

801.40 ; 802.40 ; 802.20 ; 801.1(a)(6) ; 7A (c)(4) ; 7A(a)



May 22, 1996

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

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

Dear Dick:

Earlier this year we discussed a proposed transaction and you suggested that I put the facts of the transaction in writing for your consideration. Since we first spoke, the terms of the proposed transaction have been better defined and I am writing now in response to your earlier request.

The proposed transaction, which is discussed as an attachment to this letter, involves

Authority created by state statute as a political subdivision of the state. Authority formed Joint

System and Authority. After its formation, Joint Venture Corporation constructed a §501(c)(3) not for profit [redacted] System managed [redacted] pursuant to a management agreement with Joint Venture Corporation.

Authority proposes to sell its membership interest in Joint Venture Corporation as well as

System or Authority, (i) will not issue voting securities, (ii) will not have a corporate member, (iii) will have a self-perpetuating board of directors, (iv) will be its own ultimate parent, and (v) will have only minimal assets upon formation. Newco will borrow the \$4,500,000 purchase price from System and will repay the loan from the proceeds of real property leases to Joint Venture Corporation, which leases will be at fair market rent. In addition, Newco will grant

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System an option to purchase its interest in Joint Venture Corporation, which option will be exercisable at System's discretion.

~~My analysis is that the transfer between Authority and Newco should be exempt under~~

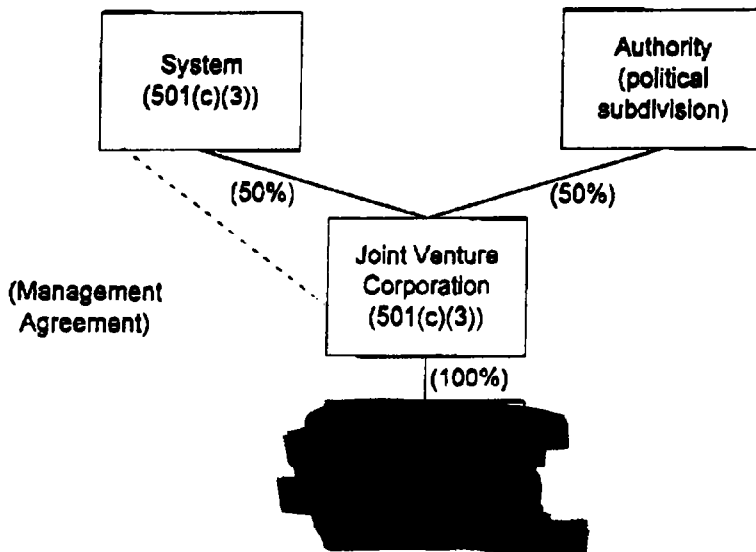
state, the transfer of assets is from a political subdivision and is exempt under (c)(4) of the Act. Second, even if the transfer by Authority to Newco is treated as an acquisition by Newco, the size of person test under the Act is not met by Newco and the size of transaction test may not be

~~met as well. In addition, the formation of Newco is not acceptable, both because of the size of~~
jurisdictional tests of the Act are met by Newco and System at that time.

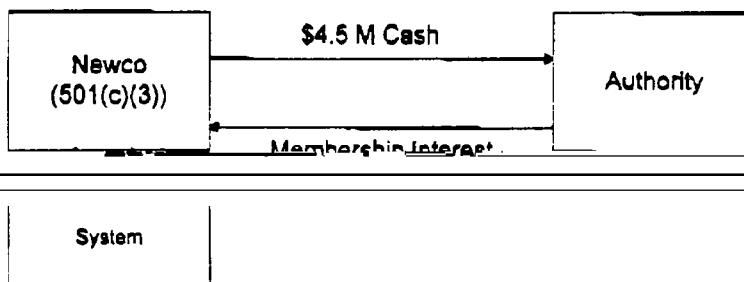
Please contact me at [redacted] to discuss whether the Premerger Notification Office

[redacted] he will have a bona fide creditor/debtor relationship
NMB/sl 6/5/96 Writer advised that the loan System's makes to Newco will
Enc. carry a normal interest rate. There is no ownership or control relationship
between System and Newco. It is advised that, in "§ 5" regard it would be
required for the transaction described herein, but that the option
exercise by System, if and when it occurs, may require a prior
HSR filing.
RBS Smith

Current Structure



Proposed Transaction



Post-Transaction Structure

