TO: Don Clark
FROM: Darren Tucker
DATE: April 30, 2013
SUBJECT: Summary of Oral Communications Regarding Notice of Proposed Rulemaking

On April 3, 2013, counsel for the Pharmaceutical Research and Manufacturers of America (PhRMA) met with FTC Commissioner Joshua D. Wright and his advisors Darren Tucker, Jan Rybnicek, and Joanna Tsai regarding a Notice of Proposed Rulemaking regarding certain licensing transactions in the pharmaceutical industry. Appearing on behalf of PhRMA were Mit Spears and Melissa Kimmel, as well as Stephen Weissman and Jim Rill of the Baker Botts LLP law firm, which serves as outside counsel to PhRMA. Also attending the meeting were Lisa Harrison from the Office of General Counsel and Bob Jones and Mike Verne from the Premerger Notification Office.

The Notice of Proposed Rulemaking at issue was published in the Federal Register on August 20, 2012 in Volume 77 of the Federal Register at page 50,057. This memorandum is to be placed on the public record pursuant to 16 C.F.R. § 1.26(b)(5) and the Notice of Proposed Rulemaking, under which summaries or transcripts of oral communications respecting the merits of the proposed rulemaking from any outside party to any Commissioner or Commissioner advisor are to be placed in the public record.

At the April 3, 2013 meeting, PhRMA's counsel asserted that the Notice of Proposed Rulemaking would expand the reach of the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and that the FTC lacks authority to do so. Counsel also asserted that the Commission did not provide a reasoned explanation in the Notice for expanding HSR requirements or for singling out the pharmaceutical industry for these increased burdens. In addition, counsel asserted that the proposed rulemaking conflicted with international antitrust enforcement principles, which espouse nondiscrimination. Counsel also stated that transactions subject to the proposed rulemaking would be easy to unwind and would not involve assets that would be eliminated by an acquiring party. Finally, counsel asserted that the Notice understated the costs to the private sector of complying with the proposed rules. PhRMA requested that the FTC not proceed with the rulemaking.