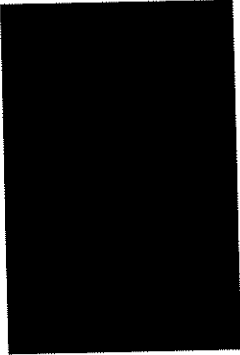




February 2, 2006

VIA ELECTRONIC TRANSMISSION
James Ferkingstad, Esq.
B. Michael Verne, Esq.
Premerger Notification Office, Room 303
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave NW
Washington DC 20003



RE: Exempt Transaction Issue

Dear James and Michael:

As James knows, I spoke with him a couple of times in the last few days to discuss an acquisition I am working on, on a client-anonymous basis. At his request, I am sending this letter to Michael, as well.


Briefly, the facts I relayed to James are these: I represent a target company, an issuer whose voting securities are being acquired from its shareholders in a transaction where the value exceeds the notification threshold. The issuer is controlled by a state university, which holds substantially more than 50% of the voting securities. The shares of the issuer would be transferred to the acquirer directly from the shareholders, including the state university.

I called to discuss the applicability of Clayton Act § 7A(c)(4), which reads:

“(c) Exempt transactions. The following classes of transactions are exempt from the requirements of this section: ...

(4) transfers to or from a Federal agency or a State or political subdivision thereof.”

Under my interpretation of the statutory language, the subject transaction is exempt from the notification requirements of the Hart-Scott-Rodino Act. James agreed, but raised the issue that some state universities or subdivisions of a state university might not qualify as agencies of the state itself (I believe we discussed an example where a state university or affiliated medical center would be separately incorporated or otherwise controlled). I expressed my understanding that the state university in this transaction does so qualify. I called back to confirm that fact, based on my review of the relevant state statutes and judicial authority.



[REDACTED]

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James confirmed the conclusion that the transaction was exempt from reporting under 7A(c)(4), again subject only to the qualification that the university must be a public agency of the state.

We carried on this discussion on a client-anonymous basis, but I have since received permission to disclose the identity of the parties. My client, the target, is [REDACTED] Company, which owns 100% of [REDACTED], a health insurance company in [REDACTED]. The Commonwealth of Kentucky, through the [REDACTED], owns approximately 85% of the voting securities of [REDACTED]. The proposed acquiring party is [REDACTED]. The purchase of the shares held by the minority shareholders would not satisfy pertinent reporting thresholds if analyzed separately.

I initiated my calls to PNO when I first learned of this transaction, but prior to my introduction to counsel for [REDACTED]. Now I have learned that [REDACTED] has had independent discussions with other PNO staff, including Marian R. Bruno, regarding this same transaction, prior to his learning of my conversations with James. Apparently, his discussions with PNO staff have focused on the interplay of the statute, and the SBP and regulations, and he has received informal guidance that the *issuer* would be required to file under the Act, notwithstanding the fact that shares constituting a controlling interest in the issuer are being transferred directly from a state government entity.

After discussing the matter with [REDACTED], we agreed that I would write to confirm or clarify our discussion before going forward with the transaction. I am not clear whether the different informal guidance we received resulted from a different presentation or understanding of the facts, a different view of the law, or my own misunderstanding of our conversations. In any event, I continue to believe that the proposed transaction is exempt under the plain language of Section 7A(c)(4), and that the SBP and regulations must be construed in a manner consistent with that language.

I look forward to discussing this matter with you further.

Very truly yours,
[REDACTED]

cc. [REDACTED]
[REDACTED]

2/6/06 Subject discussed with M Bruno, N Cluka + M Verne. Transaction is reportable. All concur

[Signature]