

~~807~~ 801.2 (d) - Non-Profit

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May 27, 1994

FEDERAL TRADE  
COMMISSION  
REGISTRATION  
SERVICE

54 PM '94

Richard B. Smith  
Bureau of Competition  
Federal Trade Commission  
Room 323  
6th Street & Pa. Ave., N.W.  
Washington, D.C. 20580

Dear Mr. Smith:

I am writing to confirm our recent conversations regarding the appropriate manner in which to handle Hart-Scott-Rodino filing with respect to a particular transaction involving two existing non-profit corporations, described here as corporation "A" and corporation "B". As we discussed, both A and B are non-profit, non-stock corporations. A new corporation "X" will be established. Through enactment of bylaw provisions, X will become the sole corporate member of both A and B. It will also have certain reserved powers over the operations of A and B, such as the power to control incurrence of debt, approve strategic plans, adopt marketing and business strategies, and direct asset transfers. Both A and B will have the right to make a specified number of nominations of individuals to serve on the board of X, but X's board will have the power to approve all appointments to X's board. X will also elect directors to the boards of A and B, from among persons nominated by the boards of A and B. X could reject nominees made by the A and B boards, until nominees from A or B were made who would be approved by X's board.

You advised me the FTC Premerger Office position with respect to such a situation is that Hart-Scott-Rodino filing should be handled by identifying either A or B as the acquiring person, and identifying the other as the acquired person. You indicated that either A or B could be identified as the acquiring person. The designated acquiring person should file in that status, along with the \$25,000 filing fee. The designated acquired person should file in that status. No filing should be

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made by X itself. You further indicated that the filing should be treated as an assets acquisition for reporting purposes.

You indicated that the same approach as outlined above would apply were a third non-profit, non-stock company, corporation "C" also be included in the arrangement in the same manner as A and B. Again, either A, B or C would be identified as the acquiring person, and the other two would be identified as acquired persons. X would not file. One filing fee would be paid.

I appreciate your cooperation in my inquiries. If I have in any way misstated the substance of our discussions, please let me know as soon as possible.

Sincerely,

[Redacted signature]

[Redacted text]

6/3/94 - advise author that letter correctly reflects the PMN position on non-profit merger except that in the next to last paragraph, where A would be acquiring the assets of non-profits B and C, two filing fees would need to be paid, assuming B + C meet the size-of-person and size-of-transaction tests and were there own UPE's.

RBSmith