

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Friday, May 7, 2021 10:18 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Interpretation, 802.50, 802.4, 801.10

[REDACTED]

Your analysis is accurate. However, for goodwill we have a more recent interpretation, see the link below. Please use this guidance for allocating goodwill.

<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1907004>

Sam

[REDACTED]

From: [REDACTED]
Sent: Wednesday, May 5, 2021 3:00:06 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for Interpretation, 802.50, 802.4, 801.10

Dear Premerger Staff:

We would appreciate your confirmation that our analysis is consistent with your interpretation of the exemption for foreign assets under HSR Rule 802.50 and exempt assets of an unincorporated entity under HSR Rule 802.4, as well as HSR Rule 801.10(c)(3).

Company A is acquiring from a US-based UPE B (a US Person) and its US and foreign subsidiaries 100% of the non-corporate interests in a US LLC plus related assets held by UPE B or 15 subsidiaries including one located in the UK (the "UK Seller Company") and others in the US and several other countries (collectively, "Seller Companies"). The transaction is a carve out of assets relating to a line of software provided to commercial and financial customers in the US, UK and other countries (the "Business").

The Purchase Price is \$150 million plus contingent payments over two years that might total up to \$20 million in the aggregate. The assumed liabilities principally relate to post-closing obligations, and thus are not viewed as consideration for the assets under HSR interpretations. Any assumed liabilities for pre-closing obligations, to the extent related to assets outside of the US LLC, would be taken into account in any acquisition price or fair market value determination.

The foreign assets included in the acquisition would be deemed exempt assets under 802.50 or (as to those of the US LLC) 802.4, including with respect to any aggregation of sales in or into the US under 801.15(d), because the total sales of the target US LLC and assets, and their sales in or into the US, in the acquired person's last fiscal year, are less than \$92 million. See Informal Interp. No. 0512014 (where total target sales are less than the threshold, the foreign asset sales in or into the US are less than the threshold)

<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0512014>

The assets to be acquired include receivables, assigned contracts, benefits under contracts of Seller Companies to the extent related to the Business, all Business intellectual property, prepaid expenses, certain FF&E, computer and telephone equipment, books and records and goodwill associated with the Business. In connection with tax allocations, the parties have agreed upon an allocation of the Purchase Price among the Seller Companies following an analysis by accountants retained by the acquired person, taking into account the tangible assets and allocation of the intangible assets, sales in various locations of certain UK software owned by the UK Seller Company and certain US software owned by the US Seller Companies. The results of the tax allocation analysis by the accountants, incorporated into the agreement of the parties, are that the Purchase Price of \$150 million should be allocated approximately \$97.7 million to the UK software and assets of the UK Seller Company; approximately \$50.2 million to the US software and assets of the US Seller Companies, and approximately \$2.1 million to Seller Companies in other jurisdictions.

To the extent that there might be deemed to be a determined acquisition price for the non-exempt assets based on the agreed allocation, it would be at most \$50.2 million, plus a corresponding allocation of about one-third of any estimated contingent payments, and any estimated assumed liabilities, which would total less than \$92 million. See Informal Interp. No. 0112010 (agreed acquisition price, reasonable estimates) <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0112010>

The acquiring person may use any reasonable method to determine in good faith the fair market value of the non-exempt assets pursuant to 801.10(c)(3). ABA Antitrust Section, Premerger Notification Manual, Interp. No. 58, 63, Informal Interp. No. 0004007 (allowing reliance on valuation of accountants adopted by the acquiring person) <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0004007>.

Contracts for services rendered outside the US are foreign assets, as is the goodwill associated with those contracts. Informal Interp. No. 1012005 point 21 <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1012005> In allocating the location and value of intangible assets such as goodwill and intellectual property, one acceptable method is to rely upon an agreed allocation for tax purposes set forth in the agreement between the parties. Informal Interp. No. 1012005, point 22. We request that you confirm that Interpretation 1012005 still represents the current PNO interpretation.

We would be pleased to discuss any further information you might need to address this request.

[REDACTED]

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[REDACTED])

[REDACTED]

[REDACTED]

