

Shaffer, Samuel I.

From: HSRHelp
Sent: Thursday, February 22, 2024 9:49 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Samuel I.; Fetterman, Peter; Burton, Jason; Lanyon, Peter
Subject: FW: Exclusive License and 802.50

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, February 22, 2024 10:05 AM
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Exclusive License and 802.50

[REDACTED]

Please see this <https://www.ftc.gov/press-releases/2024/02/22/ftc-clarifies-when-non-us-portion-of-exclusive-licenses-are-us-assets>. Exclusive licenses that have no nexus to the United States are not US assets. If any portion of the license, including a portion located in the U.S., is related to the U.S. that portion would need to be valued and included in the size of transactions.

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 10:05 AM (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 application of 802.50 to the acquisition of an asset by a foreign entity for the global manufacture and sale of a patented product, including in the U.S. I have found several 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 because their source of revenue and "know-how" was exclusively foreign). In turn, I found another informal interpretation indicating that the U.S. portion of the license would 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. portion of the exclusive license is not 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,

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[Redacted]

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[Redacted]

[Redacted]

[Redacted]