investigated and challenged *de nove*.[7] To the extent that the prospect of the prior approval requirement may deter unlawful acquisitions by a respondent, this would appear to be a benefit. To the extent that the prospect of prior approval may deter unlawful acquisitions by firms that are not under order, this, too, would appear to be a benefit.[8]

Despite considerable squawking from a few representatives of firms that are actual, alleged or potential violators of section 7, there is little if anything to suggest that the burden of prior approval requirements is undue. It is important to remember how very limited the Commission's prior approval requirements are. First, and most obviously, the prior approval requirement is imposed only on firms that have attempted unlawful acquisitions.[9] It is limited to proposed acquisitions in the same geographic and product markets in which the Commission has found reason to believe that an acquisition by the respondent would violate the law. It is limited in time, usually to a duration of ten years. And it involves a minute universe of cases. For example, in the past five years, the Commission has issued 58 orders containing prior approval provisions, fewer than twelve per year. In comparison, in fiscal year 1994, 2,305 transactions were reported under the Hart-Scott-Rodino Act. In the first six months of fiscal year 1995, through the end of March 1, 348 transactions were filed.

According to the Commission, the policy should be changed because premerger notification under the Hart-Scott-Rodino Act is an adequate substitute. While the Hart-Scott-Rodino Act enables the Commission to investigate and challenge reported transactions before they occur, the success of the premerger notification program is not a recent discovery. If pre-transaction notice were the only purpose of prior approval clauses in orders, the policy could have been abandoned years ago. Instead, the Commission consistently has concluded (until now) that the Hart-Scott-Rodino Act does not eliminate the need for prior approval clauses in merger orders. *See, e.g., The Coca-Cola Co.,* Docket 9207, Order Denying Motion To Dismiss (August 9, 1988), Chairman Oliver dissenting[10] and Commissioner Azcuenaga recused.[11]

A prior approval requirement is a simple, direct and limited remedy to prevent recurrence of unlawful acquisitions. Even if we assume that prior approval is costly (*i.e.,* more costly than is compliance with the Hart-Scott-Rodino Act—and I am not persuaded that it is), the policy provides important law enforcement benefits. The decision to abandon prior approval in Commission orders relinquishes the benefits for no apparent return.[12]

I am against it.

[FR Doc. 95–19111 Filed 8–2–95; 8:45 am]

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[7] The Antitrust Division of the Department of Justice recently filed a civil antitrust complaint to block a company's second attempt in eight years to acquire its largest competitor. *See* United States v. Engelhard Corp., Civ. Action No. 6:95–CV–454 (M.D. Ga. filed June 12, 1995). Engelhard abandoned its previous acquisition attempt in 1987, after the Department announced that it would challenge the transaction.

[8] If the prior approval requirement is costly in fact or if it is perceived to be costly, then the requirement may have a deterrent effect. Formerly, a firm contemplating an anticompetitive acquisition might have decided that on balance the risk of prosecution combined with the likelihood of becoming subject to a prior approval requirement was sufficient cause not to go forward. Because firms cannot know in advance whether their transaction will be reviewed by the Commission or by the Department of Justice, any deterrent effect from the Commission's policy would apply to all transactions.

[9] Prior approval is a form of fencing-in relief. Fencing-in provisions ordinarily impose a limited ban on otherwise lawful conduct to inhibit repetition of the unlawful conduct. *See* FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952) (''[T]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow land the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.'').

[10] Then-Chairman Oliver favored dismissal of the compliant when ''the only relief * * * would be an order requiring prior notice or prior approval,'' but he observed (as did the majority) that Coca-Cola and complaint counsel could ''choose to withdraw this matter from adjudication'' by negotiating a settlement containing ''narrow prior approval provisions . . . [that in his view would] be preferable to the continuance of unwarranted litigation.''

[11] *See also* Warner Communications, Inc., 105 F.T.C. 342, 343 (1985) (''nothing in its legislative history suggests that [premerger notification under the Hart-Scott-Rodino Act] was intended to supersede the use of fencing-in provisions imposed after a merger has actually been found improper''); Louisiana-Pacific Corporation, 112 F.T.C. 547, 566 (1989) (Hart-Scott-Rodino ''premerger notification program is not coextensive with the order's prior approval requirement'').

[12] Determining on a case-by-case basis whether to require prior approval, *see* Prior Approval Statement at 2–3, increases the costs of negotiating and litigating orders in merger cases. Given the benefits of prior approval, this is a waste of government resources.

**[File No. 941–0076]**

## Local Health System, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal trade commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the merger of the two largest hospitals in St. Clair County, Michigan and would require the hospitals, for a limited time, to notify the Commission or obtain Commission approval before acquiring certain hospital assets in the Port Huron, Michigan area.

**DATES:** Comments must be received on or before October 2, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Phillip L. Broyles, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114. (216) 522–4207.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

[File No. 941–0076]

### Agreement Containing Consent Order

In the matter of LOCAL HEALTH SYSTEM, INC., a corporation, BLUE WATER HEALTH SERVICES CORP., a corporation, and MERCY HEALTH SERVICES, a corporation.

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Local Health System, Inc. (''Local Health''), of certain assets of Mercy Hospital Port Huron (''Mercy-Port Huron'') from Mercy Health Services (''Mercy Health''), and of certain assets of Port Huron Hospital from Blue Water Health Services Corporation (''Blue Water Health''), and