

802.2(d)

September 26, 2007

VIA ELECTRONIC MAIL

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR Exemption for the Proposed Acquisition of Assisted Living Businesses

Dear Mike:

In follow-up to our conversation on September 24, 2007, I am writing to confirm my understanding that the proposed acquisition described below is not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").

Our client proposes to acquire all of the assets of various entities that you can assume for the purposes of this letter are commonly controlled. The entities to be acquired are all in the business of operating assisted living centers for seniors. In these assisted living facilities, residents receive a range of residential and personal care services, including in some instances medical care. However, these are not nursing homes (i.e., establishments primarily engaged in providing inpatient nursing and rehabilitative care).

The value of the overall transaction exceeds \$100 million. However, the fair market value of the assets being acquired attributable to medical care, and any separate businesses conducted on the residential property (e.g., a beauty shop) being transferred, along with the space in which those businesses are conducted, will not in aggregate exceed \$59.8 million, the HSR size-of-transaction threshold.

You confirmed the following:

- The transaction described above is HSR exempt. Specifically, the acquisition of assisted living facilities qualifies for HSR exemption under 16 C.F.R. § 802.2(d) as a transfer of residential property so long as the fair market value of the assets attributable to medical care, and any separate businesses conducted on the residential property (e.g., a beauty shop) being transferred, along with the space in which those businesses are conducted, does not exceed the \$59.8 million size-of-transaction threshold.
- Services routinely offered by assisted living facilities -- such as meals, cable television, housekeeping or assistance with dressing and grooming -- would not be treated as a separate

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non-exempt business that must be valued for purposes of 16 C.F.R. § 802.2(d)(3). Rather, providing these services would be exempt along with any other assets incidental to the ownership of the primarily residential property. Similarly, any offices used to run the assisted living business (whether or not on-site at a facility) and related business assets (including but not limited to computers, furniture, fixtures, phone systems) also would qualify as exempt assets incidental to the ownership of the residential property.

- The transfer of a dining room or cafeteria where meals are served would not need to be separately valued as a non-exempt asset. Rather, all common areas (e.g., recreation rooms, lobbies, dining rooms, cafeterias, exercise facilities, etc.) associated with otherwise exempt residential property also are exempt.
- Pursuant to 16 C.F.R. § 802.4, the residential property exemption remains applicable even if the transaction is structured as the acquisition of non-corporate interests (e.g., limited liability company interests or limited liability partnership interests) or the acquisition of voting securities.

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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AGREE
B
9/27/07

[REDACTED]