[redacted]

801.10 (b) and (c)
[Exclusive Licenses]
[Valuation 4]

[redacted]

VIA FACSIMILE

January 11, 1994

Richard B. Smith, Esq.
Senior Attorney
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Dick:

RE: Filing Requirement for Potential Transaction

As we discussed on the phone today, I appreciate the chance to describe some of the details of a potential transaction involving [redacted] to you for your informal opinion on its reportability. Again, a phone call from you after you have had the opportunity to review the facts would be sufficient.

The potential transaction is an acquisition of what my clients are calling an "exclusive license." My questions, after reading Interpretations 49 and 129 of the most recent Premerger Notification Practice Manual, are whether the license is "exclusive enough" and "large enough" to require notification. The transaction is still being negotiated and some of the numbers I will use have not even been shared with the other party; however, I believe the structure is almost settled.

[redacted] and Company X both manufacture unfinished [redacted] -- usually, described as just the [redacted]. Company X has developed a [redacted] that it currently distributes. As the transaction now stands, Company X would transfer its product engineering for [redacted] in the form of patent and know-how licenses lasting four years. During those four years, [redacted] would have the exclusive right to manufacture and distribute [redacted] Company X would have the exclusive right to purchase [redacted] (just the [redacted] and distribute them anywhere. Unless new license agreements are reached, Company X would again have the right to manufacture and distribute [redacted] after four years.

[redacted]

The consideration for these licenses is yet to be negotiated but will probably be divided into three parts: A lump sum payment of approximately $500,000 designed to compensate Company X for the initial transfer of engineering; annual payments of approximately $250,000 to compensate Company X for engineering support; and a royalty payment of approximately $1,500 for each [redacted] The contract will not have a minimum sales guarantee; however, internal [redacted] documents estimate annual sales of approximately 3,250.

Is this licensing package, with its important time, geographical and even product limitations, exclusive enough to be considered an "asset?" If so, can the value of that asset be determined by simply adding the numbers above and using the [redacted] estimates of future sales? Or must [redacted] and Company X determine the value in some other way?

Any guidance you can provide on these questions would be appreciated. Obviously, please call me if you have any questions or need more information.

Sincerely,

[redacted]

[redacted] 1/11/94 advised writer that grant of 4-year, North American exclusive Patent and know-how license is the transfer of an asset. The lump sum payment and estimated royalty payment appear to be a "good faith" determination as to what the acquisition price for the exclusive license will be. (The annual $250,000 payment for "engineering support" may or may not be part of the acquisition price.)* Company X's right to purchase [redacted] is not reportable. If acquisition price above $15MM, as here, we need to make a fair market value determination. RBSmith

* Might be viewed as a payment for "consulting services" to sell of assets which, if a fair payment for such services, generally is not viewed as part of the acquisition price