MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2026

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
Dale Collins
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CLASS 3 HOMEWORK ASSIGNMENT—INSTRUCTOR'S ANSWER

Instructions

Submit by email no later than 3:30 pm on Tuesday, September 1
Send to wdc30@georgetown.edu
Subject line: Merger Antitrust Law: Assignment for Class 3

Calls for a memorandum of law to the client

Assignment

You are an associate at Able & Baker LLP working with partner Margaret Chen. Elaine Porter, General Counsel of Stonebridge Technologies, Inc., has requested that the firm prepare a memorandum of law outlining the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). The client has not asked for an analysis of substantive antitrust issues.

The client explained that it has executed anagreement to purchase additional common stock of another company for an acquisition price of approximately $100 million. The market price of the shares to be acquired, determined under the HSR Rules, is also approximately $100 million. The client also already holds common stock of the same issuer with a market price under the HSR Rules of approximately $40 million. The contemplated purchase would increase the client's holdings from approximately 8 percent to approximately 23 percent of the target company's outstanding voting securities. Stonebridge has never filed an HSR notification for an acquisition of the target company's voting securities. The additional shares will be newly issued shares purchased directly from the target; the acquisition is not a tender offer or an open-market purchase. Stonebridge and the target are unrelated U.S. corporations with different ultimate parent entities.

The target company is an industrial company operating solely in the United States. Its common stock, which is publicly traded on the New York Stock Exchange, is the only stock with current voting rights. The target company has annual net sales exceeding $800 million. Chen tells you that the client's annual net sales are approximately $3.5 billion.

The client asks that the memorandum be tailored to these facts.

If you have any questions, send me an email.

THE INSTRUCTOR'S ANSWER FOLLOWS:

Note: This would be a typical assignment given to an associate in a law firm. The instructor's answer follows the form of a reasoned memorandum of law that a partner in the firm would expect. It does the analysis "by the numbers," with each requirement unpacked using the definitions and tests of the HSR Act and its implementing regulations. It also contains an appropriate attorney-client privilege legend at the top. I have not included a work-product legend because this is routine transactional advice and the facts do not establish that the memorandum was prepared in anticipation of litigation. You should have been able to write a similar memorandum using the Unit 2 primary source materials and the class notes, with two exceptions. First, I did not give you the citations to the specific implementing rules, so you could not have included those footnotes. Second, I did not give you a complete list of the exemptions, so you could not conclude that, in addition to the exemptions listed in the class notes, no other exemption would apply to the transaction.

ABLE & BAKER LLP

TO: Elaine Porter, Esq.
General Counsel, Stonebridge Technologies, Inc.
FROM:
DATE: September 1, 2026

Application of the HSR Act

You have asked us to prepare a memorandum of law describing the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act)[1] for the following contemplated transaction.

Stonebridge has executed an agreement to purchase approximately $100 million of newly issued common stock directly from another U.S. corporation. The acquisition price and the market price of the shares to be acquired, determined under the HSR Rules, are each approximately $100 million. Stonebridge already holds common stock of the same issuer with a market price under the HSR Rules of approximately $40 million. The contemplated purchase would increase Stonebridge's holdings from approximately 8 percent to approximately 23 percent of the target company's outstanding voting securities. Stonebridge has never filed an HSR notification for an acquisition of the target company's voting securities. Stonebridge and the target are unrelated U.S. corporations with different ultimate parent entities. The target is an industrial company operating solely in the United States. Its common stock, which is publicly traded on the New York Stock Exchange, is the only stock with current voting rights. The target has annual net sales exceeding $800 million. Stonebridge has annual net sales of approximately $3.5 billion.

The HSR Act requires parties to certain mergers and acquisitions to notify the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and to observe a statutory waiting period before closing, so the agencies can assess potential competitive concerns. The initial waiting period ordinarily is 30 calendar days, except for cash tender offers and certain bankruptcy transactions, for which it is 15 calendar days. Because the contemplated acquisition is a negotiated purchase directly from the issuer and is not a tender offer or open-market purchase, the ordinary 30-day initial waiting period applies. The initial waiting period may expire by passage of time, be terminated early at the agencies' discretion, or be extended if the reviewing agency issues a Request for Additional Information and Documentary Material (commonly known as a "second request").[2]

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[1] Clayton Act § 7A, 15 U.S.C. § 18a.

[2] A "second request" is a formal demand for additional information and documentary material that the reviewing agency may issue when it requires more information to evaluate a proposed reportable acquisition. The agency must issue any second request before the initial waiting period expires. In an ordinary negotiated acquisition, issuance of a second request keeps the waiting period in effect until the parties substantially comply with their respective requests and then for an additional 30 calendar days; in a cash tender offer or certain bankruptcy acquisitions, the final waiting period is 10 calendar days and runs from the acquiring person's substantial compliance. Second requests are typically extensive and may require large document productions, data

The HSR Act's reporting and waiting period requirements apply to an acquisition if three conditions are satisfied:

1. The transaction meets the size-of-transaction test and, where required, the size-of-person test
2. No statutory or regulatory exemption applies
3. For acquisitions of voting securities, the acquiring person will, as a result of the acquisition, hold an amount sufficient to cross a notification threshold specified in the rules.

The dollar values in these tests are adjusted annually.[3] The analysis applies the HSR aggregation and valuation rules to the voting securities the acquiring person will hold as a result of the acquisition, using the valuation dates specified by the rules. The jurisdictional thresholds in effect at the time of consummation govern reportability.

For the reasons stated below, the contemplated transaction will be subject to the HSR Act's reporting and waiting period requirements before Stonebridge can purchase the stock.[4]

I. Size of Transaction/Size of Person Test

The law. The HSR Act requires premerger notification for transactions that satisfy the "size of transaction" test, which is met when the acquiring person will hold voting securities, assets, or non-corporate interests of the acquired person valued in excess of $133.9 million for 2026.[5] The HSR Rules define "voting securities" as any securities that, at present or upon conversion, entitle the holder to vote for the election of directors of the issuer (or, if the issuer is not a corporation, of individuals exercising similar functions).[6] Under the HSR Rules, the value of the voting securities that an acquiring person will hold as a result of an acquisition is calculated by adding the value of the voting securities to be acquired to the value of the voting securities of the same issuer that the acquiring person already holds.[7] The value of the voting securities to be acquired, if they are publicly traded, is the greater of their acquisition price (if determinable) or their market price (defined by the HSR Rules as the lowest closing quotation within the 45 calendar days before consummation, but not earlier than the day before execution of the contract, agreement in principle, or letter of intent to merge or acquire); if the acquisition price has not been determined, the value is the market price.[8] The value of publicly traded voting securities

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compilations, written interrogatory responses, and testimony; compliance often takes many weeks or months. A second request is not compulsory process in the ordinary sense: the parties may decline to comply, but the waiting period then will not expire and they cannot close the reportable transaction.

[3] Beginning in FY 2005, the HSR Act reporting thresholds are adjusted annually by the percentage changes in the gross national product during the prior fiscal year compared to the gross national product for the fiscal year ending September 30, 2003. Pub. L. No. 106-553, § 630(b), 114 Stat. 2762, 2762A-109 to -110 (effective February 1, 2001) (codified at 15 U.S.C. § 18a(a)(2)).

[4] All dollar thresholds cited in this memorandum reflect the 2026 values effective February 17, 2026. Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026).

[5] Clayton Act § 7A(a)(2), 15 U.S.C. § 18a(a)(2) (original thresholds); Revised Jurisdictional Thresholds, *supra* note 4.

[6] HSR Rule 801.1(f)(1), 16 C.F.R. § 801.1(f)(1).

[7] HSR Rule 801.13(a)(1), 16 C.F.R. § 801.13(a)(1).

[8] HSR Rules 801.10(a)(1), 801.10(c), 16 C.F.R. §§ 801.10(a)(1), 801.10(c).

already held is their market price (as defined above), or if a market price is not available, their fair market value.[9]

In 2026, for transactions valued above $133.9 million and up to and including $535.5 million, the size-of-person test must also be satisfied. In general, the test is satisfied in 2026 if (i) the acquired person is engaged in manufacturing and has annual net sales or total assets of $26.8 million or more and the acquiring person has total assets or annual net sales of $267.8 million or more; (ii) the acquired person is not engaged in manufacturing and has total assets of $26.8 million or more and the acquiring person has total assets or annual net sales of $267.8 million or more; or (iii) the acquired person has annual net sales or total assets of $267.8 million or more and the acquiring person has total assets or annual net sales of $26.8 million or more.[10] Transactions valued in excess of $535.5 million are reportable regardless of the size of the parties, subject to applicable exemptions.[11]

A transaction that satisfies the size-of-transaction test and, where applicable, the size-of-person test is called *prima facie reportable* under the HSR Act.

Application to the contemplated transaction. Both the shares already held and the additional shares to be acquired are the issuer's common stock with present voting rights, so they are voting securities for HSR purposes. The issuer's common stock is listed on the New York Stock Exchange, a national securities exchange, so it is publicly traded and the valuation rules for publicly traded securities apply. Under those rules, the value of the block to be acquired is the greater of its determinable acquisition price or its market price, and the value of the block already held is its market price. Here, the acquisition price and HSR market price of the to-be-acquired block are each approximately $100 million, while the HSR market price of the already-held block is approximately $40 million. Aggregating those amounts, Stonebridge will hold voting securities of the target valued at approximately $140 million as a result of the acquisition. Although the block to be acquired is by itself valued below the threshold, the aggregate amount Stonebridge will hold as a result of the acquisition exceeds the 2026 size-of-transaction threshold of $133.9 million and is below $535.5 million, so the size-of-person test applies. The target, with annual net sales exceeding $800 million, has annual net sales of $267.8 million or more, and Stonebridge, with annual net sales of approximately $3.5 billion, has annual net sales of $26.8 million or more. The third branch of the size-of-person test is therefore satisfied, and it is unnecessary to decide whether the target is engaged in manufacturing.

On these facts, the transaction is prima facie reportable.

II. Exemptions

The law. Even if a transaction meets the HSR Act's size-of-transaction and, where applicable, size-of-person tests, the HSR Act and its implementing rules specify several exemptions that exempt the transaction from the Act's reporting and waiting period requirements. The most commonly invoked exemptions are:

[9] HSR Rules 801.13(a)(2), 801.10(c), 16 C.F.R. §§ 801.13(a)(2), 801.10(c).

[10] Clayton Act § 7A(a)(2)(B), 15 U.S.C. § 18a(a)(2)(B); Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, *supra* note 4.

[11] Clayton Act § 7A(a)(2)(A), 15 U.S.C. § 18a(a)(2)(A); Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, *supra* note 4.

1. *Intraperson transactions*. An acquisition is exempt if the acquiring and acquired persons are the same ultimate parent entity. In other words, transfers of assets or voting securities wholly within a corporate family are not reportable.
2. *Investment-only acquisitions*. An acquisition of 10 percent or less of an issuer's outstanding voting securities (15 percent for certain institutional investors) is exempt if the acquirer has a purely passive investment intent. The exemption is voided if the acquirer has any role in the management of the issuer, such as serving on the board of directors.
3. *Convertible voting securities*. The acquisition of convertible securities is exempt so long as they do not carry present voting rights. They become relevant only when converted into voting securities with present voting power.
4. *Acquisitions of non-U.S. assets*. Acquisitions of assets located outside the United States are exempt unless those assets generated sales in or into the United States exceeding $133.9 million (2026 threshold) in the most recent fiscal year.
5. *Acquisitions of voting securities of foreign issuers*. The rules exempt many acquisitions of voting securities of foreign issuers when the issuer has limited U.S. assets or U.S. sales, with requirements varying depending on whether the acquiring person is a U.S. or foreign person.

Application to the contemplated transaction. None of these exemptions applies to the contemplated transaction. The acquisition is not intraperson because Stonebridge and the target are unrelated U.S. corporations with different ultimate parent entities. The investment-only exemptions do not apply because Stonebridge will hold approximately 23 percent of the target's outstanding voting securities after the acquisition, which exceeds the ordinary 10 percent limit and, even if Stonebridge were a qualifying institutional investor, the 15 percent limit applicable to such investors. The shares to be acquired are common stock with present voting rights, not convertible securities. Because Stonebridge and the target are U.S. corporations and the target operates solely in the United States, the foreign-asset and foreign-issuer exemptions are not implicated. Stonebridge also has never filed an HSR notification for an acquisition of the target's voting securities, so Rule 802.21 does not exempt the contemplated acquisition as a subsequent acquisition following an earlier HSR filing.

We have also examined the less common exemptions, and none of them applies.

III. Notification Thresholds

The law. Even if a transaction satisfies the size-of-transaction and size-of-person tests and no exemption applies, an acquisition of voting securities triggers the HSR Act's reporting and waiting period requirements only if it will cause the acquiring person to cross a notification threshold. The 2026 thresholds are $133.9 million, $267.8 million, and $1.339 billion in value, as well as 25 percent of an issuer's voting securities if that stake is valued above $2.678 billion and 50 percent of an issuer's voting securities if valued above $133.9 million.[12] After the HSR Act waiting period has expired or been terminated, the acquiring person has one year to cross the

[12] HSR Rule 801.1(h), 16 C.F.R. § 801.1(h); Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026) (effective Feb. 17, 2026).

threshold specified in that filing.[13] If the filed-for threshold is not crossed within one year, the notification expires with respect to that threshold, and a new filing is required before a later acquisition that would meet or exceed it. If the threshold is crossed within that one-year period, Rule 802.21 exempts additional acquisitions of voting securities of the same issuer for five years from expiration or early termination of the waiting period, so long as the acquiring person does not meet or exceed a greater notification threshold (as adjusted at the time of the later acquisition).[14] After the five-year period expires, any additional acquisition that would cause the acquiring person's holdings to meet or exceed a then-current notification threshold requires a new HSR filing.

Application to the contemplated transaction. Applying these rules, Stonebridge will hold voting securities of the target valued at approximately $140 million as a result of the contemplated acquisition. This amount exceeds the $133.9 million notification threshold but is below the next dollar threshold of $267.8 million, so Stonebridge must indicate the $133.9 million notification threshold on its Notification and Report Form. Stonebridge has no prior HSR filing for acquisitions of this issuer's voting securities that would exempt the contemplated purchase. After the waiting period expires or is terminated early, Stonebridge will have one year to complete an acquisition that causes its holdings to meet or exceed the $133.9 million threshold. Once Stonebridge does so, it may acquire additional voting securities of the same issuer for five years from expiration or early termination of the waiting period without a new HSR filing, provided its holdings do not meet or exceed the next notification threshold then in effect. In 2026, that next dollar threshold is $267.8 million. The 25 percent and 50 percent notification thresholds do not apply to the contemplated acquisition because Stonebridge will hold approximately 23 percent of the target's voting securities after closing. The 25 percent threshold would not be triggered in any event, because Stonebridge's holdings will be valued far below the $2.678 billion at which that threshold becomes operative.

Filing and waiting period requirements. Because the contemplated acquisition is reportable, Stonebridge and the target each must submit an HSR notification before the acquisition. Each person must file the Notification and Report Form prescribed by the FTC, and each filing must include an affidavit attesting that the parties have executed the agreement and that the filing person intends in good faith to complete the transaction.[15] Because Stonebridge will purchase newly issued shares directly from the target, and the transaction is neither a tender offer nor an open-market acquisition, the initial waiting period will begin only after both required notifications have been received and ordinarily will run for 30 calendar days. Stonebridge may not acquire the shares until the waiting period expires or is terminated early. If the reviewing agency issues a second request before the initial waiting period expires, the waiting period will remain in effect until the parties substantially comply with their respective second requests and the additional 30-day waiting period expires. Based on the current HSR value of approximately $140 million, the applicable 2026 filing fee is $35,000, the fee for transactions valued at less than $189.6 million. Unlike the jurisdictional thresholds, which are those in effect at consummation, the filing fee is fixed by the transaction value and fee schedule in effect when the

[13] HSR Rule 803.7(a), 16 C.F.R. § 803.7(a).

[14] HSR Rule 802.21(a), 16 C.F.R. § 802.21(a).

[15] HSR Rule 803.5(b), 16 C.F.R. § 803.5(b). Because HSR Rule 801.30 does not apply to an acquisition of newly issued voting securities directly from the issuer, the notice and affidavit requirements of HSR Rule 803.5(a) are inapplicable.

waiting period begins, which in most cases is the date of filing. Stonebridge, as the acquiring person, must pay the fee to the FTC, although the parties may allocate the economic cost differently by agreement.[16]

Current Notification and Report Form. The expanded Form and Instructions that took effect on February 10, 2025 were vacated on February 12, 2026, and the vacatur became effective on March 19, 2026, when the Court of Appeals for the Fifth Circuit declined to stay the district court's judgment pending appeal. The agencies now accept filings on the Form and Instructions that were in place before February 10, 2025, and will also accept filings made voluntarily on the vacated Form. On May 26, 2026, the Fifth Circuit held the appeal in abeyance through December 31, 2026 while the agencies consider further revisions to the reporting requirements. Stonebridge should therefore plan to file on the pre-2025 Form, which calls for substantially less information and documentary material than the vacated Form, and we will confirm the operative Form with the Premerger Notification Office before filing.[17]

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[16] HSR Rules 803.9(a), 803.10(a)(3), 803.10(b)(1), 16 C.F.R. §§ 803.9(a), 803.10(a)(3), 803.10(b)(1); Revised Jurisdictional Thresholds, *supra* note 4.

[17] Premerger Notification; Reporting and Waiting Period Requirements, 89 Fed. Reg. 89216 (Nov. 12, 2024) (final rule), *vacated*, Chamber of Commerce of the United States v. FTC, No. 6:25-CV-9-JDK, 2026 WL 402498 (E.D. Tex. Feb. 12, 2026), *stay pending appeal denied*, No. 26-40094 (5th Cir. Mar. 19, 2026), *appeal held in abeyance*, No. 26-40094 (5th Cir. May 26, 2026); *see* Fed. Trade Comm'n, HSR Notification Forms, Instructions and Guidance (updated Mar. 23, 2026).

IV. Conclusion

Because Stonebridge will hold voting securities of the target valued at approximately $140 million as a result of the contemplated acquisition, the transaction exceeds the 2026 $133.9 million size-of-transaction threshold and, given the size of both parties, satisfies the size-of-person test. No statutory or regulatory exemption applies, and the acquisition will cross the $133.9 million notification threshold. Accordingly, Stonebridge and the target must file HSR notifications and observe the applicable waiting period before Stonebridge can acquire the additional shares. On the current valuation, the filing fee is $35,000. After expiration or early termination of the waiting period, Stonebridge will have one year to cross the $133.9 million threshold; once it does so, Rule 802.21 will permit additional acquisitions for five years from expiration or early termination of the waiting period without another filing, provided Stonebridge does not meet or exceed a greater notification threshold then in effect. Because the target's voting securities are publicly traded, we should confirm the HSR valuation and applicable thresholds again immediately before filing and closing.

Should you have any questions or wish to discuss this matter in greater detail, please feel free to contact us.