

802.2(d)

CONFIDENTIAL

VIA ELECTRONIC MAIL

May 5, 2006

Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Dear Nancy:

I am writing to confirm my understanding of telephone conversations we had on April 7, 2006, April 18, 2006 and May 4, 2006 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") of a proposed transaction discussed below.

Proposed Transaction

Our client ("Company A") is a non-profit corporation that provides housing and services for developmentally disabled persons. Pursuant to a proposed transaction, Company B, also a non-profit corporation, will become the sole member of Company A whereby Company B will have the power to select all of the members of the board of directors of Company A. Company A and Company B satisfy the size of person test. There is no purchase price for the transaction, although as a part of the transaction Company B will make financial commitments that will benefit Company A after closing. The value of those commitments would be well under the HSR size of the transaction test of \$56.7 million.

Analysis and Conclusions

My understanding is that the transaction described above will be viewed for HSR valuation purposes as the acquisition of the assets of Company A by Company B. I also understand that it is necessary to do a fair market valuation of the assets of Company A to determine if the size of the transaction test is met.

You confirmed that in doing the fair market valuation for the acquisition of control of Company A, the value attributable to assets held by Company A that are exempt as

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residential property under 16 C.F.R. § 802.2(d) can be excluded from the valuation. Accordingly, if the value of the non-exempt assets of Company A does not exceed \$56.7 million, the acquisition of control of Company A by Company B is not reportable under the HSR Act.

You agreed that residential facilities for those with developmental disabilities, other than skilled nursing facilities or nursing homes, would be HSR exempt as residential property under 16 C.F.R. § 802.2(d) except for (i) assets for medical care in the facilities (such as a nurses room devoted to seeing patients for medical care); or (ii) assets of a business conducted on the residential property such as a training center or a hair salon. You confirmed that if a residential facility (other than a skilled nursing facility or nursing home) had some medical assets or assets for conducting a separate business on the premises, those assets should be included in determining the fair market value of Company A. All other assets/parts of the residential facility would be excluded for HSR valuation purposes.

My understanding is that a facility may be residential if it is a stand alone house, apartment building or other type of structure where people reside. You have instructed us to consider the level of care provided within the residential facilities owned by Company A to determine whether it is "residential" for purposes of HSR exemptions.

As we discussed, the residential facilities held by Company A that satisfy the criteria of "residential" based on our understanding of the regulation would include houses that have a few bedrooms (e.g., approximately four), bathrooms and common residential living areas like a kitchen and living room. These houses are typically in residential neighborhoods, and have staff on site at all times when clients are present to assist the developmentally disabled residents with things like shopping and preparing meals, but they do not provide professional health care services. The residents also may receive some training in the houses, but these houses would not have a separate classroom for training or an adjoining training center. Further, these residences do not have "medical staffs" or medical directors and would not have nurses on staff, although skilled professionals may be involved in training staff on medication administration and monitoring, preparing and monitoring health care plans for staff to follow and consulting with residents at the houses on occasion or as needed. You agreed that these houses should be completely exempt for HSR purposes assuming that there are not assets designated for providing medical care or assets used for a separate business activity such as a classroom for training.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

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5/10/06
agree . N. OVUKA