

801.10

October 19, 2006

Ms. Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Dear Nancy:

I am writing to confirm my understanding of a telephone conference we had on Friday, October 13, 2006 concerning the calculation of fair market value pursuant to Rule 801.10 in an asset acquisition (of intellectual property).

Proposed Transaction

Our Client (a foreign corporation) intends to acquire various intellectual property rights relating to a particular chemical compound. Because there is no established purchase price in the acquisition agreement for this intellectual property, pursuant to Rule 801.10 our Client has calculated the fair market value of the intellectual property to be acquired by estimating its risk-adjusted payments to Seller in the form of anticipated royalties and milestone payments for sales in the US. This valuation methodology is commonly accepted and regularly relied upon as a method to value intellectual property in this industry. I suggested to you that this valuation methodology is an appropriate measure of fair market value under Rule 801.10.

In addition, the Client and Seller are currently parties to a co-development and marketing agreement (containing a non-exclusive U.S. license from Seller to Client) relating to the same chemical compound. Under this co-development agreement -- which will be superseded and replaced by the acquisition agreement discussed above -- our Client and Seller had planned to share profits pursuant to a formula upon commercialization of the chemical compound (which commercialization has yet to occur). Our Client made one milestone payment to Seller pursuant to the co-development and marketing agreement. I suggested to you that because the co-development and marketing agreement is a contractual relationship (that did not involve an HSR reportable acquisition of intellectual property), the one milestone payment made by Client to Seller pursuant to that agreement should not be included in Client's calculation of the fair market value of the intellectual property to be acquired under the new acquisition agreement.

Conclusions

With respect to the valuation methodology used by the Client, you agreed that this methodology appears reasonable under the circumstances as described.

With respect to the prior milestone payment made by Client pursuant to the co-development and marketing agreement, you agreed that Client should not include this payment in its calculation of the fair market value of the intellectual property to be acquired under the new acquisition agreement.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. As always, thank you for your assistance in this matter.

Sincerely,

[REDACTED]

10/19/06
Agree w/ conclusions
H. Orka
M. Verre concurs

[REDACTED]