

September 12, 1985

Andrew Scanlon, Esq.
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania, N.W.
Washington, D. C. 20580

Re: Pre-Merger Notification

Dear Mr. Scanlon:


Pursuant to your suggestion, I am providing you with a written description of the hypothetical transaction involving two not-for-profit hospitals that we discussed by telephone this morning. As you know, our concern is simply to determine whether the Commission considers a transaction of this type a reportable event under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Act"). You indicated you would immediately circulate this hypothetical to the appropriate people within the Commission to obtain a consensus, then promptly notify us whether, in the Commission's view, such a transaction is reportable under the Act.

The hypothetical transaction is as follows:

1. The Parties.

A is a private, not-for-profit hospital. It issues no voting stock or other securities. It's assets (including all of the stock of a for-profit subsidiary venture) and revenues (including the income from that for-profit subsidiary) each exceed \$100 million, and it is "in commerce."

A is governed by a board of directors consisting of 7 members. Six of these directors are elected by the "membership" of A, which consists of any persons who wish to be "members" and



Andrew Scanlon, Esq.
September 12, 1985
Page 2

who have made significant charitable contributions to A for at least the last three consecutive years. The membership of A is fragmented. The seventh member of A's board is the president of A as selected by the other six directors of A.

B is also a private, not-for-profit hospital. It too issues no voting stock or other securities and its assets and revenues each exceed \$10 million. It is "in commerce."

B is affiliated with, but not legally a part of, a state-run university and medical college. B is governed by a board of directors consisting of 17 members. Seven of them are selected by the governor of the state with the consent of the state senate. Seven others are ex-officio based on their being specified officers or directors of the university and medical college. The final 3 are ex-officio based on their holding specified positions at B.

2. The Transactions.

A. The Change in A's Board.

By amendment to its by-laws, A will expand the number of members on its board of directors to 13 in two classes. Class 1 will consist of 6 seats under the control of the current six members of A's board. These 6 directors will have the power to elect the directors for these 6 seats, and there will no longer be an electing membership.

Class 2 will consist of 6 seats. The directors for these 6 seats will be selected by the chairman of the board of directors of hospital B from among the directors of B. The thirteenth member of A's board will be A's president as selected by the remaining 12 board members.

B. The Management Contract.

The board of B will enter into a management contract with A under which A will operate B's hospital, subject to the approval authority of B's board over A's selection of management personnel and rate-setting. The management contract will be for 10 years, non-cancellable, and will automatically

[REDACTED]

Andrew Scanlon, Esq.
September 12, 1985
Page 3

renew for successive 5 year terms thereafter, unless the board of B provides notice of termination prior to a renewal term. F. will receive a maximum fee of \$300,000 per year for its management of B.

3. The Issues.

Our concern is, of course, whether either or both of the hypothetical transactions are reportable under the Act and regulations. Accordingly, we seek the Commission's answer to the following:

a. Does the Commission consider the by-law expansion of A's board, as described, a reportable acquisition of A by B? If so, how should it be treated for reporting purposes (e.g., as an acquisition of A's "voting securities" by B)?

b. Does the Commission consider the management contract as described a reportable acquisition of B by A and, if so, how should it be treated for reporting purposes (e.g., as an acquisition of B's "assets" by A)?

c. If either transaction is reportable, who is the ultimate parent entity of hospital B for reporting purposes, in light of the substantial control over the selection of B's directors by the state and the state-run university?

We appreciate your prompt attention to these questions and look forward to your guidance.

Sincerely,

[REDACTED]

TC 9/17/85 10²² AM Scanlon

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Advised that transaction is reportable with B acquiring 50% of the stock of A - He will report that amount

Andy Scanlon