

801-10

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 29, 2010 1:14 PM
To: Verne, B. Michael; Walsh, Kathryn
Cc: [REDACTED]
Subject: Informal HSR Advice - Confirmation
Importance: High

Mike & Kate,

I apologize for the delay in sending this message, but I am writing to ask that you confirm the informal advice that you provided orally to [REDACTED] and myself on Thursday, June 17, 2010. Note that I have also included below, for your reference, an email chain reflecting my prior conversation with Mike on this transaction.

Description of the Transaction

The basic facts outlined in my email below remain unchanged. We now understand, however, that approximately \$60 million of the \$66 million consideration for the transaction is an upfront payment for the underlying assets to be acquired when the purchase option is exercised in three years. The underlying assets that will be acquired pursuant to the purchase option include rights to the underlying intellectual property, all books and records relating thereto, and any new drug applications or abbreviated new drug applications relating to the Products. The payment due upon option exercise varies based upon the aggregate net sales of the Products during the option period, but Buyer expects it to be only a nominal amount, well below either the \$60 million upfront payment or the expected fair market value of the underlying assets.

Moreover, Buyer's accountants will treat the initial transaction as a purchase of assets, including the underlying intellectual property subject to the option, for tax purposes, and will show the underlying intellectual property as assets on the books of the Buyer.

Question

Would the significant upfront payment, coupled with the option to purchase for a nominal payment in three years and the tax and accounting treatment described above, indicate a present transfer of beneficial ownership in the underlying intellectual property such that an HSR filing would be required now, as opposed to upon exercise of the option? Is this situation akin to the installment sales contract or equipment lease arrangements discussed in various informal interpretations in the Premerger Notification Practice Manual?

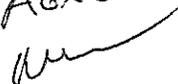
Response

During our call you advised that the significant upfront payment, coupled with the option to purchase for a nominal payment in three years and the tax and accounting treatment described above, indicate a present transfer of beneficial ownership in the underlying intellectual property. You advised that the parties submit an HSR filing now for the acquisition of the assets subject to the option.

Thank you for your time and assistance with this matter. I would be grateful if you could confirm that this email accurately summarizes the advice that you provided and the position of your office.

Kind regards,

[REDACTED]

AGREE -

 KW CONCURS
 6/30/10

6/29/2010

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