

801.1 (a)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 07, 2013 12:12 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR reportability question

Dear Mike,

We would be grateful for your thoughts on the HSR reportability of the following: Licensor will grant Licensee exclusive rights to develop, make, have made, use, sell, offer to sell, import, and export licensed compounds, however Licensor will still retain the right to co-develop and co-promote the licensed compound.

Do you agree that because Licensor retains development and promotional rights, the license is not exclusive within the meaning of PNPM (4th Ed.) Interp. 27 and therefore does not constitute an asset transfer that would require an HSR filing?

Many thanks,

[REDACTED]

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

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No – it is still exclusive. It has long been and continues to be our position that the retention of co-development and co-promotion rights does not defeat the exclusivity of the license. Your cite to Interp. 27 is not on point. That discusses co-exclusive licenses which are different in that both the licensor and the licensee have exclusive rights to the patent, making the license non-exclusive for HSR purposes. See the discussion of retention of co-rights beginning on p.8 of the link below:

<http://www.ftc.gov/opa/2013/11/pmn.shtm>

Bm ✓
11/7/13

Kw concerns