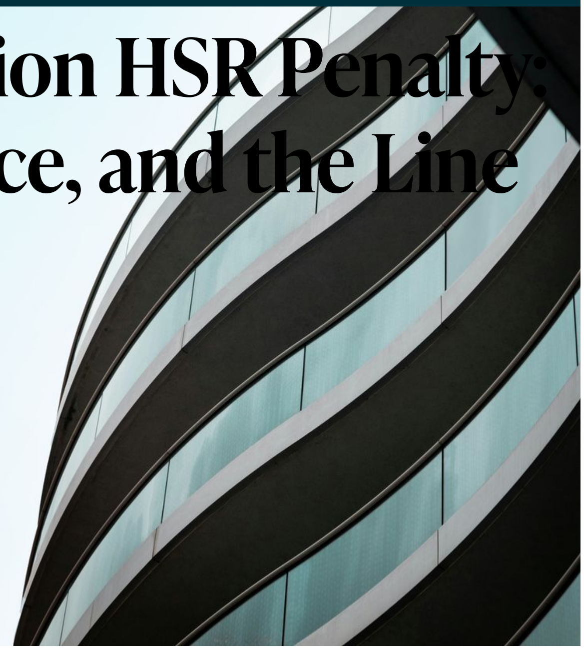
The FTC's Record $12 Million HSR Penalty: Deal Structuring, Avoidance, and the Line Between Them



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Parties structure transactions with the HSR Act in mind all the time, and nothing in the Act requires them to make a deal reportable. What parties cannot do, in the FTC's view, is disguise a reportable transaction as a non-reportable one. The FTC's latest enforcement action – and the largest penalty in the HSR Act's history – shows where the agency draws that line and what it now charges for crossing it.

On July 13, 2026, the FTC announced that Edwards Lifesciences and Genesis MedTech will pay penalties of $10 million and $2 million, respectively, to resolve allegations that they structured the acquisition to avoid HSR notification. The $12 million settlement is the largest penalty ever imposed for failing to make an HSR filing and observe the applicable waiting period.

Chair Andrew Ferguson made clear that the FTC intends the settlement to send a message:

> **"Companies that try to sneak deals past the FTC will not escape our notice and they will be held accountable."**

Writing on X, Ferguson called the resolution “a big win for competition and innovation in healthcare.”

The allegations are straightforward. In July 2024, Edwards agreed to acquire JC Medical, a Genesis subsidiary developing a transcatheter heart valve, for $115 million plus future milestone payments of approximately $1.8 million (the combined amount below the then-applicable $119.5 million HSR size-of-transaction threshold). Contemporaneously, Edwards committed to investing another $25 million in Genesis.

According to the complaint, the JC Medical acquisition and the Genesis investment were negotiated together as parts of a single transaction but documented separately. The government alleges that a “sufficient part” of the $25 million investment constituted additional consideration for JC Medical, pushing the acquisition price above the HSR threshold.

Edwards was pursuing a $945 million acquisition of JenaValve, a JC Medical competitor, at the same time it acquired JC Medical. Edwards told JenaValve that “there was no HSR review for the JC Medical acquisition” because the purchase price was “below the threshold! Intentional.”

The Consequences Extend Beyond Civil Penalties

Both JC Medical and JenaValve were developing competing transcatheter heart valve products. According to the FTC, an HSR filing for JC Medical would have placed both transactions before the agency at once. The unreported JC Medical acquisition later became part of the factual basis for the FTC’s challenge to the JenaValve transaction, which a federal court preliminarily enjoined, and Edwards subsequently abandoned.

The record presented at the JenaValve trial about Edwards’ HSR avoidance was more extensive than in the FTC’s complaint. According to trial reporting, the FTC confronted JC Medical’s former president with an April 2024 text – sent after a call with Edwards and the deal’s “antitrust folks” – stating, “We’re all aligned on avoiding HSR.” Other trial exhibits described Edwards’ planned follow-on investments as closing a roughly “$10m to $35m” gap between the upfront payment and Genesis’s asking price. The JC Medical executive maintained that the payments were “two separate concepts” and that the deal “was never meant to skirt around HSR.”

JenaValve, meanwhile, learned of the JC Medical acquisition only after signing. Its counsel wrote that the merger “was negotiated and agreed at a time when Jvalve was kept secret from us,” and its CEO indicated, “This is not the transaction we signed on for.”

Under the proposed final judgment, Edwards will also be required to implement a five-year antitrust compliance program and provide the FTC with advance notice of certain future acquisitions.

Those consequences illustrate the larger risk. Avoidance exposes the parties not only to daily civil penalties (currently $53,088 per day of violation for each party), but also to prolonged agency scrutiny, costly compliance obligations, and uncertainty surrounding future M&A activity.

The Avoidance Rule is Broad but Not Boundless

Rule 801.90 looks through devices used to avoid HSR notification to the economic substance of the parties' agreement. In the agencies' view, a legitimate business purpose for a transaction structure used for the purpose of avoiding HSR notification does not protect against enforcement. The agencies apply a "but-for" test and ask, "was the transaction structure motivated by some benefit from avoiding or delaying filing? If the answer is yes, the structure is an avoidance device under the Rule."

In *United States v. Canon Inc.* (2019), the last avoidance action before Edwards/Genesis, the seller asserted a legitimate business reason for the transaction structure. Toshiba needed to recognize the sale of Toshiba Medical Systems before its fiscal year ended in March 2016 to strengthen its balance sheet, but the HSR waiting period would not expire in time. The parties therefore used a special-purpose company to nominally acquire Toshiba Medical Systems' voting shares. At the same time, Canon paid the full $6.1 billion purchase price in exchange for a nonvoting share and options to acquire the voting shares. Canon exercised those options in December 2016, after submitting an HSR filing and observing the waiting period.

The agencies nevertheless concluded that Canon had obtained beneficial ownership in March 2016 because the special-purpose company bore no meaningful risk of loss and had no meaningful opportunity for gain. The agencies challenged the structure under Rule 801.90, and Canon and Toshiba settled, each paying a $2.5 million civil penalty.

Deal structures or devices that only incidentally affect HSR notification requirements, by contrast, may be permissible. The key question is whether the feature that motivates the particular structure or device has value independent of avoiding or delaying HSR notification. An acquirer may negotiate a lower price, acquire fewer assets, take a smaller equity stake, or pursue a nonexclusive license rather than an acquisition. Those choices may result in no HSR filing obligation, and Rule 801.90 generally does not reach them.

Every HSR avoidance action to date, Edwards/Genesis included, has been resolved by settlement, so the agencies' but-for test and the outer bounds of Rule 801.90 remain untested in court. Parties weighing a structure with a genuine independent business rationale should not assume that the agencies' expansive reading is the last word – provided that they have the appetite to litigate.

Renewed Attention to Avoidance

Rule 801.90 is only sporadically enforced, but the agencies have recently been on alert for avoidance devices.

In 2020, the FTC's Premerger Notification Office withdrew an earlier informal interpretation that pre-closing special dividends could never be avoidance devices. Instead, PNO staff said it would evaluate value-reducing transactions as a whole, including whether a dividend or similar payment was economically part of the acquisition.

More recently, the FTC warned that Novo Nordisk's proposed acquisition of Metsera raised similar concerns. Novo Nordisk's proposal reportedly contemplated paying billions of dollars for convertible stock before making an HSR filing, allowing much of the consideration to reach

Metsera's shareholders without observing the requisite waiting period. The FTC cautioned that parties cannot evade review by breaking an acquisition into multiple steps and leaving notification until the end. Metsera was ultimately acquired by Pfizer.

Scrutiny has also moved beyond conventional acquisitions. In January 2026, Commissioner Mark Meador observed that "acqui-hires" could be problematic because "firms may be attempting to structure such hiring arrangements to avoid formal premerger notification review under the HSR Act" and reiterated the "importance of looking past formal transaction structure" to the substance—consistent with Rule 801.90. Similarly, in March 2026, Senators Elizabeth Warren and Richard Blumenthal raised questions about NVIDIA's "acqui-hire" of Groq, which involved approximately $20 billion for a nonexclusive license to Groq's technology, together with the hiring of Groq's founder and other key employees. The transaction closed without an HSR filing, and no public enforcement action has been announced.

What are the Agencies Likely to Examine?

The Rule 801.90 analysis is highly fact-specific and no single fact is dispositive of whether a structure constitutes an avoidance device. But the Rule 801.90 enforcement history points to several issues that the agencies will consider:

- Does the deal structure have a material benefit independent of avoiding or delaying an HSR filing?
- Were multiple agreements negotiated at the same time or made contingent on one another?
- Does a side investment, consulting agreement, dividend, milestone payment, license, or other arrangement function economically as additional purchase consideration?
- Did the buyer obtain beneficial ownership (i.e., the risk of loss or prospect of gain) before filing?
- Did an intermediary or special-purpose entity have any meaningful economic role?
- Will the structure automatically collapse, unwind, or reconfigure after the HSR waiting period expires?
- Would the transaction plainly be reportable if all its steps were viewed together?

The agencies, as always, will look to ordinary course materials to understand the true reason for a transaction's structure. A carefully drafted agreement will not rescue parties engaging in avoidance if the contemporaneous record describes a different economic bargain.

Practical Takeaways

There is no obligation to make a transaction reportable. There is, however, in the FTC's view, a clear obligation not to disguise a reportable transaction as non-reportable. Edwards/Genesis merely reaffirms the long-standing practice of looking past form to the substance.

The scrutiny surrounding Novo Nordisk/Metsera and NVIDIA/Groq suggests that the same attention will increasingly extend to nontraditional structures, such as acqui-hires and other arrangements that transfer beneficial ownership or competitive value outside the typical M&A form.

Finally, it is worth remembering that HSR non-reportable deals remain subject to post-close challenges. Avoiding an HSR filing (legitimately or not) confers no substantive antitrust immunity.

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