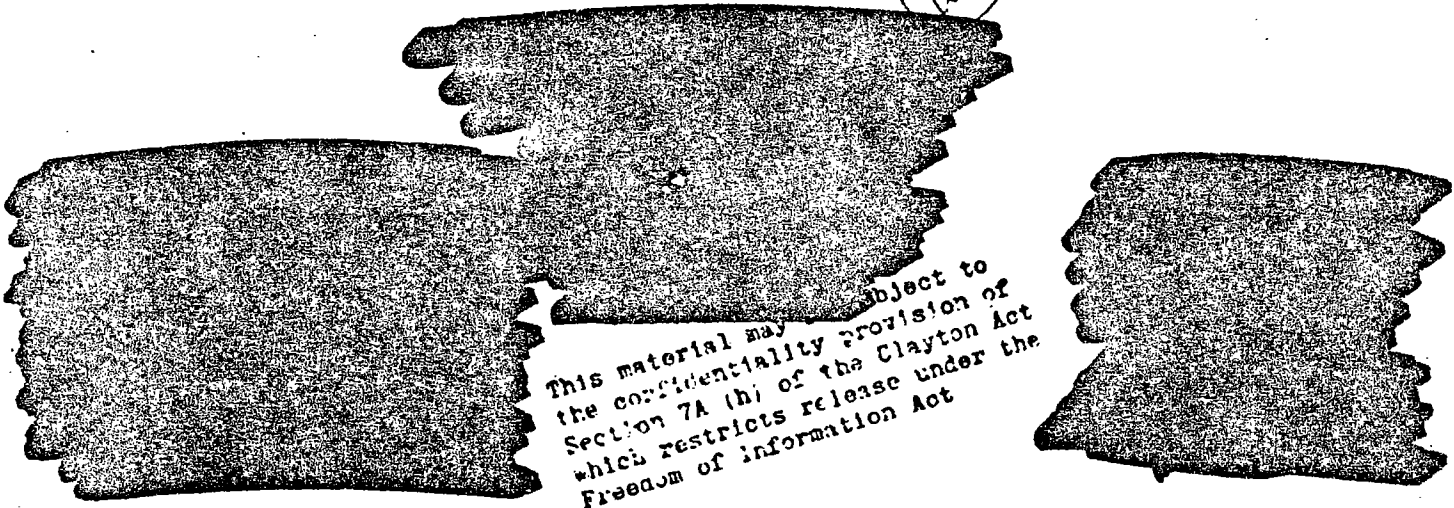


WK



This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act

December 13, 1985

Wayne Kaplan, Esq.  
Premerger Notification Office  
Bureau of Competition  
Seventh Street and Pennsylvania Avenue, N.W.  
Washington, DC 20580

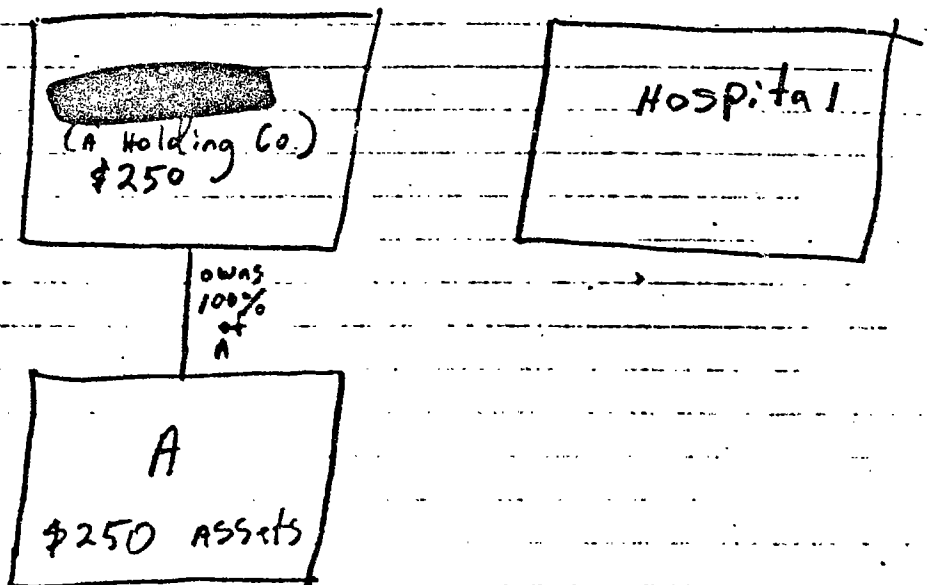
RECEIVED  
DEC 16 11 33 AM '85  
PREMERGER NOTIFICATION OFFICE

Dear Mr. Kaplan:

Thank you for your explanation by telephone today of certain matters relating to the requirement for Premerger Notification reporting. This letter is to confirm my understanding of your explanation.

Your explanation was based on the following hypothetical: An acquisition of assets is contemplated. The acquisition agreement provides that the purchase price for the acquisition is to be \$8 million plus an "earn out" that is to total between zero and \$5.0 million and is to be paid over a two year period. The size of the "earn out" is contingent upon the acquiring entity achieving certain levels of gross revenue during that two year period. The acquisition agreement also provides that certain liabilities are to be assumed by the acquiring entity, including accounts payable of \$20 million.

My understanding of your explanation is that, on these hypothetical facts, for the purposes of determining the size of the transaction and accordingly whether premerger notification reporting is necessary, the value of the acquisition of assets is contingent and therefore should be determined by the board of directors of the acquiring entity pursuant to 16 C.F.R. § 801.10(c)(3). In making its determination, the board should consider the purchase price,



A is entitled to elect over 50% of the directors of Hospital

Under the affiliation agreement, [redacted] would be entitled to elect 100% of the board of Directors of Hospital.

The Premerger office has determined that a membership unit in a nonprofit corporation is a voting security and that the rules are broad enough to describe them as such. This informal interpretation fits with the Premerger office historical interpretation that the acquisition of all of the membership units of a nonprofit corporation by another nonprofit corporation is a merger. A merger by definition is the acquisition of voting securities.

called [redacted] 8-16-85 and informed her that this transaction is exempt under c-3 of the Clayton Act or 802-30 of the rules.

Wayne Kaplan, Esq.  
December 13, 1985  
Page 2

the "earn out", the liabilities to be assumed, and all other relevant factors.

Sincerely,

A large, dark, irregularly shaped redacted area covering the signature of the sender.A small, dark, irregularly shaped redacted mark.

OK  
WEK, upon later  
review, 3/9/87.