[redacted]

801.40

October 31, 2008

By Hand and Electronic Mail

Michael B. Verne
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Foreign Joint Venture Analysis

Dear Mike:

I write to summarize the advice you gave me on several points recently regarding a transaction in which two affiliates of one Korean corporate family intend to create a joint venture. You will recall that the transaction is structured as follows: Affiliate A has created a subsidiary ("Newco"), into which it has transferred two of its existing business units., and Affiliate B now proposes to contribute one of its own existing business units to Newco as consideration for 50% of Newco's voting interests. Assume that the fair market value of the former business unit(s) contributed to Newco by each party exceeds $63.1 million.

Ultimate Parent Entity: Although both parties are affiliates of the same corporate family, neither party is controlled by any other person or entity under any provision of Rule §801.1(b). Rather, the shares of each party are held by a complex network of other affiliates of the same family, and effective control of the entire affiliate network is exercised by the head of the corporate family, which however holds only a small percentage of voting security interests in each case. Such affiliate control arrangements are reportedly common in South Korea. You confirmed that the PNO, while respectful of foreign corporate cultures, applies the strict literal control tests of Rule §801.1(b) to these arrangements. Accordingly, you advised that the creation of a joint venture between two members of a single corporate family in this circumstance will not be exempt as an intraperson transaction under Rule §802.30.

[redacted]

12

US Sales: Although this was not ultimately the analysis on which your ultimate advice was predicated, for purposes of Rule 802.51(b), you advised that the sales of the former Affiliate A business units during Affiliate A's last fiscal year would count as sales of Newco.

Transaction Structure: Finally, you advised that the transaction should be analyzed under Rule §801.40 as the creation of a new joint venture entity by Affiliate A and Affiliate B, rather than as an acquisition by Affiliate B of voting securities in an existing corporation and a simultaneous acquisition of assets by Newco. You noted that under either approach, Affiliate A ends up having to make an HSR filing as an acquiring person, but that under the joint venture approach, there is no filing required for the acquired person.

As you parsed the Rule §801.40 transaction, Affiliate B's acquisition of joint venture interests is exempt under Rule §802.4, because its own former business unit is an exempt asset under Rule §802.30, while Affiliate A's former business unit generated less than $63.1million in US sales during Affiliate A's last fiscal year, and so is an exempt foreign asset under Rule §802.50. However, Affiliate A's acquisition of joint venture interests is reportable: although its own former business units are exempt assets under Rule §802.30, Affiliate B's former business unit generated more than $63.1 million in US sales during Affiliate B's last fiscal year, and so does not qualify as an exempt foreign asset under Rule §802.50.

Please let me know if the facts of this summary are unclear, or if I have mistated your advice in any respect.

Best regards,

[redacted]

[redacted]

AG 1E2

11/4/08