

802.40
801.1(f)

November 30, 2001

Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Attn: Nancy Ovuka

By Certified Mail and Fax: 202-326-2624

Re: Premerger Notification Filing Exemption for Michigan Non-profit Corporations

Dear Ms. Ovuka:

This letter will confirm our telephone call of November 29, 2001 in which we discussed the application of the Hart-Scott-Rodino Premerger Notification filing requirements to Michigan non-profit corporations. Our discussions were based in part on the two memoranda which I faxed to you on November 28, 2001, and which are attached to this letter (with proof of faxing). The first, longer memorandum describes a proposed transaction involving the acquisition of voting stock of one Michigan non-profit corporation by another Michigan non-profit corporation. The second memorandum describes a Michigan non-profit corporation formed as a "joint venture" by two Michigan non-profit corporations.

As we discussed, you discussed the matter with other officials at the Premerger Notification office, and you agreed with the analysis and conclusion in the memoranda. That is, if the proposed transaction were structured as an acquisition of voting stock, the transaction would be treated as an acquisition of voting securities (rather than assets), and, for purposes of determining whether Premerger Notification were necessary, the relevant value would be the value of the acquired stock, even if this value were substantially less than the value of the gross assets held by the corporation whose stock was acquired. Accordingly, if the value of the voting securities acquired were less than \$50,000,000, Premerger Notification filing would not be necessary under the Hart-Scott-Rodino Act. Alternatively, if the proposed transaction were structured as the formation of a joint venture, the transaction would be exempted from the Premerger Notification filing requirements by Rule 802.40.

in excess of \$50.0mm

If you have any questions, or if your understanding differs from mine, please contact me.

Sincerely,

[Redacted signature block]

802.40
801.1 (P)

MEMORANDUM

To: Nancy Oyuka
From: [REDACTED]
Date: November 28, 2001
Re: Hart Scott Filing in Context of Michigan Non-profit Corporations

My client, "P", a Michigan non-profit corporation, is considering a transaction whereby it would acquire all of the capital stock of a currently unaffiliated Michigan non-profit corporation, "T". Both P and T are members of different "reorganized" health-care systems, with P the parent of its system, and T the main operating entity of a system which has as its parent another Michigan non-profit corporation, "PT". While the precise form of the transaction has not been firmly settled, it is expected that P would in exchange for a fairly small payment acquire all of the T stock owned by PT, as part of a plan pursuant to which PT would merge into T, with T as the surviving corporation. At the end of the day, P would own all T stock, and T would own not only its own operating assets, but also all of the ownership interests formerly owned by PT. T and the other former affiliates of PT would continue to operate their businesses out of their existing corporate shells; they would just be affiliates (or subsidiaries) of P, as opposed to PT. P would as part of the plan make additional capital contributions to T and possibly other affiliates. The total amount committed by P in the form of the stock purchase price and committed capital contributions would be less than \$20,000,000.

T has gross assets in excess of \$500,000,000, and other members of the PT system have gross assets of less than \$50,000,000. However, these assets are subject to very substantial debt, and the PT system as a whole, and T in particular, have been losing money and are in a difficult financial position. They likely have value as going concerns of \$10,000,000 to \$50,000,000 at most (if the good parts could be split out), and perhaps much less (if everything was to remain).

unusual for nonprofits
Michigan has a nonprofit corporation act which may be unusual in allowing for non-profit corporations to be organized on a stock basis; MCL 450.2302 provides that a non-profit corporation "shall be organized upon a stock or nonstock basis." In addition, MCL 450.2505(2) provides that, unless otherwise provided in a non-profit corporation's articles or bylaws, "the shareholders ... shall elect directors to hold office until the succeeding annual meeting" of the shareholders. Accordingly, P, as sole shareholder of T, would have the right to appoint all of T's directors.

Under these circumstances, it seems the acquisition of T's stock by P ought to be considered an acquisition of voting securities, and the value of the stock, for purposes of determining whether pre-merger notification is necessary, should be the fair market value of the stock, and not necessarily the gross value of T's assets.

If you have any questions, please contact me or [REDACTED]

11/29 If stock votes for directors then it is a voting securities acquisition. If purchase price does not exceed \$50mm, then transaction is exempt. Mr & Ms concur

MEMORANDUM

To: Nancy Oanka
From: [REDACTED]
Date: November 28, 2001
Re: Non-profit, tax exempt venture entity

As an alternative structure, would Section 802.40 exempt the transaction if 1) P and PT formed a new venture entity, "MP", with PT contributing to MP in exchange for a minority of MP's stock all of PT's stock in T and other affiliates, and P contributing in exchange for a majority of MP's stock cash of \$20,000,000, and 2) MP obtained exemption under 501(c)(3)?

If you have any questions, please contact me.

11/29/01

Transaction would be exempt

no
MV, RS
concur