

some were is a
to previous non-holder (esp. where there is a change in name)
also) This would constitute an acquisition. Facts in
this case do not meet [redacted] This test since each
person retains operation of its own hospital. [redacted]
[redacted] perfect losses & nothing more is
mere partnership arrangement.
August 26, 1993
[redacted]

Bureau of Competition
Federal Trade Commission
6th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20580

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FEDERAL TRADE
COMMISSION
PER NOTIFICATION
OFFICE

Dear Mr. Cohen:


This is to confirm the interpretation of the application of
the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the
"Act"), as amended, 15 U.S.C. § 18a, and the Rules promulgated

Under the proposed transaction, two hospitals intend to
enter into a joint operating agreement by a contract. This
will not involve the formation of a corporation. The first
hospital ("Hospital A") is a separate corporation, owned by a
hospital system. The second hospital ("Hospital B") is also a
part of a larger hospital system, but is a division of the
system and not separately incorporated. Under the proposed
joint operating agreement, both hospitals will run their

[redacted] hospital would be merged or consolidated into the other at the

assets would be acquired by a new corporation to be formed by
Hospital A and Hospital B. However, this is not yet being
contemplated.


Notes however that any agreement to restrict services
may be an illegal conspiracy in restraint of trade
violation of both the Sherman Act & FTC Act.


Victor Cohen, Esq.
August 26, 1993
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This view is consistent with Interpretations 195 and 196 of the Premerger Notification Practice Manual (1991 ed.), which states that non-corporate joint ventures are not covered by the Act.

You further stated that if a new corporation is formed by the hospitals for the purposes of acquiring new assets, the transaction would be analyzed under the joint venture rules, 16 C.F.R. § 801.40. If this new corporation is a not for profit corporation within the meaning of the Internal Revenue Code § 501(c)(1) - (4), (6)-(15), (17)-(20) or (d), it will be exempt

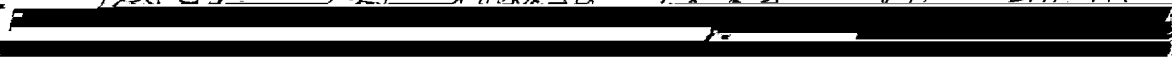
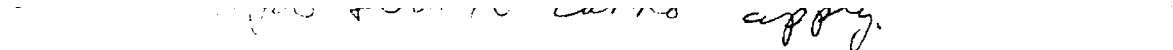
Please let me know as soon as possible if this letter does not reflect the informal opinion pursuant to 16 C.F.R. § 803.30(a) given to me and David Ettinger over the telephone. Thank you very much for your assistance.

Sincerely,




→ Formation of the new corporation is analyzed

this corporation of "new asset" is analyzed separately. If the non-profit issues voting stock, which is doubtful, it may rely on § 802.40 for an exemption. If it doesn't the brackets point to § 801.40



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