801.2
802.50

TRANSACTION DESCRIPTION AND ANALYSIS

FACTS

Corporation A is (i) its own ultimate parent entity, (ii) headquartered in the United States with worldwide operations and (iii) engaged in the manufacture and sale of prescription drugs, including a particular prescription drug (the "Prescription Drug"). Corporation B is (i) its own ultimate parent entity, (ii) headquartered in the United States with worldwide operations (although much smaller than the operations of Corporation A) and (iii) engaged in the manufacture and sale of prescription drugs, but not including the Prescription Drug. Corporation A and Corporation B satisfy the size-of-the-parties test.

Currently Corporation A is the sole manufacturer of the Prescription Drug and, except in the United States, the sole seller of the Prescription Drug worldwide. The sales by Corporation A worldwide, except the United States, in each of 2006 and 2007 were approximately $85 million, with the majority of sales being made in Europe. As to the sales of the Prescription Drug in the United States, Corporation A previously sold all United States commercial rights to the Prescription Drug to Corporation C, which subsequently assigned such rights to Corporation D. These commercial rights were comprised of intellectual property rights specific to the Prescription Drug (including United States patents, trademarks and domain names), the new drug application for the Prescription Drug filed with the United States Food and Drug Administration, and certain of the Prescription Drug marketing materials and other documentation related to the Prescription Drug maintained by Corporation A. In addition, Corporation A and Corporation D have entered into a supply agreement pursuant to which Corporation A supplies the Prescription Drug to Corporation D for sale in the U.S. Corporation D did not obtain from Corporation A or Corporation C any patent rights related to the process or manufacture of the Prescription Drug. The sales by Corporation D of the Prescription Drug in the United States in each of 2006 and 2007 were less than $10 million.

Corporation A proposes to sell all non-United States commercial rights to the Prescription Drug to Corporation B for approximately $150 million. The commercial

[redacted]

rights are comprised of non-United States intellectual property rights specific to the Prescription Drug (including patents, trademarks, and domain names), the health registrations for the Prescription Drug held in the various foreign countries (the "Health Certificates"), certain contracts relating exclusively to the Prescription Drug, and certain marketing materials and other documentation related to the Prescription Drug maintained by Corporation A (the "Assets"). The Assets also include a United States factory process patent which could be used in the manufacture of the Prescription Drug in the United States. Both as to the prior transaction with Corporation D and as to this transaction with Corporation B, Corporation A has retained through a license back of intellectual property enough rights to allow Corporation A to manufacture the ingredients for the Prescription Drug that Corporation A has agreed to supply to Corporation D and will agree to supply to Corporation B.

In that regard, Corporation A currently manufactures the Active Pharmaceutical Ingredients ("API") for the Prescription Drug at one of its facilities in Europe. However, Corporation A has contracted with Corporation E, which is located in the United States, to process the API into the Prescription Drug (mixing the powdered API in a saline solution) and to package the Prescription Drug for supply to Corporation D and for worldwide distribution by Corporation A.

The Health Certificates are not immediately transferable upon the sale of the Assets. Corporation A and Corporation B are required to apply for the transfer of the Health Certificates in each foreign jurisdiction and Corporation B may only sell the Prescription Drug in each such jurisdiction upon the transfer of the applicable Health Certificate. Because Corporation A continues to hold the Health Certificates for some period after closing, as part of the sale of the Assets, Corporation A will agree to continue to make sales of the Prescription Drug in the foreign jurisdictions for a period not to exceed two years, or until such earlier time as the Health Certificates are transferred in the foreign countries. During this interim period, Corporation A will continue to send the API manufactured in its facilities in Europe to Corporation E in order to process and

package the Prescription Drug in the United States under the Corporation A name, and Corporation A will continue to own the Prescription Drug that it sells outside the United States. During this time period, and as part of the purchase of the Assets, Corporation B will receive approximately 30% of the proceeds from the sales of the Prescription Drug by Corporation A in the foreign jurisdictions. Once Corporation B receives a Health Certificate for a particular foreign jurisdiction, Corporation B will sell the Prescription Drug in that jurisdiction under the Corporation B name.

Although the Assets do not include the right to sell the Prescription Drug in the United States, the Assets do include the factory process patent to manufacture the Prescription Drug in the United States. Corporation A values the patent right to manufacture the Prescription Drug in the United States at zero, attributing this low value to the fact that Corporation D has the sole right to sell the Prescription Drug in the United States. But even if the United States patent had a greater value than zero, it would be substantially less than $59.8 million.

It is almost certain that Corporation B will contract with a third party to manufacture the Prescription Drug, overseas or in the United States. Corporation B currently is in negotiation with Corporation E to have Corporation A's rights under Corporation A's contract with Corporation E assigned to Corporation B, or to enter into a new contract with Corporation E for the processing and packaging of the Prescription Drug under Corporation B labels at such time as Corporation B receives permits to sell in foreign countries. Corporation B will not acquire any manufacturing facilities from Corporation A, whether in the United States or elsewhere, and will not hire any employees of Corporation A.

Following the sale of the Assets, Corporation A proposes to sell to Corporation B for approximately $110 million an estimated six year supply of API for the Prescription Drug (the "Inventory") for sale in the foreign jurisdictions. The Inventory of API has been manufactured by Corporation A in its facilities in Europe and will remain stored in such facilities until such time as Corporation B decides to have the Inventory processed

and packaged. It is likely that Corporation B will reach an agreement with Corporation E to have the Inventory of API processed into the Prescription Drug and packaged in the United States under the Corporation B name. Corporation A has closed its production line in Europe for manufacture of API for the Prescription Drug because Corporation A believes that it has already made enough API to meet its supply obligations to Corporation B and to Corporation D. The patent protection for the manufacture of API for the Prescription Drug expires in 2013.

QUESTION

Is any filing required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), in connection with the transactions described above?

ANALYSIS

The acquisition of assets is reportable under the Act if the value of the assets is $59.8 million (the current threshold, subject to adjustment). However, under 16 C.F.R. §802.50, the acquisition of assets located outside the United States is exempt from the requirements of the Act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the United States exceeding $59.8 million (the current threshold, as adjusted) during the acquired person's most recent fiscal year.

In this instance, the Assets consist of foreign patents, foreign trademarks and related contracts performed in foreign jurisdictions (with the exception of the patent right to manufacture the Prescription Drug in the United States). Because the Assets (with the exception of the patent right to manufacture the Prescription Drug in the United States) relate only to foreign jurisdictions, the Assets to be acquired could not have generated sales in or into the United States. As to the patent right to manufacture the Prescription Drug in the United States, its fair market value may not be zero, but it is certainly less than $59.8 million, where Corporation D has the sole right to sell the Prescription Drug in the United States, the annual sales in the United States of the Prescription Drug are less

than $10 million and the largest current sales of the Prescription Drug are made in Europe, where the Prescription Drug is currently manufactured.

The Inventory consists of API for the Prescription Drug manufactured in Europe and stored in Europe. None of the Inventory that Corporation B will acquire can ever be processed into the Prescription Drug and sold in the United States because that right belongs exclusively to Corporation D. Therefore, the Inventory has not and cannot ever generate any revenues in or into the United States.

In view of the foregoing, it is our understanding that the transactions described above would be exempt from the filing requirements under the Act.

AGREE THIS IS NOT REPORTABLE.
K. WALSH CONCURS

2/19/08