

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, February 22, 2024 9:49 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Exclusive License and 802.50

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, February 22, 2024 9:49:17 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Exclusive License and 802.50

[REDACTED]

Please see this informal: <https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/1703001>

Exclusive licenses that have no nexus to the United States are not US assets. If any portion of the license, including goodwill, is related to the US, that portion would need to be valued and included in the size of transaction.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, February 21, 2024 4:18:07 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Exclusive License and 802.50

Dear PNO,

I hope all is well. I write to seek clarification on the applicability of 802.50 to an exclusive license between two non-U.S. entities for the global manufacture and sale of a patented product, including in the U.S. I have found several dated informal interpretations indicating that the non-U.S. portions of the exclusive license are exempt pursuant to 802.50. *See, e.g.*, Informal Interpretation [0203001](#) (stating that exclusive licenses for geographic areas outside the U.S. are considered assets located outside the U.S. for purposes of 802.50); Informal Interpretation [0606010](#) (indicating that the exclusive license at issue was an asset located outside the U.S. for purposes of 802.50 because its source of revenue and “know-how” was exclusively European). In turn, I found another informal interpretation indicating that the U.S. portion of the license would be considered an acquisition of an asset for HSR purposes and not subject to 802.50. *See* Informal Interpretation [0807006](#) (indicating that the U.S. portion of a multi-country exclusive license should be considered an acquisition of an asset in the U.S.). I unfortunately have not been able to find more recent guidance and would therefore appreciate confirmation that (a) the non-U.S. portions of the exclusive license are exempt pursuant to 802.50; and (b) the U.S. portion of the exclusive license (assuming that the U.S. will be a source of revenue and “know-how”) is considered an acquisition of an asset for HSR purposes and that the size of transaction is the fair market value of the exclusive license in the U.S.

Many thanks,

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