

801.1(a)(2); 801.1(a)(3); 801.11

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

SEP 13 12 04 PM '95
WASHINGTON, D.C.

VIA FACSIMILE

September 11, 1995

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Dick:

I am writing to ask you, on behalf of the Premerger Notification Office, to review my analysis regarding the determination of the ultimate parent entities of the parties described in this letter and the application of the size of person test under the Act to these parties.

In the 1880's, the Legislature of the State of X enacted a law calling for the establishment of (i) a university (the "University") at a site to be selected by the vote of the citizens of the State, and (ii) a medical department of the University, as a branch of the University, at a site to be selected by the vote of the citizens of the State. By vote of the citizens of the State of X, the University and the medical department were established. The medical department is called the Medical Branch and currently includes four schools, two institutes, a medical library and numerous health care and research facilities. The Medical Branch is under the governance of the Board of Regents of the University and reports to the Board of Regents through the Executive Vice President of Health Affairs of the University and the Chancellor of the University. In 1994, the Medical Branch organized a not-for-profit corporation ("Not-for-profit") under the laws of the State of X. The sole corporate member of Not-for-profit is the Medical Branch. Not-for-Profit does not control any other entity.

It is currently proposed that Not-for-profit will acquire the assets of a not-for-profit hospital corporation ("Hospital"), operating in the State of X, for a purchase price that may exceed \$15 million. Hospital is a member of a larger hospital system, which has at least \$100 million in total assets or net sales on a consolidated basis. The cash needed to fund the acquisition of Hospital will be contributed by the Medical Branch to Not-for-profit immediately prior to the closing of the acquisition. Therefore, as of the closing, the most recent regularly prepared balance sheet of Not-for-Profit will reflect both total assets and net sales of less than \$10 million.

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Under my analysis, neither the University nor the Medical Branch are entities within the definition of entity under 16 C.F.R. §801.1(a)(2) because they are agencies of the State of X. Not-for-profit is an entity, but is its own ultimate parent entity under 16 C.F.R. §801.1(a)(3). Because, as of the closing, the most recent regularly prepared balance sheet of Not-for-profit will reflect both total assets and net sales of less than \$10 million, the size of person test will not be satisfied by Not-for profit and no filing will be required under the Act.

Please telephone me at [REDACTED] to let me know if you concur with my analysis.

Very truly yours,
[REDACTED]

9/13/95 - Writer confirmed that Not-for-profit would make
provision before its next regularly prepared balance sheet was issued and then
the cash provided to make the acquisition would not be included in its size
at the time of the acquisition. I agreed that the University and the Medical
Branch appeared to be state agencies, and thus not entities, and that
Not-for-profit appeared to not meet the 10MM size-of-person test (but
did qualify as an entity).
RBS Smith

[REDACTED]