

801-12



August 12, 2009

Michael B. Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Informal HSR Opinion

Dear Mr. Verne:

This letter is to confirm our discussion of July 29, 2009 regarding whether the transaction described below would trigger the premerger notification and filing requirements of the Hart-Scott-Rodino Act ("HSR"). We concluded during our conversation that no such notification or filing is required.

Company A is a North Carolina non-profit hospital system, which owns and operates two licensed, acute care hospitals. Company B is a North Carolina hospital authority, which owns and operates one licensed, acute care hospital. Company A and Company B intend to form a joint operating company ("JOC") that will be organized as a North Carolina non-profit corporation. The JOC will operate Company A's and Company B's hospitals as a unified healthcare delivery system. Company A and Company B will serve as the JOC's sole corporate members. The JOC's board will initially consist of twelve (12) members, with four (4) directors appointed by Company A, four (4) directors appointed by Company B, and four (4) directors appointed on an at-large basis.¹

Company B was created under the Hospital Authorities Act, codified at Chapter 131E-15 *et seq.* of the North Carolina General Statutes. Company B's board is appointed by the County Board of Commissioners for the county in which Company B operates. Hospital authorities are defined by statute as a "public body and a body corporate and politic." N.C.G.S. § 131E-16(14). The Hospital Authorities Act provides, among other things, that North Carolina hospital authorities shall have the power of eminent domain and the power to issue revenue bonds. N.C.G.S. § 131E-24, -26.

¹ The JOC will ultimately enter into a management services agreement ("MSA") with Company C, another North Carolina hospital authority. Pursuant to the MSA, Company C will manage the JOC's day-to-day operations, but Company C will not acquire any voting securities or assets in connection with the MSA.



[REDACTED]

We have reviewed the financial statements for Company A and Company B that were prepared in the ordinary course of business in September 2008. Based on our review, we determined that neither entity has total assets or net sales in excess of \$130.3 million.

In light of the above, we concluded that an HSR filing will not be required with respect to the formation of the JOC. This determination is based on two principles. First, neither party meets the size-of-person test under 15 U.S.C. § 18a(a)(2). Second, given Company B's status as a North Carolina hospital authority, the transaction is exempt from notification under 15 U.S.C. § 18a(c)(4) as a "transfer to or from...a State or political subdivision thereof."

Please let me know if I misinterpreted our discussion or if you have any questions about the foregoing. Many thanks for your assistance in this regard.

Best regards,

[REDACTED]

AGREE - NOTHING
REPORTABLE

BM
10/15/09

[REDACTED]