



August 18, 1995

**VIA FACSIMILE - 202-326-2624**  
**CERTIFIED MAIL NO.: P 031 664 510**  
**RETURN RECEIPT REQUESTED**

Mr. Hy Rubenstein  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
Washington, D. C. 20580

RE: Marketing and Distribution Agreement

Dear Mr. Rubenstein:

The purpose of this letter is to confirm our telephone conversation of August 17, 1995 regarding whether a Notification and Report Form for Certain Mergers and Acquisitions ("Form") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Act") must be filed in connection with a transaction involving the granting of exclusive marketing, selling and distribution rights under a certain registered trademark.

The relevant facts pertaining to this transaction are:

1. Company A has a license for the exclusive right to use certain intellectual property in order to manufacture a certain pharmaceutical product ("Product"). Pursuant to such license, Company A may not sublicense such rights. In addition, Company A owns a certain trademark ("Trademark") under which the Product will be sold.
2. The Ultimate Parent Entities of the parties to the transaction at hand (the "Transaction"), Company A and Company B, meet the "Size of the Parties" test and the value of the Transaction exceeds \$15,000,000.
3. Pursuant to the Marketing and Distribution Agreement to be entered into in connection with the Transaction, Company A is granting to Company B exclusive rights to sell, market and distribute the Product in the United States. Company A retains:
  - (a) ownership of certain regulatory approvals (FDA rights);
  - (b) its exclusive rights to manufacture the Product; and

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(c) ownership of the trademarks and copyrights with respect to the Product.

4. Company A will manufacture the Product on behalf of Company B pursuant to a Manufacturing Agreement to be executed contemporaneously with the Marketing and Distribution Agreement. *2 3 (a) (b) & (c)*

5. As part of the Transaction, Company A has the option ("Option") (exercisable by Company A at any time upon 90 days' notice) to assign, transfer and convey to Company B all of its right, title and interest in and to the Marketing Assets in accordance with parameters set forth in the Marketing and Distribution Agreement. Such Option will be only exercised to the extent allowable by Company A's licensor of the Product or upon the Product being available to Company A, free of its commitments under the license agreement.

Based upon these facts, you advised that the Transaction is not reportable under the Act because the Transaction only involves the granting of marketing and distribution rights with respect to the Product, and Company A is retaining its exclusive rights to manufacture the Product and is not granting to Company B any rights with respect to the trademarks and copyrights relating to the Product other than those necessary to market and distribute the Product. Furthermore, the granting of the Option is not reportable under the Act. However, a Form must be submitted upon the exercise of the Option if the parties meet the applicable "Size of the Parties" test and the sum of (i) the purchase price of the Marketing Assets payable by Company B upon the exercise of the Option, and (ii) the value of the Option granted pursuant this Transaction, exceeds the applicable "Size of the Transaction" threshold in effect at the time of the exercise by Company A of the Option.

Please confirm with the undersigned [redacted] of this office, by telephone [redacted] your agreement with the conclusions set forth herein.

Thank you very much for your cooperation.

Very truly yours, [redacted]

*8/22/95 - Advised writer that the entering into*

*of the Marketing and Distribution Agreement was not reportable under HSR. (He stated that the Marketing Assets were those noted in 3 (a) (b) & (c)) Exclusive distribution right is not a reportable event under HSR. However, exercise of the Option could result in a reportable transfer of assets. B's right to use the trademarks and copyrights in its marketing of the Product does not compromise the conclusion that this is the grant of an exclusive distribution right only.*