

Verne, B. Michael

801.2

From: [REDACTED]  
Sent: Wednesday, June 20, 2007 12:18 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: HSR Question

Mike,

Our client has licensed a pharmaceutical compound that we believe is nonexclusive and nonreportable and wanted to receive your input. The license grants the licensee the right to research, develop and commercialize a compound within the US. The license also grants the licensee exclusive rights to use the active pharmaceutical ingredient to manufacture the finished product within the US, but the licensor retains the right to manufacture the active pharmaceutical ingredient. For reasons unknown to our client, the licensor insisted that it retain manufacturing rights over the active pharmaceutical ingredient. The license agreement provides that the licensee shall manufacture the active ingredient as a subcontractor for the licensor and the licensor will manufacture additional amounts of the active ingredient once the licensee's requirements exceed certain volume thresholds.

We concluded that the licensor's retention of manufacturing rights for the product's active ingredient renders the agreement to be nonexclusive under HSR rules and informal interpretations and, thus, there is no reportable asset acquisition. Do you agree?

Thanks.

[REDACTED]

Agree  
DM  
6/20/07

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[REDACTED]

For more information about [REDACTED] click here:

[REDACTED]