment.

The more difficult question is whether the parties might be required to make HSR filings in the future (assuming jurisdictional thresholds are met) should opt-out decisions result in one of the parties obtaining exclusive rights to develop, manufacture and market intellectual property (both i.p. of the other party licensed on a non-exclusive basis at the inception of the co-development agreement and i.p. subsequently developed by the parties during the term of the co-development agreement that is relevant to the new compound) either throughout the world or in particular regions where the other party has declined the opportunity to market the new compound. I would appreciate your thoughts on this issue.

Please let me know if you need any additional information. Thanks for your help.



ENTRANCE INTO CO-DEVELOPMENT AGREEMENT IS NOT REPORTABLE. POTENTIALLY REPORTABLE LATER IF ONE PARTY OPTS OUT ON A NEW PRODUCT OR GEOGRAPHIC REGION. M. BAUNO & NOVICKS AGREE.

B. Michael
3/29/06