

801-10 (LLC formation)

November 26, 1996

Via Facsimile
Richard B. Smith
Premerger Notification Office
Room 303
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Dick:

I am writing to you to confirm your conclusions regarding the appropriate Hart-Scott-Rodino analysis of a transaction I described to you on the telephone on November 12, 1996.

Specifically, I explained that two universities are forming a limited liability company ("LLC"). Representatives or employees of the universities will staff and operate the LLC. It will have a policy board composed of the following members: (1) the two university presidents, (2) university trustees, (3) university deans, (4) faculty chairpeople from the universities, (5) several physicians who will have faculty appointments to the universities but who may not be salaried employees of either university, (6) the chief executive officer of the LLC, and (7) possibly representatives of hospitals affiliated with the universities. The hospitals would not be represented on the Board initially, and if they are added later, might be non-voting members of the board.

You stated that the FTC would treat the LLC as a partnership for HSR purposes. You noted that the presence of third parties on the board could convert the LLC, for HSR purposes, into a corporation, but concluded that this would not be the case in my hypothetical. First, the FTC would deem the physicians on the board to be "quasi-employees" of the universities and therefore not third parties. Second, although hospital representatives might be added later and would be deemed to be third parties, their presence on the board would not convert the LLC into a corporation for HSR purposes so long as the hospital representatives would be non-voting members of the board. Because the LLC I described in my hypothetical would be deemed a partnership for HSR purposes, its formation is not a reportable event under the HSR Act.

[Redacted]

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If this letter does not accurately reflect your analysis of the hypothetical I posed to you, please call me by December 2, 1996. Once again, and as always, thanks for your help.

Sincerely,

[Redacted signature]

[Redacted] 12/11/96 - Confirmed with writer that LLC would be controlled by both universities. The chief executive officer of the LLC would be, therefore, an employee of both universities. Representatives of hospitals affiliated with (but not controlled by) the two universities would be viewed as "outsiders" but, since they have no voting power, would not be viewed as holding roles comparable to a "director" of a corporation. The "quasi-employee" test is one which the PMW office has used previously for physicians affiliated with a hospital of a university but who do not receive a salary from the university or the hospital and are therefore, technically, not officers, directors or employees of the forming persons.

[Handwritten signature]

[Redacted]