

807.40; 801.40 (Non-profit formation)

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

January 24, 1996

VIA FACSIMILE - (202) 326-2624  
AND U.S. MAIL, REGULAR DELIVERY

Mr. Richard Smith  
Premerger Notification Office  
Bureau of Competition  
Room 303 - Federal Trade Commission  
Sixth Street and Pennsylvania Ave., N.W.  
Washington, D.C. 20580

RE: Application of Hart-Scott-Rodino Antitrust  
Improvement Act of 1976 (the "Act")

Dear Mr. Smith:

Thank you for your telephone call of earlier today. Pursuant to our discussion, set forth below are the relevant facts underlying the proposed transaction:

1. Three not-for-profit corporations, hospitals A, B, and C, each of which satisfies the size-of-person test, propose to form a not-for-profit (under Internal Revenue Code § 501(c)) corporate joint venture, Newco;
2. A, B, and C will have membership voting rights to appoint one-third of the board. Newco will not have any membership interest in A, B, or C;
3. A, B, and C will contribute at closing a combined total of up to \$10 million in cash. In addition, A, B, and C have agreed to contribute annually to Newco their respective excess net revenues, if any;
4. A, B, and C will retain ownership of their respective assets, and each will maintain their account receivables and pay their own obligations;
5. A, B, and C will give Newco control of strategic planning, and capital and operating budgets. Although the exact extent of Newco's control has not yet been determined and subject to the exceptions stated above, each hospital will be responsible for its own day-to-day operations.

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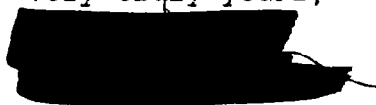
We understand, based upon the foregoing facts and our conversations from today and last week, that this proposed transaction does not require premerger notification under the Act.

Rule § 802.40 exempts from filing the acquisition of voting securities of a not-for-profit joint venture at the time of its formation. However, in this proposed transaction there are no voting securities of Newco. Thus, this exemption is not applicable and we are directed to Rule § 801.40 regarding the reportability of formations of joint ventures. However, for the same reason Rule § 802.40 is not applicable (i.e., no voting securities), Rule § 801.40 is not applicable. Consequently, this proposed transaction is not reportable.

Alternatively, we understand from our conversations that this proposed transaction would be exempt under Rule § 802.20. A, B, and C will each acquire a one-third membership with voting rights to appoint one-third of the Newco board and would satisfy the 15% threshold in § 7A(a)(3)(A) of the Act. However, as a result of the acquisition neither A, B, nor C will hold assets of Newco valued at more than \$15 million or hold voting securities conferring control of Newco. Therefore, this transaction would be under the minimum dollar value of Rule § 802.20 and therefore exempt from reporting under this alternative reasoning.

Please call me at the direct dial number listed above if you disagree with these conclusions or wish further information prior to reaching your conclusion. We will call you in the near future to discuss this letter. Thank you.

Very truly yours,



2/13/96 - advised writer that formation of Newco was non-reportable because no voting stock was being acquired as a result of its formation.  
R. B. Smith