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FTC Reaches $12 Million Settlement Over Alleged HSR Act Violations

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The Federal Trade Commission has announced a proposed settlement with Edwards Lifesciences Corporation and Genesis MedTech Group Limited resolving allegations that the companies structured Edwards' acquisition of JC Medical, Inc. to avoid the notification and waiting-period requirements of the Hart-Scott-Rodino Antitrust Improvements Act. Under the proposed final judgment, Edwards would pay a $10 million civil penalty, and Genesis would pay $2 million. According to the FTC, the combined $12 million penalty is the largest ever imposed for failing to make a required HSR filing.

In July 2024, Edwards acquired JC Medical from Genesis for $115 million. The transaction value was below the then-applicable $119.5 million HSR reporting threshold. In connection with the acquisition, however, Edwards also committed to make a $25 million investment in Genesis, structured as an acquisition of non-voting shares in Genesis.[1] According to the FTC's published informal interpretations, acquisitions of non-voting securities, unexercised options or warrants, or any restricted stock units that have not yet vested are typically not included in determining whether a transaction's value exceeds the HSR reporting threshold. *See* Interpretation 6, Premerger Practice Manual, 5th Edition (2015). However, the agency has been clear that the use of non-voting shares to reduce valuation allocated to voting securities will draw scrutiny. *See* FTC Informal Interpretation No. 2407002 ("allocating the total consideration between voting and non-voting securities for the purpose of making the transaction non-reportable would violate Rule 801.90, which prohibits transaction structures designed to avoid HSR reporting obligations").

The FTC alleges that the Genesis investment was, in substance, additional consideration for JC Medical and that the parties separated the payments for the purpose of avoiding an HSR filing. The complaint cites documents and testimony allegedly showing that the investment was "within the deal structure" and that the parties considered the two arrangements as part of a single transaction. It also alleges that Edwards described the acquisition in a communication as "below the threshold! Intentional[.]"

Under HSR Rule 801.90, transactions or devices entered into for the purpose of avoiding the HSR Act are disregarded, and reportability is determined based on the substance of the transaction. Applying that rule, the government alleges that the JC Medical acquisition and related Genesis investment collectively exceeded the applicable reporting threshold and should have been reported.

Although competitive impact does not determine HSR compliance or reporting obligations, the FTC's complaint also highlighted the competitive context surrounding the transaction. One day after acquiring JC Medical, Edwards agreed to acquire JenaValve Technology, Inc., which the agency described as JC Medical's only competitor developing a transcatheter aortic valve replacement device to treat aortic regurgitation ("TAVR-AR") in the United States. A federal district court subsequently granted the FTC's request to preliminarily enjoin the JenaValve acquisition. *See FTC v. Edwards Lifesciences Corp.*, 2026 WL 228723 (D.D.C. 2026).

In addition to the civil penalties, the proposed final judgment would impose several obligations on Edwards, including prior notice of transactions involving TAVR-AR devices where the acquisition is not otherwise reportable under the HSR Act, establishing an antitrust compliance program, and cooperation with the FTC's monitoring efforts.

Key Takeaways

- **Consider the complete deal structure.** HSR analyses should account for contemporaneous investments, side agreements, milestone payments, and other transfers that may constitute consideration for the acquired business.
- **Substance controls over form.** Separating related payments into distinct classes of securities (*i.e.*, voting versus non-voting) will be disregarded if done to avoid HSR filing requirements.
- **Internal communications matter.** Documents suggesting that a transaction was structured to remain below an HSR threshold may create significant enforcement risk.
- **Consequences may extend beyond penalties.** HSR settlements can include prior-notice requirements, compliance programs, reporting obligations, and government monitoring in addition to substantial civil penalties.

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[1] Complaint ¶ 24.

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