

[REDACTED]

[REDACTED]

Via Email Transmission and Regular Mail

July 24, 2008

James H. Ferkingstad
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. Ferkingstad:

This letter is a follow up to our telephone conversation this morning with Mr. Ferkingstad requesting confirmation of my conclusion that no aspect of the transaction described herein is reportable under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. §18a ("HSR Act"). I have set forth below the general transaction that we discussed but have added additional details to help further explain the proposed transaction.

In the proposed transaction, two nonprofit 501(c)(3) hospital systems ("System A") and ("System B") have agreed to affiliate through the creation of a to be formed 501(c)(3) parent holding company (NewCo). System A consists of a 501(c)(3) hospital and affiliates which provide health care related services. System B operates a 501(c)(3) hospital and integrated delivery system that provides services consistent with the healing mission of the Catholic Church. The structure of the transaction is that of a parent holding company model under which NewCo will be formed and will become the sole corporate member of System A and the Class A corporate member of System B. The Catholic Bishop currently affiliated with and controlling System B, or an entity the Catholic Bishop controls (in either event, the "Bishop"), will be the Class B member of System B with certain reserved powers related solely to religious and ethical directives for Catholic health care services currently in place for System B. The initial Board of Trustees of NewCo will consist of fifteen (15) members, eight (8) of whom will be appointed by the Bishop and seven (7) of whom will be appointed by the Board of Trustees of System A. The current Chair of the Board of Trustees of System A will be the initial Chair of the Board of Trustees of NewCo. The initial appointees to the Board of Trustees will each serve a three year term. At the expiration of the three year term of the initial board, their successors shall be elected to staggered terms such that five of the individuals shall serve two year terms, five shall serve three year terms and five shall serve four year terms. The organizational documents for Newco shall establish a Nominating Committee for the election of successors to

[REDACTED]

1

the initial appointees to the Board. The parties agree that the successors to the initial members of the Board will be appointed without regard to any historical allegiance to any of System A or System B. Until all of the initial Trustees have completed their initial terms, the Nominating Committee shall include an equal number of initial Trustees who are designated by the Bishop and the Board of Trustees of System A, respectively.

Following the transaction, NewCo will govern the operation of the new health system consisting of System A and System B and their respective affiliates and will retain certain reserve powers over management and operation of the health system, except for certain reserve powers noted earlier related to religious and ethical directives for Catholic healthcare services with respect to System B to be retained by the Bishop. NewCo will operate in a highly centralized manner and will maintain at least the following reserved powers over the NewCo Health System consisting of System A and System B:

1. Approval of any changes to the mission, philosophy and value statements.
2. Authority to amend or approve the amendment of the Articles of Incorporation and Bylaws, except for those provisions reserved to the Bishop relating to Catholic directives at System B.
3. Appointment/removal of the System A and System B Hospitals' Boards of Trustees.
4. Approval of the operating and capital budgets for each System entity.
5. Approval of the strategic plan for the NewCo System and each System entity.
6. Approval of the sale, lease, transfer or mortgage of property, closure or relocation of services and retention of any debt by any System entity.
7. Appointment of corporate officers of each System entity.
8. Approval of any corporate affiliation, reorganization or change of control.
9. Approval of any certificate of need filing or any material change in services.

The following reserved powers of the Bishop shall be limited to System B:

1. Approval of the philosophy, mission and value statements.
 2. Compliance with the religious and ethical directives for Catholic health care services.
 3. Approval of the sale/mortgage/lease of System B property if in an amount in excess of relevant canonical threshold.
 4. Approval of the dissolution of the System B corporation.
 5. Continuation of System B charity care policy.
 6. Continuation of pastoral care.
 7. The right to withdraw Catholic sponsorship of System B is the Diocesan mission of hospital health care is ever discontinued.
- 

James H. Ferkingstad
July 24, 2008
Page 3

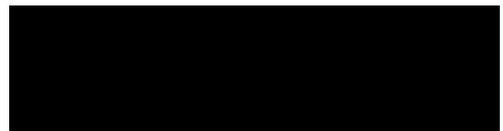
Newco will not pay to any party a purchase price and no voting securities will be issued in connection with the affiliation and integration of System A and System B under Newco. It is the intent of the parties that NewCo will be created as a permanent joining together of the assets of System A and System B and that neither party shall be able to trigger a unilateral withdrawal, sale, merger, change of sponsorship or other disposition of assets or dissolution of or from NewCo.

Assuming that the "commerce test" under subsection (a)(1) of the HSR Act and the "size-of-person" test and "size-of-transaction" test under subsection (a)(2)(B) of the HSR Act are otherwise satisfied., please confirm my conclusion that neither NewCo nor the Bishop, nor System A nor System B, is required to file a HSR Premerger Notification with respect to the formation of NewCo, the affiliation and integration of System A and/or System B under Newco or any other aspect of the integration of System A and System B under NewCo, based on the exemption contained in 16 CFR §802.40 or, alternatively, that 16 CFR §801.2(f)(3) and 16 CFR §801.40 are not applicable and, as such, no aspect of the proposed transaction is reportable.

Thank you for your review of this matter. Please contact me if you have any questions or need any further information.

Thank you.

Very truly yours,



08/05/08
Not reportable 802.40
JHF

