

[N.J. Rev. Stat. § 17:27A-4.1.]

§ 17:27A-4.1. Definitions, regulations concerning acquisitions: Insurance Holding Company Systems

7. a. As used in this section only:

"Acquisition" means any agreement, arrangement or activity, the consummation of which results in a person acquiring, directly or indirectly, the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an insurer which is an acquirer or is acquired, or is the result of a merger.

b. (1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this State.

(2) This section shall not apply to the following:

(a) (Deleted by amendment, P.L.2014, c.81)

(b) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control as defined in subsection c. of section 1 of P.L.1970, c.22 (C.17:27A-1), it is not solely for investment purposes unless the commissioner or other appropriate official of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner or official to the commissioner of this State;

(c) The acquisition of already affiliated persons;

(d) An acquisition if, as an immediate result of the acquisition, the combined market share of the involved insurers would not exceed five percent of the total market, there would be no increase in the market, or

(i) the combined market share of the involved affiliated insurers would not exceed twelve percent of the total market, and

(ii) the market share increases by no more than two percent of the total market.

For the purpose of this subparagraph (d), "market" means direct written insurance premium in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State;

- (e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
- (f) An acquisition of an insurer whose domiciliary commissioner or other appropriate official affirmatively finds that: the insurer is in failing condition; there is a lack of feasible alternatives to improving that condition; the public benefits of improving that insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner or official to the commissioner of this State.
- (g) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with paragraph (1) of subsection c. of this section 30 days prior to the proposed effective date of the acquisition. Such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subsection.
- c. An acquisition covered by subsection b. of this section shall be subject to an order pursuant to subsection e. of this section unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 6 of P.L.1970, c.22 (C.17:27A-6).
- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the commissioner relating to those markets which, under subparagraph (2)(d) of subsection b. of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as he deems necessary. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State, accompanied by a summary of the education and experience of that person indicating his ability to render an informed opinion.
- (2) The waiting period required shall begin on the date of receipt by the commissioner of pre-acquisition notification and shall end on the earlier of the 30th day after the date of that notification, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of that additional information by the commissioner or termination of the waiting period by the commissioner.
- d. (1) The commissioner may enter an order under paragraph (1) of subsection e. with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance of this State or, to tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection c.
- (2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the commissioner shall consider the following:

(a) Any acquisition covered under subsection b. involving two or more insurers competing in the same market shall be prima facie evidence of violation of the competitive standard if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more

Insurer A	Insurer B
15%	3% or more
19%	1% or more

For the purposes of this subparagraph (a), the insurer with the largest share of the market shall be deemed to be Insurer A. A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table shall be prima facie evidence of violation of the competitive standards in paragraph (1) of this subsection.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time, extending from any base year five to ten years prior to the acquisition, up to the time of the acquisition. Any acquisition or merger covered under subsection b. involving two or more insurers competing in the same market shall be prima facie evidence of a violation of the competitive standard in paragraph (1) of this subsection if:

- (i) there is a significant trend toward increased concentration in the market;
- (ii) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and
- (iii) another involved insurer's market is two percent or more.

(c) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (a) and (b) of this paragraph (2), the commissioner may establish the requisite anticompetitive effect based

upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under those subparagraphs, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph (c) include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(d) For the purposes of this paragraph (2):

The term "insurer" includes any company or group of companies under common management, ownership or control;

The term "market" means the relevant product and geographical markets as determined by the commissioner. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State.

The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(3) An order may not be entered under paragraph (1) of subsection e. if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from those economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits which would arise from not lessening competition.

e. (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) requiring an involved insurer to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation; or

(ii) denying the application of an acquired or acquiring insurer for a license to do business in this State.

(b) Such an order shall not be entered unless:

(i) there is a hearing,

(ii) notice of that hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(iii) the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth his findings of fact and conclusions of law.

(c) An order entered under this subsection shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anti-competitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the commissioner shall specify the conditions, if any, under which, and the time period during which, the aspects of the acquisition causing a violation of the standards of this section may be remedied and the order vacated or modified.

(d) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under paragraph (1) while such order is in effect, may after notice and hearing, be subject to a penalty of up to \$10,000 for each day of violation, or suspension or revocation of that person's license, or both.

(3) Any insurer or other person who fails to make any filing required by this section shall be required to pay a penalty of up to \$5,000 per violation.

f. Subsections b. and c. of section 8 of P.L.1970, c.22 (C.17:27A-8) and section 10 of P.L.1970, c.22 (C.17:27A-10) shall not apply to acquisitions covered under this section.

g. This section shall not limit the commissioner's authority to refuse to renew or revoke the certificate of authority of an insurer admitted to transact business in this State pursuant to R.S.17:32-1 et seq., or N.J.S.17B:23-1 et seq.