

801.2

Verne, B. Michael

From: [REDACTED]
Sent: Monday, January 27, 2014 3:35 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Question re Exclusive Distribution

Dear Mike,

Our client is [REDACTED]. [REDACTED] distribution system varies throughout the U.S. – in some areas, the company distributes through its company-owned distributor, and in others, the company has granted exclusive distribution rights to independent distributors. [REDACTED] is presently considering several transactions whereby it would grant existing distributors exclusive distribution rights for certain territories currently covered by [REDACTED] company-owned distributor. In some cases, [REDACTED] would also sell distributors accompanying distribution assets, e.g., trucks and warehouses.

Our understanding (based on Informal Interpretation 0712007: <http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0712007>) is that exclusive distribution agreements (including those with an exclusive license to use the trademark in connection with the distribution of the product in the relevant territory) are not assets for HSR purposes (or at least are exempt assets), and so the granting of these licenses in itself cannot trigger an HSR filing requirement. We also understand that the sale of the distribution assets could be reportable if the value of the assets sold to a particular buyer were valued at more than \$75.9 million.

In addition to its own products, [REDACTED] acquired and holds exclusive distribution rights (including an exclusive license to use the trademarks in connection with the distribution in the relevant territory) for certain third-party brand products in some parts of the country, including in some of the territories it is contemplating licensing to independent distributors. [REDACTED] currently contemplates that the independent distributors will obtain the exclusive distribution rights for these third party products in the relevant territories at the same time that they obtain the [REDACTED] exclusive distribution rights. (It is not clear at this time whether this will be accomplished by assignment of the existing third party licenses, by sub-license by [REDACTED] or by the independent distributors and the third party brand owner(s) entering into new agreements.) Regardless of the precise structure, the independent distributors will make a present payment to [REDACTED] as consideration for the transfer of these exclusive distribution rights that [REDACTED] currently holds.

Our understanding, which we would like you to confirm, is that exclusive distribution agreements of this nature (including those with exclusive trademark licenses in the relevant territories) are not assets for HSR purposes (or at least are exempt assets), so regardless of how the third party exclusive distribution rights are transferred, and regardless of the amount paid for the transfer, that transfer would not be reportable under the HSR Act.

Thanks in advance for your review.

Best regards,

[REDACTED]

[REDACTED]

A

We agree that neither the distribution agreement (with exclusive trademark license within the territory) for the [REDACTED] products or the third party products are reportable. The warehouses and other distribution assets would be, because they are not being used to store third party products, but rather as part of a wholesale distribution business.

Bur

1/28/19

KW CONCURS