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Verne, B. Michael

From: [REDACTED]
Sent: Sunday, July 17, 2005 12:00 PM
To: Verne, B. Michael
Subject: Asset Acquisition/License

Mike,

Sorry that we missed each other on Thursday. I would like to get PNO guidance as to whether the following proposed transaction would be considered an asset acquisition for HSR purposes. (Since I will be out of the office the first part of this coming week, I thought it would make sense to summarize the question in an email.)

In the proposed deal, Licensor will grant to Licensee what is described as an "exclusive, global license for the co-development and co-commercialization" of a pharmaceutical product. As that phrase implies, Licensor will be retaining an interest and role in the Product. The parties will split the costs of developing the Product, and it is envisioned that Licensor will manufacture the Product (though I assume the license may be broad enough to permit Licensee to manufacture as well). Specifically, the proposal provides that:

In US (and Canada)

- * Licensee will fund all sales and marketing and provide the required expert resources for the successful commercialization of Product.
- * Licensee will lead the commercialization of Product, with Licensor having full engagement in the strategy and planning process.
- * Licensor will have the option to co-promote the product alongside Licensee to certain specialists.
- * Licensee will record sales and reimburse Licensor, at agreed rates, for its direct promotional expenses
- * Licensee will pay Licensor a royalty of ___% on net sales in this territory.

All Other Markets excluding US (and Canada)

- * Licensor will lead and fund all sales and marketing, and provide the required expert resources for the successful commercialization of Product
- * Licensor will lead the commercialization Product, with Licensee having full engagement in the strategy setting and planning process.
- * Licensee will co-promote the product alongside Licensor throughout this territory and in all sectors.
- * Licensor will record sales and reimburse Licensee, at agreed rates, for its direct promotional expenses
- * Licensor will pay Licensee a royalty of ___% on net sales in this territory

Based on past conversations, my sense is that Licensor is retaining enough of an interest (co-promotion, manufacturing, commercialization outside US) that this would not be considered an asset acquisition for HSR purposes. As noted, however, the parties would like to get the PNO's guidance on that question.

Thanks in advance for your consideration of the question.

AGREE - THIS DOES NOT CONSTITUTE
AN EXCLUSIVE LICENSE FOR ASR PURPOSES
1/2 WOULD NOT BE REPEATABLE.

B. [Signature]

7/10/05