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May 1, 1996

VIA HAND DELIVERY

Thomas F. Hancock, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Not-For-Profit [REDACTED] Formation of Joint Venture Management and Operating Company [REDACTED]

Dear Tom:

Two not-for-profit [REDACTED] have proposed the joint operation of their [REDACTED] related businesses. The proposed transaction would involve the formation of a joint management and operating company which would manage and operate the [REDACTED] related businesses of the two systems as an integrated [REDACTED]. Title to the existing assets of each of the two systems will remain unchanged, although new projects will generally be titled in the joint operating company. The parties do not believe that the proposed transaction is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act"). However, the parties would like to confirm that assessment with your office.

I. Facts

The proposed transaction involves two [REDACTED] of [REDACTED] is a tax-exempt [REDACTED] nonprofit non-membership corporation, qualified under Internal Revenue Code § 501(c)(3), which operates (either directly or through one or more subsidiaries) three [REDACTED] two located in [REDACTED] and several other [REDACTED] related facilities. An affiliated charitable foundation supports the educational and research activities of [REDACTED]. A second charitable foundation, affiliated with one of its non-profit subsidiaries, supports that non-profit [REDACTED]

[REDACTED]

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[REDACTED]
Thomas F. Hancock, Esq.
May 1, 1996
Page 2

charitable mission [REDACTED] is associated with the [REDACTED]
[REDACTED] and has a self-perpetuating Board of Directors.

[REDACTED] is a tax-exempt [REDACTED] not-
for-profit membership corporation, qualified under I.R.C. § 501(c)(3). The members of [REDACTED]
are certain individuals, each of whom is a member in good and regular standing in the [REDACTED]
[REDACTED]

The Board of Directors of [REDACTED] are the members of [REDACTED]
[REDACTED] and, in such capacity, elect the Board of Trustees of [REDACTED] is a tax-
exempt [REDACTED] not-for-profit corporation, qualified under I.R.C. § 501(c)(3), which operates an
[REDACTED] located in [REDACTED] as well as several other [REDACTED] related
facilities. [REDACTED] also has an affiliated charitable foundation.

The Board of Directors of [REDACTED] also are the members of [REDACTED]
[REDACTED] and, in such capacity, elect its Board of Directors. [REDACTED]
Inc. is a tax-exempt [REDACTED] not-for-profit corporation, qualified under I.R.C. § 501(c)(3), which
operates a skill [REDACTED]

[REDACTED] propose to form a joint venture company ("Newco")
which would manage and operate the [REDACTED] and other [REDACTED] related facilities of the
parties and their affiliates as an integrated [REDACTED]. The parties
would prefer to effect a merger and have the joint venture acquire title to all of the assets of the
parties and structurally integrate their operations, but are prevented from doing so by the
guidelines of the [REDACTED]. For these reasons, the parties have instead
adopted the proposed structure explained below.

Newco will be a tax-exempt [REDACTED] nonprofit membership corporation qualified under
I.R.C. § 501(c)(3). (A copy of the Affiliation and Management Agreement (the "Agreement")
is attached hereto as Appendix 1.) [REDACTED] will be the members of the
corporation. Newco will be governed by a 20 member Board of Trustees. [REDACTED] will
appoint 10 Trustees, [REDACTED] will appoint 7 Trustees; and the Board will appoint 3
as Trustees, 2 from a slate submitted by a [REDACTED]
and 1 from a slate submitted by [REDACTED]. In addition, the President of Newco, the senior
executive officer of [REDACTED] the senior executive officer of [REDACTED] and the [REDACTED]
[REDACTED] will be ex officio, non-voting members
of the Board.

[REDACTED]
Thomas F. Hancock, Esq.
May 1, 1996
Page 3

[REDACTED] each will retain its separate corporate existence. The members of each [REDACTED] and the Board of Directors of [REDACTED] will continue to have sole authority to elect the respective governing boards of [REDACTED] and [REDACTED].

Under Section 4.1 of the Agreement, Newco would be granted the power to manage and direct the operations of the [REDACTED]. In addition, under Sections 4.2 and 4.4 of the Agreement, Newco would develop a strategic plan and an annual business plan for the [REDACTED] and, under Section 4.3, Newco would develop annual capital expenditure and operating budgets of the [REDACTED]. Under Section 4.5, Newco also would be the exclusive bargaining agent for the [REDACTED] with [REDACTED] and employers. Finally, under Sections 7.2 and 7.9, Newco would have the power to derive its income and capital needs from [REDACTED] and [REDACTED] and to transfer funds from one [REDACTED] participant to another to meet the financial needs of any [REDACTED] participant.

To complete as fully as practicable the financial integration and operation of the [REDACTED] the parties also have agreed to an income/loss-sharing arrangement. Under the Agreement, the parties would share the risks and rewards of the economic outcome of the [REDACTED]. All revenue and expenses of the [REDACTED] will be allocated on a 75/25 basis with [REDACTED] credited with 75% and [REDACTED] credited with 25%. Thus, if in year one the [REDACTED] facilities had net income of \$8 million and the [REDACTED] facilities had net income of \$2 million, the total net income of \$10 million would be allocated 75/25, with [REDACTED] credited \$7.5 million and [REDACTED] credited \$2.5 million. Under Section 7.3 of the Agreement, each of the parties would retain ownership of its existing assets. New assets will ordinarily be titled to the entity which has historically operated the location where the new assets will be used, and it is the parties' preference that assets for new locations will be titled to Newco.

II. Analysis

The parties believe that the formation of Newco would not be reportable under the HSR Act because it would constitute the formation of a not-for-profit joint venture. It is the parties' understanding that the Premerger Notification Office of the Bureau of Competition of the FTC views the formation of not-for-profit joint ventures as non-reportable transactions through the relationship between 16 C.F.R. § 801.40 and 16 C.F.R. § 802.40.

The question arises whether the contractual rights to operate and manage the [REDACTED] granted to Newco affect reportability. In the parties' view, they do not. First, the contractual rights do not convey the right to elect any trustee or director of any entity. Second, the contractual rights

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[REDACTED]
Thomas F. Hancock, Esq.
May 1, 1996
Page 4

do not convey the right to an equity ownership interest in any of the [REDACTED] facilities. Finally, even if Newco's assets were deemed to include those of the [REDACTED] the transaction would nevertheless be the formation of a not-for-profit joint venture, and thus not reportable.

A final question arises as to whether the income/loss-sharing arrangement affects reportability. Pursuant to the arrangement, [REDACTED] will be credited with 75% of the net income of the venture. However, this does not mean that [REDACTED] has a right to receive 75% of the income of the [REDACTED] facilities, entities that it does not otherwise control. In the example described earlier, in year one, the [REDACTED] facilities had net income of \$2 million, but \$500,000 of the net income of the [REDACTED] facilities was credited to [REDACTED]. Moreover, even if one were to assume that, under the income loss-sharing arrangement [REDACTED] were to be deemed to be an additional ultimate parent entity of the [REDACTED] facilities pursuant to 16 C.F.R. § 801.1(b)(ii), it would not mean that a reportable transaction had taken place. In many instances, non-reportable events occur which result in one entity being deemed the ultimate parent entity of another. For example, the grant by Company A of the right to appoint half its Board of Directors to each of individuals X and Y, may make X and Y Company A's ultimate parent entities, but the grant is not a reportable event because it does not involve the acquisition of voting securities or assets.

For the reasons set forth above, the parties believe that the formation of Newco will not result in a reportable event under the HSR Act. After you have had an opportunity to review this letter and the attachment, I would appreciate your confirming our conclusions.

Sincerely,

[REDACTED]

Enclosure

Called the writer and told him that the formation of Newco is not a reportable event primarily because there is no requisition. No assets are being transferred to Newco. We did not reach the issue of whether Newco would be considered a joint venture.

TFH

[REDACTED]