

Ferkingstad, James H.

From: [Redacted]
Sent: Tuesday, February 21, 2006 12:26 PM
To: Ferkingstad, James H.

James:

Thank you for returning my call this morning. I am writing to confirm our conversation regarding the HSR reportability the acquisition of a limited exclusive license where manufacturing rights are retained by the grantor. Our client is entering into an agreement whereby it will become the sole and exclusive distributor and promoter in the US and two other countries of a product currently in the FDA pipeline. The agreement contemplates our client engaging in development activities related to obtaining FDA approval, thereafter distributing and promoting the product in the defined territory for a specified field of use, and a supply arrangement whereby the grantor/counterparty manufactures and supplies the product to our client. The agreement also contemplates the grant of an exclusive license for the right to grantor's IP as required for the purpose of performing obligations under the agreement, i.e., obtaining FDA approval and distributing and marketing the product in a defined territory (that includes the US) and within a specified field of use. Grantor retains the right to manufacture the product, and will in fact take responsibility for supplying our client the product. All IP will remain the sole property of the Grantor.

You confirmed to me that the grant of an exclusive license supporting exclusive distribution and marketing rights where the grantor retains the right to manufacture the underlying product is not viewed by the Premerger Notification Office as the transfer or acquisition of an asset that would require notification under HSR if relevant thresholds are met. In the situation described above the grantor of the license retains manufacturing rights and will undertake sole responsibility for the manufacture and supply of our client's needs for the product at issue.

Please let me know as soon as possible if I have not accurately summarized the advice you gave me. Many thanks in advance for your kind help on this. I can be reached at [Redacted]



2/21/06 Agree

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

For more information please go to [Redacted]

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