

801.1(b)(4), 801.1(c)(8); 802.30 (non-profit acquisition)

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

JUN 18 11 03 AM '96

June 17, 1996

VIA FACSIMILE
ORIGINAL VIA FEDERAL EXPRESS

Richard D. Smith, Esq.
Premerger Notification Office
Room H-303
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Reportability of [redacted] Transaction

Dear Mr. Smith:

We very much appreciate your time and assistance during our June 7, 1996 conference call. Pursuant to your invitation, we are writing to confirm the substance of that conversation and to seek, pursuant to 16 C.F.R. § 803.30, an informal interpretation that this transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

We represent a not-for-profit, charitable [redacted] organization which serves as the vehicle through which a church diocese conducts a major portion of its [redacted] activities [redacted] (Corp. A"). [redacted] Corp. A has five trustees on a board of trustees, all of whom are members of the clergy in this diocese. [redacted] Corp. A is the sole member of four [redacted] corporations (in one case, through an intermediary holding corporation) which, under state law and the Bylaws of the [redacted] corporations, gives it the power to elect the boards of directors and the Chairman and President of such [redacted] corporations.

Not-for-profit corporation B is the operating corporation of another [redacted] within the same church diocese [redacted] (Corp. B"). [redacted] Corp. B has three members, who elect the board of directors of B. They all are members of the clergy of the same church diocese, and serve at the request of the head of the diocese. (However, no one of B's three members controls B.) At the present time, one of the three individual members of [redacted]

[redacted]



[REDACTED] LLP

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Corp. B is also one of the five trustees of [REDACTED] Corp. A, although there is no requirement for such an overlap. [REDACTED] Corp. B holds itself out to the public as, and in fact is, sponsored by the church diocese in the sense that the diocese assumes responsibility for its operation. [REDACTED] Corp. B, as well as the four [REDACTED] controlled by [REDACTED] Corp. A, participate in a diocesan [REDACTED] which is directed by the Director of [REDACTED] for the church diocese.

In part because of [REDACTED] Corp. B's deteriorating financial condition, the diocese intends as soon as possible to restructure B's governance to link it more closely with one of the [REDACTED] in [REDACTED] Corp. A. This would be accomplished by the resignation of the present three clergy members of [REDACTED] Corp. B, who will be replaced as sole member by the holding corporation of one of the [REDACTED] which corporation is a subsidiary of [REDACTED] Corp. A.

It appears that the size-of-parties test is satisfied in the subject transaction. You may also assume that the size-of-transaction test is satisfied. (We note that in fact [REDACTED] Corp. B has a negative net worth, although the value of its assets alone is sufficient for purposes of 16 C.F.R. § 801.10(b)(c)(3), which we understand to be the applicable test.) In our view, the transaction poses no underlying competitive concerns, because the [REDACTED] operated by [REDACTED] Corp. B is located in a county and geographic catchment area separate from that of the [REDACTED] operated by [REDACTED] Corp. A and because of overcapacity in the relevant metropolitan area.

We recognize that it has been the Staff's position that, if there is a transfer of control, the transaction described constitutes a merger or consolidation under 16 C.F.R. § 801.2(d). We respectfully submit that this transaction is not reportable, because the assets of [REDACTED] Corp. B are not being "acquired" within the meaning of 15 U.S.C. §§ 7 or 7A and/or that this transaction is exempt under 16 C.F.R. § 802.30 as an intrapersonal transaction. In this regard, in addition to the facts set forth above, we note that [REDACTED] Corp. A "controls" [REDACTED] Corp. B, within the meaning of Rule § 801.1(b)(1)(ii), because the By-laws of B provide that in the event of a dissolution, all of its assets (after the satisfaction of liabilities) would go to "another [REDACTED] operated under the auspices of the [diocese]"

If Mr. Sipple, you, or any other member of the Staff requires any additional information, please call me. We request that this letter and the information disclosed in our telephone conference be treated as confidential under applicable law and regulations. Thank you very much for your assistance and attention.

Very truly yours,
[REDACTED]

6/19/94 Writer's co-counsel advises that Bishop of diocese is one of trustees of [REDACTED] Corp. A but does not directly appoint the other 4. Bishop also does not directly appoint three members of who elect board of [REDACTED] Corp. B. As such, [REDACTED] Corp. A and [REDACTED] Corp. B are not controlled by same person, i.e., the Bishop. [REDACTED] is required for [REDACTED] Corp. A's taking over of the assets of [REDACTED] Corp. B. This position is consistent with the conclusion reached by the RMN office in responding to the 3/8/96 letter which had a somewhat similar fact situation. [REDACTED] Corp. B should not be treated as a subsidiary or otherwise controlled.

[REDACTED]