

802.40; 801.40

FEDERAL TRADE
COMMISSION
PRE-MERGER NOTIFICATION
OFFICE

NOV 21 10 20 AM '95

November 22, 1995

Richard B. Smith, Esq.
Pre-Merger Notification Office
Federal Trade Commission
6th Street and Pennsylvania, NW
3rd Floor, Room 323
Washington, DC 20580

Re: HSR Coverage Issue

Dear Mr. Smith:

This will confirm our telephone conversation of November 16, 1995, during which you advised me that no Hart-Scott-Rodino pre-merger notification is required for a transaction of the following description:

Six non-manufacturing, nonprofit, 501(c)(3) corporations propose to create a new non-manufacturing company (hereinafter referred to as the "joint venture"), for the purpose of selling a service which is related to the services which three of the founders sell separately. Three of the founders will contribute cash, and the other three will contribute assets from operating subsidiaries. The joint venture will also be a nonprofit, 501(c)(3) corporation. Each of the founders will become a "member" of the joint venture for corporate organization purposes, and each of the founders will be entitled to proportionate representation on the Board of Directors of the joint venture. Because the joint venture will be a nonprofit corporation, none of the founders will hold voting "securities" in the joint venture, and their "ownership" interests will exist solely through their positions as corporate members, their representation on the Board of Directors, and possibly through distributions of net income generated by the joint venture.

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You have confirmed that this transaction will require no pre-merger notification, irrespective of the value of the assets contributed by the founders to the joint venture or the value of the joint venture entity. If I have correctly described your conclusion, please sign the enclosed copy of this letter and return it to me in the enclosed envelope. If I have misstated your conclusion, please advise me immediately.

Thank you again for your assistance in this matter.

Sincerely,

Concurrence Noted
Richard B. Smith, Esq.

11/27/95 - Writer confirmed that the six non-profits forming the 501(c)(3) non-profit will remain in business. I confirmed that 802.40 does not apply since no voting stock is being taken by the founders. However, 801.40 is also inapplicable since the reportable event there is the taking of voting stock. The PHN Office's position is that the formation of a non-profit is non-reportable since it does not have voting stock.

RTB Smith