

[REDACTED]

[REDACTED]

TELEPHONE  
[REDACTED]  
WRITER'S DIRECT DIAL NUMBER  
[REDACTED]

August 6, 1999

Mr. Richard Smith  
Federal Trade Commission  
Pre-Merger Notification Office  
Bureau of Competition, Room 303  
6th Street & Pennsylvania Ave., NW  
Washington, DC 20580

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FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Dear Mr. Smith:

This letter confirms our telephone conversation on July 26, 1999 regarding the application of the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and the rules and regulations promulgated thereunder to the facts below:

- Hospital Network A is a not-for-profit, tax exempt corporation, that serves as the sole corporate member of a number of hospitals and hospital holding companies in a certain metropolitan area, including Hospital B and Hospital Holding Company C.
- Each of Hospital B and Hospital Holding Company C is a not-for-profit, tax exempt corporation.
- In its capacity as sole corporate member, Hospital Network A has been granted a number of reserved powers over Hospital B and Hospital Holding Company C, including the right to appoint directors to the boards of Hospital B and Hospital Holding Company C and to remove directors for cause.
- With the approval of Hospital Network A, Hospital Holding Company C plans to merge into Hospital B.
- The Board of Directors of Hospital Network A has approved the voluntary dissolution of Hospital Network A, and Hospital Network A is currently in the

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process of winding up its affairs. Although the effective date of dissolution has yet to be determined, we asked that you presume, for the sake of analysis, that Hospital Network A would not be dissolved until after the merger of Hospital B and Hospital Holding Company C.

- Hospital Network A will continue to exercise its reserved powers over the network hospitals and hospital holding companies, including over Hospital B and Hospital Holding Company C, through the effective date of dissolution. However, Hospital Network A will carry on few other day-to-day operations, other than those necessary to wind up its affairs.

You opined that the merger of Hospital Holding Company C into Hospital B would not constitute a reportable transaction under the HSR Act. Although such merger would not fall within the exemption for Intraperson Transactions under Rule 802.30 of the HSR Act rules because no voting securities are involved, the FTC Pre-Merger Notification Office has interpreted Rule 801.1(c)(8) to exempt the merger of two non-profit corporations having the same sole corporate member/parent because the parent already holds all of the assets held by the entities it controls. Thus, Hospital Network A would be viewed as already holding the assets of both Hospital B and Hospital Holding Company C and the merger would not constitute an acquisition of assets under the HSR Act.

This conclusion is not altered by the fact that Hospital Network A will be dissolved and removed as the member of Hospital B following the effective date of the merger. As you stated, as long as Hospital Network A exists and holds the reserved power over appointments to the boards of Hospital B and Hospital Holding Company C at the time of the merger, the merger will not be reportable. Of course, if Hospital Network A is dissolved or removed as a member of Hospital B and Holding Company C prior to their merger, the merger will be reportable.

We further asked you to confirm that the dissolution of Hospital Network A and its removal as the sole member of Hospital B and the other hospitals that comprise the Network would not itself trigger any HSR Act reporting obligations. Based on our representation that the only assets of Hospital Network A that might be transferred to its constituent hospitals were furniture, equipment and art work with values well under the HSR Act thresholds, you confirmed that the dissolution would not be reportable, unless "some one else" were to replace Hospital Network A as the sole corporate member of Hospital B and the other hospitals.

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If the foregoing does not accurately reflect the Pre-Merger Notification Office's position regarding the reportability of the proposed transaction, please contact either me [REDACTED] or [REDACTED] prior to the close of business on August 16, 1999.

Thank you for your assistance. Should you have any questions, please do not hesitate to call.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]  
cc: [REDACTED]

8/10/99 - Advised writer that letter accurately reflected view of Premerger Office in transactions such as this.

R. R. Smith