

**Clark-Coleman, Sheila**

**From:** [REDACTED]  
**Sent:** Monday, December 03, 2007 7:25 PM  
**To:** Clark-Coleman, Sheila; Clark-Coleman, Sheila  
**Cc:** [REDACTED]  
**Subject:** Email confirming our conversation

*MV agree 12/04/07*

Dear Sheila:

This email is intended to confirm the advice you gave Nick Koberstein, representing Abbott Laboratories, and me, representing [REDACTED], regarding whether a certain transaction between [REDACTED] and [REDACTED] (the "Parties") would be subject to reporting requirements of the Hart-Scott-Rodino Act at this time. As we discussed, the Parties intend to enter into an Asset Purchase Agreement ("Agreement") by which [REDACTED] will acquire certain FDA-approved pharmaceutical products from [REDACTED] in a transaction that falls below reporting requirements of the HSR Act. The Parties plan to consummate this transaction before the end of this calendar year. Because it falls below HSR reporting thresholds, we do not believe it requires premerger notification filings. After discussing the factual circumstances presented below, you agreed that no filing would be required for this transaction unless and until a subsequent transaction is completed within 180 days time.

At an earlier point in their negotiations, the Parties had considered a transaction that would have included not only the products that are subject to the current Agreement but also additional products in the same product line family. Such a transaction would have exceeded \$60 million and would likely therefore have been reportable. For business reasons unrelated to HSR filing requirements, however, the Parties included in the current Agreement only approximately half of the assets that were at one point the subject of discussions. Excluded from the products in the current Agreement are the product family's international products and certain other products in the family that either have not yet received FDA approval or may have only received FDA approval during the latter portion of the negotiations.

Shortly after the Agreement is signed, the Parties intend to enter into a Letter of Intent to "use their best efforts" to negotiate a subsequent transaction involving additional products in the product line family. This letter of intent may or may not culminate in a second asset purchase agreement. The two transactions are not contingent or cross-conditioned upon one another.

We called to discuss whether HSR filings are required for the transaction that is the subject of the current Agreement, given the history of the Parties' negotiations and the Parties' intention to execute the letter of intent described above. Documents in the Parties' files will evidence that they contemplated including additional assets at certain times during their negotiations but that the companies had valid business reasons, unrelated to the HSR Act, for selecting the current products now included in their current Agreement.

We understand that the Commission's HSR regulations require aggregation of the value of certain transactions for purposes of HSR thresholds when multiple transactions are entered into between the same two parties within 180 days of one another. Although you advised us that our current transaction would not require a premerger filing, if the Parties are able to negotiate and execute a subsequent agreement within this time frame, we anticipate making HSR filings as appropriate.

Please review this letter and notify me if I have misunderstood your advice. Thank you very much for your assistance in this matter.

Best regards,

[REDACTED]



This message may contain confidential and/or legally privileged information from the law firm of [REDACTED] If delivered to anyone other than the intended recipient, please notify the sender immediately by return email or by telephone [REDACTED] and delete the message, along with any attachments, from your computer. Thank you.

\* \* \* \*

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations,

\* \* \* \*

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations,