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Verne, B. Michael

From: [Redacted]  
Sent: Tuesday, January 12, 2010 3:35 PM  
To: Verne, B. Michael  
Cc: [Redacted]  
Subject: HSR Analysis Confirmation

Mike: Thank you for taking the time to discuss an HSR question with me last Friday afternoon. This email is to confirm the content of our prior discussion and your analysis. Informal Staff Opinion 0803005 states that where Company A grants an exclusive license to Company B, but retains the right to manufacture the product that is covered by the license, the license is not considered exclusive under the HSR Act and Rules, and therefore is not treated as the sale of an asset.

In the transaction we discussed, Seller is conveying exclusive rights to one of its pharmaceutical product lines to Purchaser. These rights include intellectual property (patents, trademarks, clinical and other data, and know-how), regulatory filings and approvals, contracts, promotional materials, and books and records. The intellectual property will be conveyed to Purchaser through a combination of outright sale (transfer via assignment) and exclusive licenses. However, Seller will maintain the right to manufacture the product, and will supply Purchaser with product after the closing pursuant to a supply agreement.

Seller will also sell shares of its common stock to Purchaser, valued at approximately \$12 million.

Your initial view was that this transaction should not be treated any differently from the transaction described in Informal Staff Opinion 0803005. Because Seller would still have the right to manufacture the product that was subject to the transfer of intellectual property, regardless of the proportion of intellectual property to be transferred from Seller to Purchaser through each of the means described above, we believe that the entire transfer of intellectual property to Seller in this transaction would not be considered the transfer of an asset under the HSR Act and Rules.

Kind regards.

[Redacted]

[Redacted]

AGREE -  
[Signature]  
1/13/08

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