

MAYER | BROWN

NAVIGATING HART-SCOTT-RODINO ACT FILING REQUIREMENTS

2025

OUR TEAM



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INTRODUCTION

- This guide was developed to help companies understand the basics of the HSR process.
- To advance through the guide, answer the question on the screen by clicking on the appropriate hyperlinked object or by clicking the “NEXT” button at the bottom.
- To return to this initial screen at any point, click the “START OVER” button at the bottom.
- This resource is for general informational purposes only. It should not be construed as legal advice, nor should it be used as a substitute for legal counsel.
- If you need additional information or have questions regarding the HSR filing process, contact Scott Perlman (sperlman@mayerbrown.com; 202-263-3201), or Oral Pottinger (opottinger@mayerbrown.com; 202-263-3218).



HSR OVERVIEW

- Generally, a transaction is reportable if the size-of-the-transaction test is met:
 - Is the value of what’s being acquired greater than \$505.8M? If yes, the deal is reportable unless an exemption applies.
 - If not, and the value of what’s being acquired is greater than \$126.4M but less than \$505.8M, then the size-of-the-persons test also must be met for the deal to be reportable.
 - Size-of-the-persons test: One party must have \$25.3M in net sales or total assets; and another party must have \$252.9M in net sales or total assets.
 - If the value of what’s being acquired is less than \$126.4M, then an HSR filing is not required.
- A transaction can involve the acquisition of: (a) voting securities (the right to vote for the board of directors of an issuer); (b) assets; (c) non-corporate interests (LLC or LLP units); or (d) a combination thereof.
- Even if a transaction meets the HSR thresholds, one or more HSR exemptions may apply (explained in more detail in this presentation).
- If a transaction is reportable, a filing must be submitted to each of the FTC/DOJ, and the parties must abide by a 30-day statutory waiting period before they can close. The waiting period can be terminated early under certain circumstances.

WHAT DOES YOUR TRANSACTION INVOLVE?

ACQUISITION OF VOTING SECURITIES

ACQUISITION OF ASSETS

ACQUISITION OF NON-CORPORATE
INTERESTS (LLCS, LLPS, ETC.)

FORMATION OF A CORPORATION

VALUING VOTING SECURITIES

A deal involving the acquisition of voting securities is reportable if the **size-of-the-transaction test** is met. For these kinds of deals, the **size-of-the-transaction test** is based on: (1) the value of the voting securities that are being acquired; PLUS (2) the value of any voting securities already held.

Answer these questions to determine if the **size-of-the-transaction test** in this kind of deal:

ARE THE VOTING SECURITIES
PUBLICLY TRADED?



START
OVER



YES



NO

VALUING VOTING SECURITIES

HAS THE PRICE BEEN SET
BY AGREEMENT?



YES



NO



START
OVER

VALUING VOTING SECURITIES

The Value is the Greater of
the Market Price or the
Agreed Upon Price



START
OVER



NEXT

VALUING VOTING SECURITIES

The Value is the
Market Price



START
OVER



NEXT

VALUING VOTING SECURITIES

The Value is the Agreed
Upon Price



START
OVER



NEXT

VALUING VOTING SECURITIES

The Value is the Fair Market Value
of the Voting Securities



START
OVER



NEXT

IS AN HSR FILING REQUIRED?

- *Add the value of any voting securities already held to the value of the voting securities being acquired*
(CALCULATION HELP)

TOTAL VALUE EXCEEDS \$505.8 MILLION?

TOTAL VALUE IS LESS THAN OR EQUAL TO
\$505.8 MILLION AND MORE THAN \$126.4
MILLION?

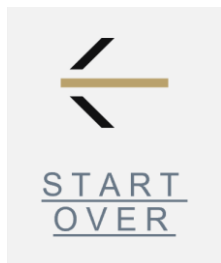
TOTAL VALUE IS \$126.4 MILLION OR LESS?



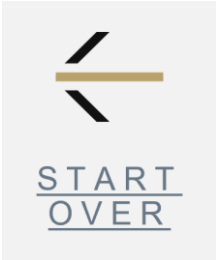
START
OVER

CALCULATING THE VALUE OF VOTING SECURITIES ALREADY HELD

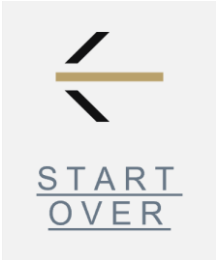
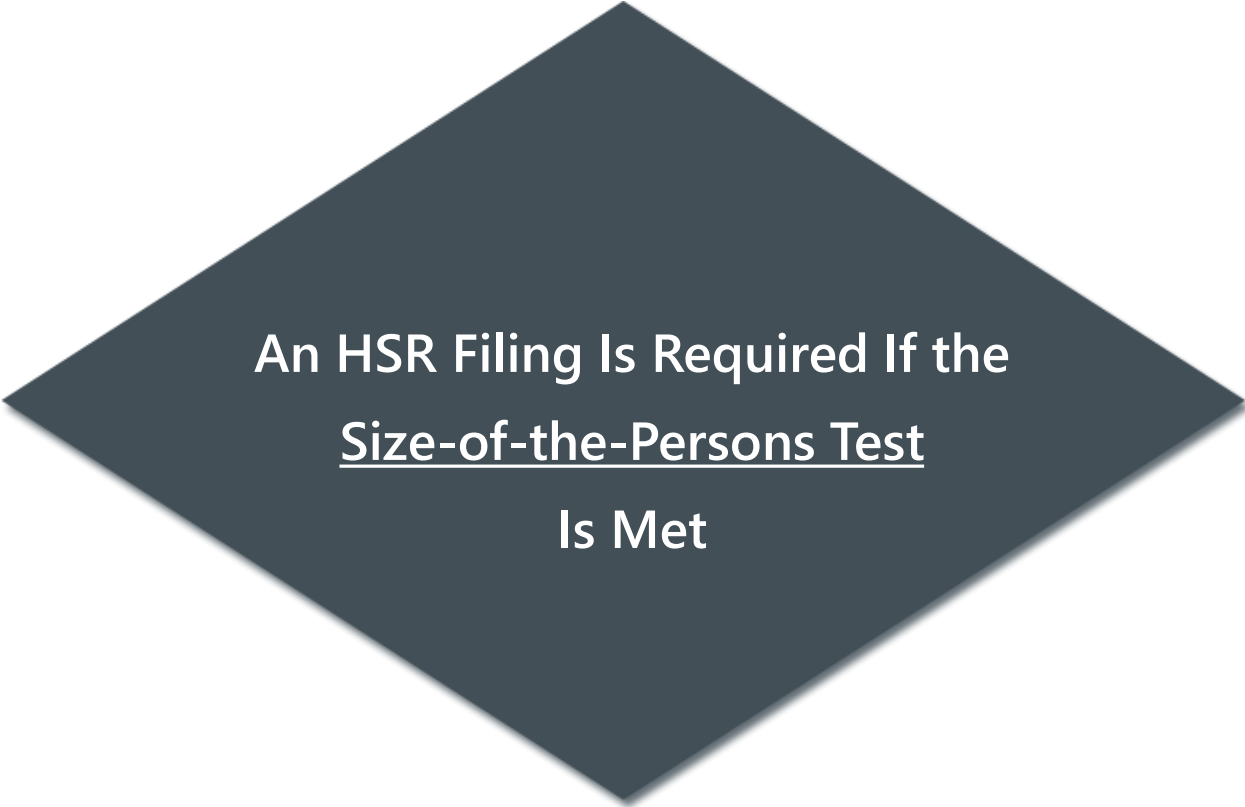
- To calculate the value of voting securities already held, first determine if the voting securities are publicly traded.
 - Publicly traded voting securities that were held prior to the current transaction are valued at the publicly traded market price.
 - Non-publicly traded voting securities that were held prior to the current transaction are valued at fair market value.



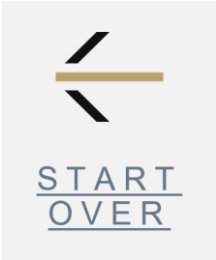
IS AN HSR FILING REQUIRED?



IS AN HSR FILING REQUIRED?



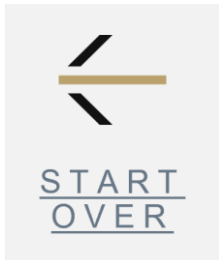
IS AN HSR FILING REQUIRED?



VALUING ASSETS

- *If your transaction involves the acquisition of assets, the first step is to determine if the **size-of-the-transaction test** is met. This test is based on: (1) the value of the assets that will be acquired; PLUS (2) the value of any assets acquired from the same company within the last 180 days.*
- *Answer these questions to determine whether the acquisition of assets could be reportable under HSR.*

IS THE ACQUISITION PRICE SET
BY AGREEMENT?



VALUING ASSETS

The Value Is the Greater of the
Acquisition Price or the Fair
Market Value of the Assets



START
OVER



NEXT

VALUING ASSETS

If the Acquisition Price Isn't Set by the Agreement, or if Acquisition Price Is Uncertain (e.g., because Future Payments Are Based on Performance), then the Value of the Assets Is Their Fair Market Value



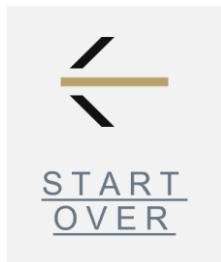
START
OVER



NEXT

VALUING ASSETS

- To determine the acquisition price:
 - Start with the consideration being paid; and
 - Add the value of any accrued liabilities of the Target that will be assumed by the Buyer; and
 - Add the value of any assets that the Buyer has acquired from the Target or for which the Buyer has entered into an LOI/agreement in principle to acquire within the last 180 days.
- The fair market value must be determined in good faith by the board of directors of the Buyer or by a designee of the Buyer's BOD; any reasonable method can be used (e.g., discounted cash flow).



IS AN HSR FILING REQUIRED?

(CALCULATION HELP)

TOTAL VALUE OF THE ASSETS EXCEEDS
\$505.8 MILLION?

TOTAL VALUE OF THE ASSETS IS LESS THAN OR
EQUAL TO \$505.8 MILLION AND MORE THAN
\$126.4 MILLION?

TOTAL VALUE OF THE ASSETS IS \$126.4
MILLION OR LESS?



START
OVER

VALUING NON-CORPORATE INTERESTS (LLCS, LLPS, ETC.)

*If your transaction involves the acquisition of non-corporate interests, the first step is to determine if the **size-of-the-transaction test** is met. This test is based on: (1) the value of the non-corporate interests that will be acquired; PLUS (2) the value of any non-corporate interests already held.*

Answer these questions to determine whether the acquisition of non-corporate interests could be reportable under HSR.

WILL ONE BUYER ACQUIRE A CONTROLLING
INTEREST (50% OR GREATER)
IN THE NON-CORPORATE ENTITY?



START
OVER



YES



NO

IF THE BUYER WILL ACQUIRE A CONTROLLING INTEREST
IN THE NON-CORPORATE ENTITY:

DOES THE AGREEMENT SET THE PRICE FOR THE
NON-CORPORATE INTERESTS BEING ACQUIRED?



YES



NO



START
OVER

IF THE BUYER WILL NOT ACQUIRE A CONTROLLING INTEREST IN THE NON-CORPORATE ENTITY:

An HSR Filing Is Not Required



START
OVER

END

IF THE AGREEMENT SETS THE PRICE FOR THE
NON-CORPORATE INTERESTS BEING ACQUIRED:

The Value Is the Agreed
Upon Price



START
OVER

END



NEXT

IF THE AGREEMENT DOES NOT SET THE PRICE FOR THE NON-CORPORATE INTERESTS BEING ACQUIRED:

The Value Is the Fair Market Value
of the Non-Corporate Interests



START
OVER



NEXT

IS AN HSR FILING REQUIRED?

- *Add the fair market value of any non-corporate interests already held by the Buyer to the value of any non-corporate interests being acquired:*

TOTAL VALUE EXCEEDS
\$505.8 MILLION?

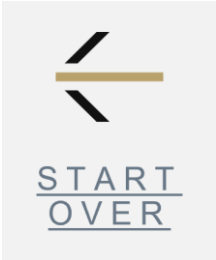
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TOTAL VALUE IS \$126.4 MILLION OR LESS?

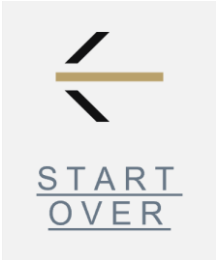


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OVER

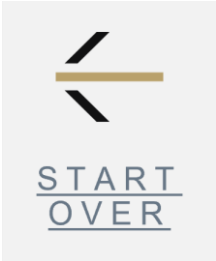
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IS AN HSR FILING REQUIRED?

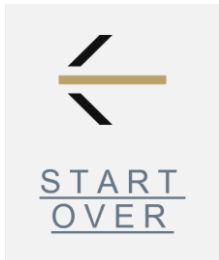


IS AN HSR FILING REQUIRED?



THE SIZE-OF-THE-PERSONS TEST

Based On Ultimate Parents' Fully Consolidated Financials,
Does One Party Have Total Assets or Annual Net Sales of
\$252.9 Million or More and Does Another Party Have Total
Assets or Annual Net Sales of \$25.3 Million or More?



IS THE SIZE-OF-THE-PERSONS TEST MET?

The Size-of-the-Persons Test
Is Met, and an HSR Filing Is Required
Unless an Exemption Applies



START
OVER

END



NEXT

THE SIZE-OF-THE-PERSONS TEST

IS THE ACQUIRED PERSON ENGAGED IN
MANUFACTURING?



YES



NO



START
OVER

IS THE SIZE-OF-THE-PERSONS TEST MET?

The Size-of-the-Persons Test Is
Met, and an HSR Filing Is Required
Unless an Exemption Applies



START
OVER

END



NEXT

IS THE SIZE-OF-THE-PERSONS TEST MET?

The Size-of-the-Persons Test
Is Not Met; An HSR Filing
Is Not Required



START
OVER

END



NEXT

IF THE ACQUIRED PERSON IS ENGAGED IN MANUFACTURING

Based On Ultimate Parents' Fully Consolidated Financials,
Does The Target Have Total Assets Or Annual Net Sales Of
\$25.3 Million Or More And Does The Buyer Have Total
Assets Or Annual Net Sales Of \$252.9 Million Or More?



START
OVER



YES



NO

IF THE ACQUIRED PERSON IS NOT ENGAGED IN MANUFACTURING

Based on Ultimate Parents' Fully Consolidated Financials,
Does the Target Have Total Assets of \$25.3 Million or More*
and Does the Buyer Have Total Assets or Annual Net Sales
of \$252.9 Million or More?

* Unlike When a Target Is Engaged in Manufacturing, for This Assessment, You Only
Need to Consider the Target's Total Assets, Not Total Assets or Annual Net Sales.



START
OVER



YES



NO

IS THE SIZE-OF-THE-PERSONS TEST MET?

The Size-of-the-Persons Test
Is Met, and an HSR Filing Is
Required Unless an
Exemption Applies



START
OVER



NEXT

IS THE SIZE-OF-THE-PERSONS TEST MET?

The Size-of-the-Persons Test
Is Not Met; An HSR Filing Is
Not Required

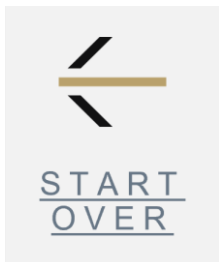


START
OVER

FORMING CORPORATIONS: APPLYING THE SIZE-OF-THE-PERSONS TEST

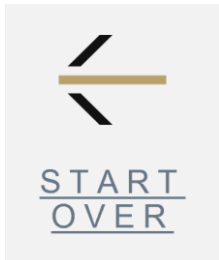
DOES:

- The Buyer Has Annual Net Sales or Total Assets of \$25.3 Million or More;
- The Newly Formed Corporation Have Total Assets of \$252.9 Million or More (CALCULATION HELP); and
- At Least One of the Other Buyers Have Annual Net Sales or Total Assets of \$25.3 Million or More?

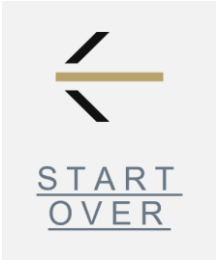


CALCULATING THE TOTAL ASSETS OF THE NEWLY FORMED CORPORATION

- To calculate the total assets of newly formed corporation, include:
 - (1) All of the assets that the parties have agreed to contribute; and
 - (2) Any amount of credit of the newly formed corporation that any contributing party has agreed to extend or guarantee.



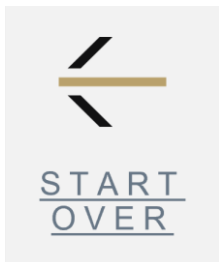
IS AN HSR FILING REQUIRED?



FORMING CORPORATIONS: APPLYING THE SIZE-OF-THE-PERSONS TEST

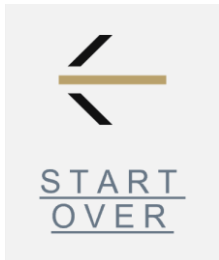
DOES:

- The Buyer Have Annual Net Sales or Total Assets of \$252.9 Million or More;
- The Newly Formed Corporation Have Total Assets of \$25.3 Million or More (CALCULATION HELP); and
- At Least One of the Other Buyers Have Annual Net Sales or Total Assets of \$25.3 Million or More?

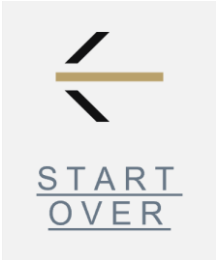


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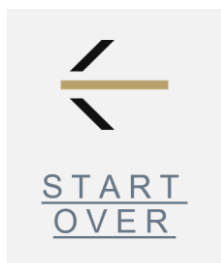
IS AN HSR FILING REQUIRED?



COMMONLY USED HSR EXEMPTIONS

§ 802.1 – Ordinary Course Exemptions

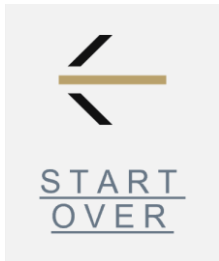
- Exempts certain acquisitions made in the ordinary course of business
- Covers acquisitions of new goods, current supplies, and used durable goods in certain situations (e.g., certain leased used durable goods), and acquisitions relating to certain outsourcing transactions
- Does not apply if the Target is selling all the of the assets of an operating unit



COMMONLY USED HSR EXEMPTIONS

§ 802.2 – Certain Acquisitions of Real Property

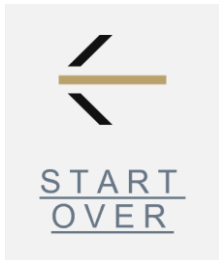
- Exempts certain acquisitions of:
 - New or Used Facilities
 - Unproductive Real Property
 - Office and Residential Property
 - Hotels and Motels
 - Does not include casinos or management companies that manage third-party properties
 - Recreational Land
 - Agricultural Property
 - Retail Rental Space and Warehouses
- Any non-exempt assets being acquired still may be reportable if the value exceeds HSR thresholds.



COMMONLY USED HSR EXEMPTIONS

§ 802.3 – Acquisitions of Carbon-Based Mineral Reserves

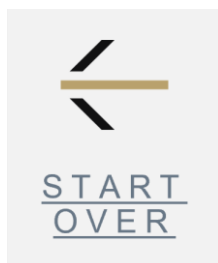
- Exempts acquisitions of oil reserves, natural gas, shale or tar sands, or the rights thereto, valued at \$500 million or less
- Also exempts acquisitions of reserves of coal, or rights thereto, valued at \$200 million or less
- Includes associated exploration and production assets
- Any non-exempt assets being acquired still may be reportable if the value exceeds HSR thresholds



COMMONLY USED HSR EXEMPTIONS

§ 802.4 – Acquisition of Entities that Hold Exempt Assets

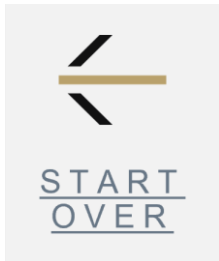
- Exempts the acquisition of voting securities or controlling interests in non-corporate entities if the underlying entity only holds assets that are otherwise exempt from HSR
- Any non-exempt assets being acquired still may be reportable if the value exceeds HSR thresholds.



COMMONLY USED HSR EXEMPTIONS

§ 802.9 – Acquisitions Solely for the Purpose of Investment

- Exempts passive investments in corporations, regardless of dollar amount, if the Buyer will hold 10% or less of the corporation
- Does not apply if the Buyer takes actions that are inconsistent with a passive-only intent, such as:
 - Nominating a candidate for the board of directors
 - Proposing corporate action requiring shareholder approval
 - Having a controlling shareholder, director, officer, or employee simultaneously serving as an officer or director of the Target
 - Being a competitor of the Target
 - Having stand-alone business dealings with the Target, regardless of whether such dealings are horizontal or vertical



COMMONLY USED HSR EXEMPTIONS

§ 802.50 – Acquisition of Foreign Assets

- Exempts the acquisition of assets located outside of the U.S. if:
 - Sales into the U.S. attributable to those assets were \$126.4 million or less in the Target’s most recent fiscal year; or
 - Both the Buyer and Target are foreign, the aggregate sales of the Buyer and Target in or into the U.S. are less than \$278.2 million in their respective most recent fiscal years, the aggregate total assets of the Buyer and the Target located in the U.S. have a fair market value of less than \$278.2 million, and the transaction value does not exceed \$505.8 million.



START
OVER

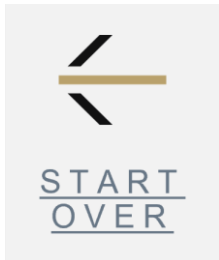


NEXT

COMMONLY USED HSR EXEMPTIONS

§ 802.51 – Acquisitions of Voting Securities of a Foreign Corporation

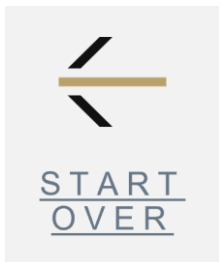
- Exempts acquisitions of the voting securities of a foreign corporation by a U.S. person if:
 - Any assets of the corporation and all of the entities it controls located in the U.S. have a fair market value of \$126.4 million or less; and
 - The sales in or into the U.S. of the corporation and all the entities it controls do not exceed \$126.4 million in its most recent fiscal year



COMMONLY USED HSR EXEMPTIONS

§ 802.51 – Acquisitions of Voting Securities of a Foreign Corporation

- Exempts acquisitions of the voting securities of a foreign corporation by a foreign Buyer if:
 - The Buyer does not acquire control of the corporation; or
 - Any assets of the corporation and all of the entities it controls located in the U.S. have a fair market value of \$126.4 million or less; and the sales in or into the U.S. of the corporation and all the entities it controls do not exceed \$126.4 million in its most recent fiscal year; or
 - Both the Buyer and Target are foreign, the aggregate sales of the Buyer and Target in or into the U.S. are less than \$278.2 million in their respective most recent fiscal years; the aggregate total assets of the Buyer and Target located in the U.S. have a fair market value of less than \$278.2 million; and the transaction value does not exceed \$505.8 million.



FORMING THE CORPORATION: APPLYING THE SIZE-OF-TRANSACTION TEST

HAS THE PRICE BEEN SET BY THE AGREEMENT?



YES



NO



START
OVER

FORMING THE CORPORATION: APPLYING THE SIZE-OF-TRANSACTION TEST

The Value Is the Agreed
Upon Price



START
OVER



NEXT

FORMING THE CORPORATION: APPLYING THE SIZE-OF-TRANSACTION TEST

The Value Is the Fair Market Value
of the Voting Securities



START
OVER



NEXT

**FORMING THE CORPORATION:
APPLYING THE SIZE OF TRANSACTION TEST**

FOR EACH SHAREHOLDER FORMING CORPORATION:

DOES THE TOTAL VALUE EXCEED
\$505.8 MILLION?

IS THE TOTAL VALUE LESS THAN OR
EQUAL TO \$505.8 MILLION AND MORE THAN
\$126.4 MILLION?

IS THE TOTAL VALUE \$126.4 MILLION OR LESS?



START
OVER

FORMING THE CORPORATION: IS AN HSR FILING REQUIRED?

An HSR Filing Is Required
Unless an Exemption Applies



START
OVER

END



NEXT

FORMING THE CORPORATION: IS AN HSR FILING REQUIRED?

An HSR Filing Is Required If the
Size-of-the-Persons Test Is Met



START
OVER



NEXT

FORMING THE CORPORATION:
IS AN HSR FILING REQUIRED?

An HSR Filing Is Not Required



START
OVER

END

Check Back with us for Updated Hart-Scott-Rodino Thresholds in January 2026

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