



FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

HART-SCOTT-RODINO ANNUAL REPORT

FISCAL YEAR 2010

Section 7A of the Clayton Act
Hart-Scott-Rodino Antitrust Improvements Act of 1976
(Thirty-third Annual Report)

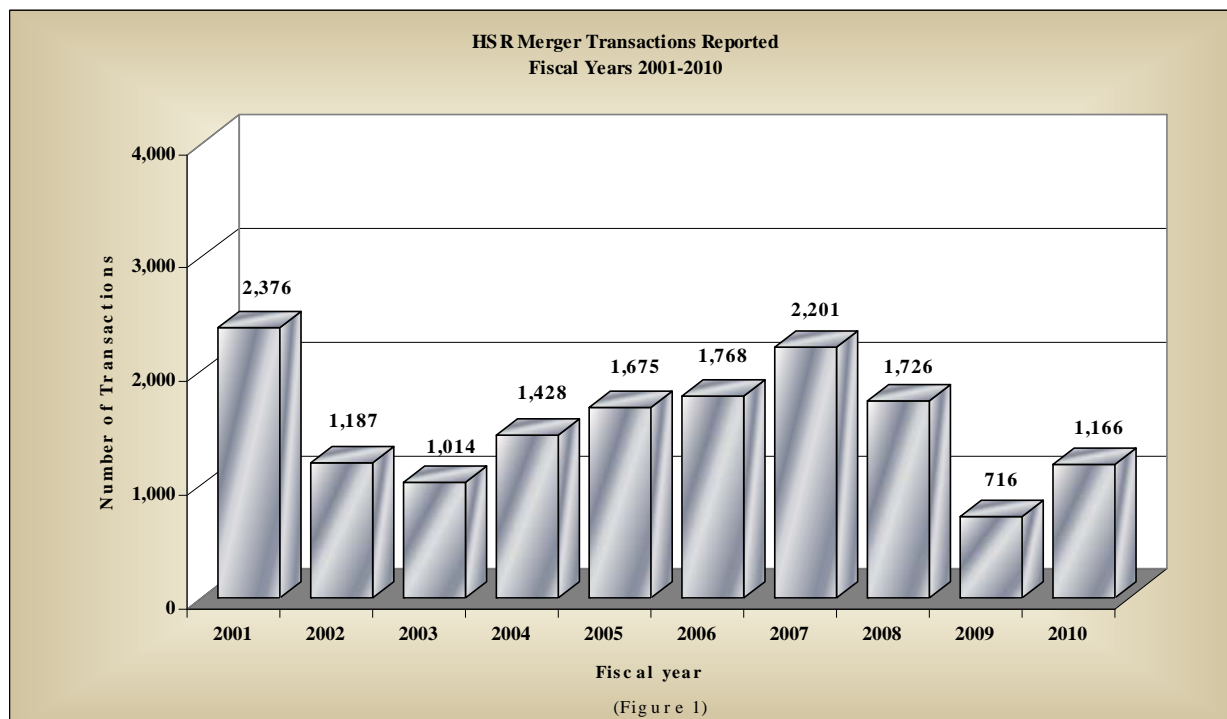
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INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act or the Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (Commission) and the Antitrust Division of the Department of Justice (Antitrust Division or Division) to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in alerting the Commission and the Division of transactions that became the subjects of the numerous enforcement actions brought in fiscal year 2010¹ to protect consumers – individual, business, and government – against anticompetitive mergers.

The Commission and the Antitrust Division continue their efforts to protect competition by identifying and investigating those mergers and acquisitions that raise potentially significant competitive concerns. In fiscal year 2010, 1,166 transactions were reported under the HSR Act, representing about a 63% increase from the 716 transactions reported in fiscal year 2009 and about a 51% decrease from the 2,376 transactions reported in fiscal year 2001, the last partial fiscal year under the previous reporting thresholds.² (See Figure 1 below.)



During the year, the Commission challenged 22 transactions, leading to 19 consent orders, one of which was obtained after the Commission filed an administrative complaint, and

¹ The fiscal year covers the period of October 1, 2009 through September 30, 2010.

² The decrease in the number of reportable transactions since fiscal year 2001 is, to a considerable extent, a result of the significant statutory changes to the HSR Act that took effect on February 1, 2001. The legislation raised the size-of-transaction threshold from \$15 million to \$50 million (with annual adjustments for changes in gross national product that began in 2005), and made other changes to the filing and waiting period requirements. In fiscal year 2010, the threshold was adjusted to \$63.4 million. Section 630 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 2001, Pub. L. No. 106-553, 114 Stat. 2762. See also Appendix A.

three transactions that were abandoned after the parties learned of the Commission's concerns. One of the Commission's notable challenges was against Dun & Bradstreet's consummated acquisition of Quality Education Data, which produces data used to sell books, educational materials, and other products to teachers nationwide. The Commission filed an administrative complaint to challenge this acquisition, but before trial, Dun & Bradstreet agreed to divest to a Commission-approved buyer certain assets acquired in the merger to restore competition. Other notable challenges were against proposed mergers in key industries that are critical to consumers, including pharmaceuticals and energy. In the pharmaceutical industry, the Commission challenged Watson Pharmaceutical's proposed acquisition of rival generic drug company Arrow Pharmaceuticals, asserting that the merger, as originally proposed, would have substantially reduced competition in U.S. markets for important generic drugs used to treat Parkinson's disease and the side effects of chemotherapy. To restore the competition that would have been lost as a result of the merger, the Commission required the firms to sell assets related to two drugs. In the energy industry, the Commission also challenged Pilot Corporation's proposed acquisition of Flying J Inc.'s travel center network. To resolve the Commission's concerns, Pilot, owner of the largest travel center network in the United States, agreed to sell 26 travel centers, which provide diesel, food, parking, and other amenities for truckers, as part of a settlement that will replace the competition that would have been lost because of the acquisition.

The Antitrust Division challenged 19 merger transactions. Consent decrees resolved ten of these challenges³, one matter is currently in litigation, and eight transactions were abandoned or restructured after the Division informed the parties of its antitrust concerns relating to the transaction. Notably, the Division obtained a consent decree requiring Ticketmaster Entertainment Inc. to license its ticketing software, divest ticketing assets and subject itself to anti-retaliation provisions in order to proceed with its proposed merger with Live Nation Inc., thereby remedying anticompetitive effects in the sale of primary ticketing services. The Division also sued and is currently in litigation seeking to undo Dean Foods' acquisition of the Consumer Products Division of Foremost Farms USA, alleging that the acquisition was likely to substantially lessen competition in the sale of school milk and fluid milk to school districts and other purchasers located in Wisconsin, the Upper Peninsula of Michigan, and Northeastern Illinois. In another notable challenge, the Division alleged that an acquisition by Election Systems and Software, Inc., substantially lessened competition in the market for voting equipment systems and obtained a consent decree requiring divestiture of all voting equipment systems assets acquired in that consummated transaction.

In fiscal year 2010, the Commission's Premerger Notification Office (PNO) continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form (the filing form). The HSR website, <http://www.ftc.gov/bc/hsr/>, continued to provide improved access to information necessary to the notification process. The website includes basic resources such as introductory guides that provide an overview of the premerger notification program and merger review process. It is the primary source of information for HSR practitioners seeking information on the HSR form and instructions, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, contact information for PNO staff, and frequently asked questions regarding the HSR filing requirements. Web users can also find up-to-date information on changes to the Act and

³ One consent decree addressed two separate mergers.

amendments to the premerger rules, including speeches, press releases, summaries and highlights, and Federal Register notices about any amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff is available to help HSR practitioners comply with HSR notification requirements.

BACKGROUND OF THE HSR ACT

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. §18a. In general, the HSR Act requires that certain proposed acquisitions of voting securities or assets be reported to the Commission and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days (15 days in the case of a cash tender offer or a bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and, in certain acquisitions, the size of the parties as measured by their sales and assets. Small acquisitions, acquisitions involving small parties, and certain classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

The primary purpose of the statutory scheme, as the legislative history makes clear, is to provide the antitrust enforcement agencies with the opportunity to review mergers and acquisitions before they occur. The premerger notification program, with its filing and waiting period requirements, provides the agencies with both the time and the information necessary to conduct this antitrust review. Much of the information for a preliminary antitrust evaluation is included in the notification filed with the agencies by the parties to the proposed transactions and is immediately available for review during the waiting period.

If either agency determines during the waiting period that further inquiry is necessary, the agency is authorized by Section 7A(e) of the Clayton Act to issue a request for additional information and documentary material (second request). The second request extends the waiting period for a specified period (usually 30 days, but 10 days in the case of a cash tender offer or bankruptcy sale) after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may substantially lessen competition, it may seek an injunction in federal district court to prohibit consummation of the transaction. The Commission may also challenge the transaction in administrative litigation.

The Commission, with the concurrence of the Assistant Attorney General for the Antitrust Division, promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form.⁴ The program became effective on September 5, 1978. The Commission, with the concurrence of the Assistant Attorney General, has amended the rules and the filing form on several occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules.⁵ During fiscal year 2010, the Commission proposed giving the

⁴ 43 Fed. Reg. 33450 (July 31, 1978).

⁵ 43 Fed. Reg. 34443 (August 4, 1978); 43 Fed. Reg. 36053 (August 15, 1978); 44 Fed. Reg. (November

HSR form its most extensive overhaul since its creation. The proposed changes are intended to reduce the burden of filing parties, while capturing additional information that will significantly assist the agencies in their initial review.⁶

A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported, the number of filings received, the number of merger investigations in which second requests were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted.⁷ Appendix A also shows, for fiscal years 2001 through 2010, the number of transactions in which second requests could have been issued, as well as the percentage of transactions in which second requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 2001 through 2010.

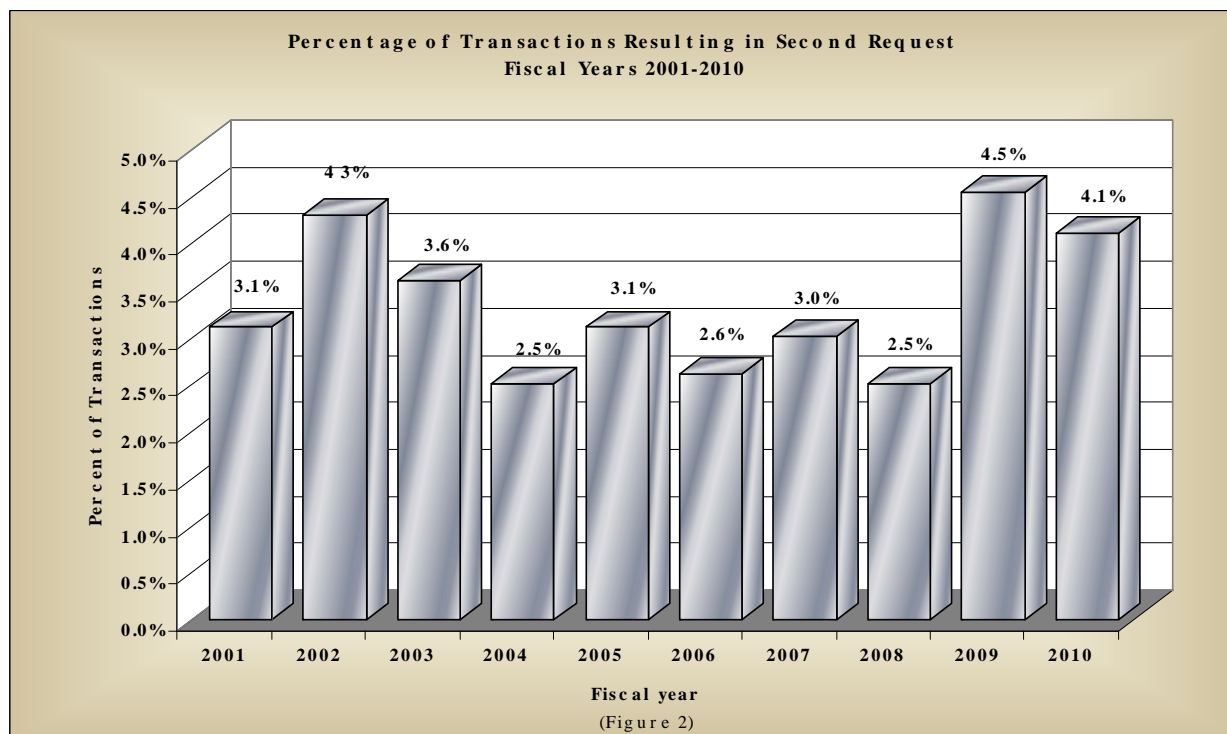
The statistics set out in these appendices show that the number of transactions reported in fiscal year 2010 increased 63% from the number of transactions reported in fiscal year 2009. In fiscal year 2010, 1,166 transactions were reported, while 716 were reported in fiscal year 2009.⁸ The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2010 increased 48% from the number of merger investigations in which second requests were issued in fiscal year 2009. Second requests were issued in 46 merger investigations in fiscal year 2010 (20 issued by the FTC and 26 issued by the Division), while second requests were issued in 31 merger investigations in fiscal year 2009 (15 issued by the FTC and 16 issued by the Division). The percentage of transactions resulting in second requests decreased slightly, from 4.5% in fiscal year 2009 to 4.1% in fiscal year 2010. (*See* Figure 2 below.)

21, 1979); 45 Fed. Reg. 14205 (March 5, 1980); 48 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (November 12, 1985); 51 Fed. Reg. 10368 (March 26, 1986); 52 Fed. Reg. 7066 (March 6, 1987); 52 Fed. Reg. 20058 (May 29, 1987); 54 Fed. Reg. 214251 (May 18, 1989); 55 Fed. Reg. 31371 (August 2, 1990); 60 Fed. Reg. 40704 (August 9, 1995); 61 Fed. Reg. 13666 (March 28, 1996); 63 Fed. Reg. 34592 (June 25, 1998); 66 Fed. Reg. 8680 (February 1, 2001); 66 Fed. Reg. 8723 (February 1, 2001); 66 Fed. Reg. 16241 (March 23, 2001); 66 Fed. Reg. 23561 (May 9, 2001); 66 Fed. Reg. 35541 (July 6, 2001); 67 Fed. Reg. 11898 (March 18, 2002); 67 Fed. Reg. 11904 (March 18, 2002); 68 Fed. Reg. 2425 (January 17, 2003); 70 Fed. Reg. 4988 (January 31, 2005); 70 Fed. Reg. 11501 (March 8, 2005); 70 Fed. Reg. 11526 (March 8, 2005); 70 Fed. Reg. 47733 (August 15, 2005); 70 Fed. Reg. 73369 (December 12, 2005); 70 Fed. Reg. 77312 (December 30, 2005); 71 Fed. Reg. 2943 (January 18, 2006); 71 Fed. Reg. 35995 (June 23, 2006); 72 Fed. Reg. 2692 (January 22, 2007); 75 Fed. Reg. 57110 (September 17, 2010).

⁶ 75 Fed. Reg. 57110 (September 17, 2010).

⁷ The term "transaction," as used in Appendices A and B and Exhibit A to this report, does not refer only to separate mergers or acquisitions. A particular merger, joint venture, or acquisition may be structured such that it involves more than one transaction. For example, cash tender offers, options to acquire voting securities from the issuer, or options to acquire voting securities from someone other than the issuer, may result in multiple acquiring or acquired persons that necessitate separate HSR transaction numbers to track the filing parties and waiting periods.

⁸ This Report, like previous Reports, also includes annual data on "adjusted transactions in which a second request could have been issued" ("adjusted transactions"). See Appendix A and n. 2 of Appendix A (explaining calculation of that data). There were 1128 adjusted transactions in FY 2010, and the data presented in the Tables and the percentages discussed in the text of this Report (e.g., percentage of transactions resulting in second requests) are based on this figure.



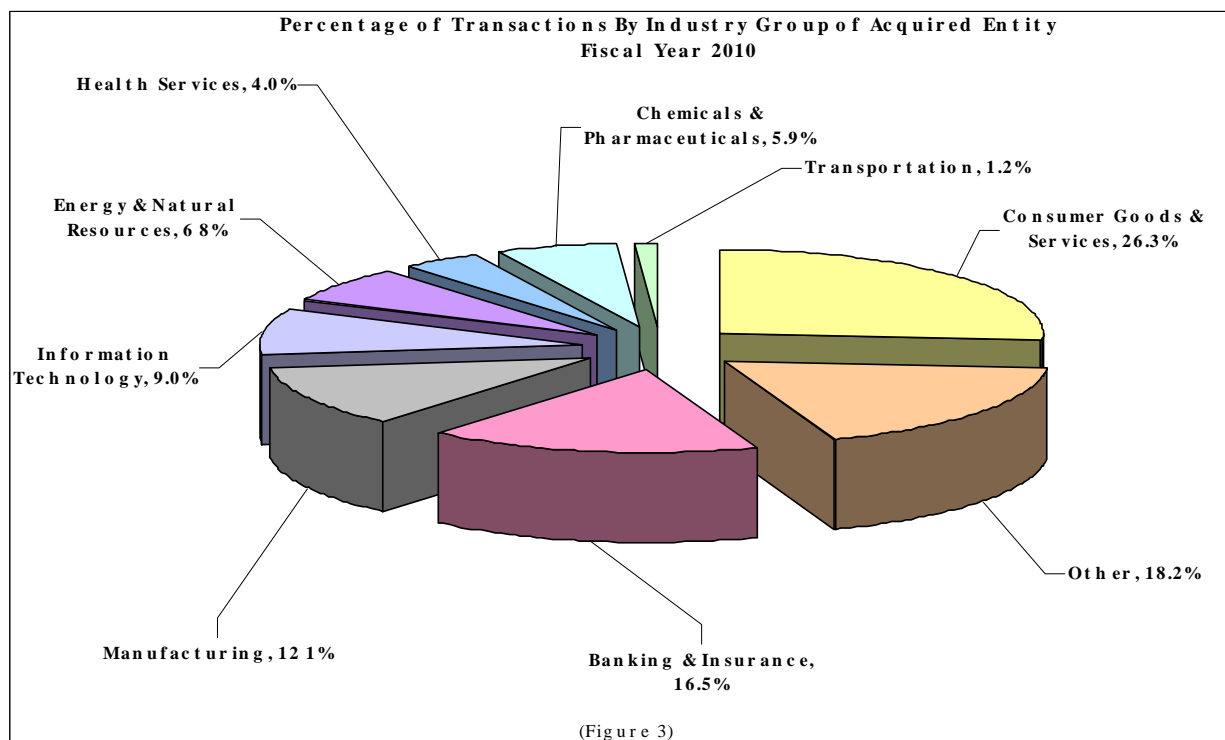
The statistics in Appendix A also show that early termination of the waiting period was requested in the majority of transactions. In fiscal year 2010, early termination was requested in 84% (953) of the transactions reported, remaining unchanged from fiscal year 2009 when it was also requested in 84% (575) of the transactions reported. The percentage of requests granted out of the total requested increased from 69% in fiscal year 2009 to 74% in fiscal year 2010.

Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2010. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued. Table III of Exhibit A shows that, in fiscal year 2010, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 19.7% of the total number of the transactions reported. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report.

The total dollar value of reported transactions rose dramatically from fiscal years 1996 to 2000, from about \$677.4 billion to about \$3 trillion. After the statutory thresholds were raised, the dollar value declined to about \$1 trillion in fiscal year 2001, \$565.4 billion in fiscal year 2002, and \$406.8 billion in fiscal year 2003. This was followed by an increase in the dollar value of reported transactions over the next four years: about \$630 billion in fiscal year 2004, \$1.1 trillion in fiscal year 2005, \$1.3 trillion in fiscal year 2006, and almost \$2 trillion in 2007. The total dollar value of reported transactions declined to just over \$1.3 trillion in fiscal year 2008, and to \$533 billion in fiscal year 2009, and increased to \$780 billion for fiscal year 2010.⁹

⁹ The information on the value of reported transactions for fiscal year 2010 is drawn from the Premerger Database, while data for the previous fiscal years is taken from the corresponding fiscal year Annual HSR Reports (<http://www.ftc.gov/bc/anncompreports.shtml>).

Tables X and XI provide the number of transactions by industry group in which the acquiring person or the acquired entity derived the most revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 2010 based on the acquired entity's operations.¹⁰



DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. Compliance

The Commission and the Antitrust Division continued to monitor compliance with the premerger notification program's filing and waiting period requirements and initiated a number of compliance investigations in fiscal year 2010. The agencies monitor compliance through a variety of methods, including a review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, interested members of the public, and in some cases the parties themselves, often provide the agencies with information about transactions and possible violations of the Act's requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$16,000 – increased in 2009 from \$11,000 – for each day the violation continues.¹¹ The antitrust agencies

¹⁰ The "Other" category consists of industry segments that include construction, educational services, performing arts, recreation, and non-classifiable establishments.

¹¹ Dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (April 26, 1996). The adjustments have included an increase in the maximum civil penalty from \$10,000 to \$11,000 for each day during which a person is in violation under Section 7A(g)(1) (61 Fed. Reg. 54548 (October 21, 1996), corrected at 61 Fed. Reg. 55840 (October 29, 1996)) and to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857-

examine the circumstances of each violation to determine whether penalties should be sought.¹² During fiscal year 2010, 24 corrective filings for violations were received, and the agencies brought one enforcement action, resulting in the payment of \$900,000 in civil penalties.

In this enforcement action, *United States v. Smithfield Foods, Inc. and Premium Standard Farms, LLC*,¹³ the complaint alleged that prior to the expiration of the statutory waiting period applicable to Smithfield's acquisition of Premium Standard, Premium Standard stopped exercising independent business judgment in its hog purchases. Instead, it submitted for Smithfield's consent each of the three contracts for hog purchases from independent producers that arose during the HSR waiting period. These hog procurement contracts were necessary to Premium Standard's ongoing business and entered into in the ordinary course. Through this conduct, Smithfield exercised operational control over Premium Standard's hog procurement and thereby acquired beneficial ownership of a significant segment of Premium Standard's business. Such "gun jumping" is prohibited by the Act. Under the terms of a consent decree filed simultaneously with the complaint and entered by the Court on January 22, 2010, the companies were required to pay a total of \$900,000 in civil penalties to settle the charges.

2. *Threshold Adjustments*

The 2000 amendments to the HSR Act require the Commission to publish adjustments to the Act's jurisdictional and filing fee thresholds annually, based on the change in the gross national product, in accordance with Section 8(a)(5) of the Clayton Act for each fiscal year beginning after September 30, 2004. The Commission amended the rules in 2005 to provide a method for future adjustments as required by the 2000 amendments and to reflect the revised thresholds contained in the rules. The revised thresholds are published annually in January and become effective 30 days after publication.

On January 21, 2010, the Commission published a notice¹⁴ to reflect adjustment of reporting thresholds as required by the 2000 amendments¹⁵ to Section 7A of the Clayton Act, 15 U.S.C. §18a. The revised threshold, which dropped from \$65.2 million to \$63.4 million, became effective February 22, 2010.

3. *International Cooperation*

The Commission and the Antitrust Division routinely cooperate with their non-U.S. counterparts in merger investigations to promote transparency and predictability as well as convergence, where appropriate, towards the best practices of merger review. These efforts enable multiple jurisdictions to manage the similarities and differences in their approach to merger review with the goal of more efficient and effective merger enforcement worldwide to the benefit of consumers and businesses. Additionally, these efforts reduce the risk of inconsistent outcomes and remedies among agencies. In some instances cooperation with non-U.S. competition authorities is particularly extensive. During the past year, the FTC worked on

01 (January 9, 2009)).

¹² When the parties inadvertently fail to file, the enforcement agencies generally do not seek penalties if the parties promptly make corrective filings after discovering the failure to file, submit an acceptable explanation of their failure to file, and have not previously violated the Act.

¹³ *United States v. Smithfield Foods, Inc. and Premium Standard Farms, LLC*, No.1:10-CV-00120 (D.D.C. filed January 21, 2010).

¹⁴ 75 Fed. Reg. 3468 (January 21, 2010).

¹⁵ 15 U.S.C. §18a(a). *See* Pub. L. 106-553, 114 Stat. 2762.

over 15 international merger investigations that involved coordination or cooperation with international counterparts. Highlighted examples from the year are Nufarm/A.H. Marks and Panasonic/Sanyo. In the Nufarm matter, the Commission worked particularly closely with staff from the Canadian Competition Bureau throughout the investigation to arrive at a proposed settlement order that restored competition in both the U.S. and Canadian markets for certain types of herbicides. In the Panasonic/Sanyo matter, the Commission worked with its counterparts in the European Commission (EC), Canada, and Japan to resolve competitive concerns raised by Panasonic's proposed \$9 billion acquisition of Sanyo. The FTC and the EC's Directorate General for Competition coordinated to order the divestiture of a battery manufacturing facility in Japan to protect competition in the market for portable NiMH batteries that power two-way radios used by police and fire departments. Of the Antitrust Division's investigations that were closed during fiscal year 2010, the Division coordinated with one or more non-U.S. competition agencies in eleven matters. Amongst the Antitrust Division's most notable instances of international cooperation were its Ticketmaster matter and Cisco Systems Inc.'s acquisition of Tandberg ASA. In its Ticketmaster matter¹⁶, the Division cooperated closely with the Canadian Competition Bureau throughout the investigation, and the two agencies worked together to obtain the same remedy. The Division and the EC cooperated closely to resolve competition issues regarding Cisco Systems Inc.'s acquisition of Tandberg ASA. In announcing that it would not challenge the acquisition, the Division stated that it had taken into account commitments Cisco had made to the EC as part of the EC's merger clearance process, along with various market factors, and stated that the investigation "was a model of international cooperation between the United States and the European Commission."¹⁷ In many instances, international cooperation is aided by the parties' waivers of certain confidentiality rights so the agencies can have more meaningful discussions regarding their analyses of the merger and, if enforcement action is warranted, seek compatible remedies.

MERGER ENFORCEMENT ACTIVITY¹⁸

1. *The Department of Justice*

During fiscal year 2010, the Antitrust Division challenged 19 merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed or as consummated. In eleven of these challenges, the Antitrust Division filed a complaint in U.S. district court.¹⁹ Ten of these challenges were settled by consent decree, and one matter is currently in litigation. In the other eight challenges during fiscal year 2010, when apprised of the Antitrust Division's concerns regarding their proposed transactions, the parties in four instances abandoned the proposed transaction and in four instances restructured the proposed transaction to avoid competitive problems.²⁰

¹⁶ See *infra* at p. 10.

¹⁷ http://www.justice.gov/atr/public/press_releases/2010/257173.pdf.

¹⁸ The cases listed in this section were not necessarily reportable under the premerger notification program. Because of provisions regarding the confidentiality of the information obtained pursuant to the Act, it would be inappropriate to identify which cases were initiated under the program except in specific instances where such information has already been disclosed.

¹⁹ The Division filed ten complaints. One of those complaints challenged two transactions, and both of those challenges were resolved in one consent decree.

²⁰ In two instances, the Division issued a press release: March 8, 2010 – proposed acquisition of Physicians Health Plan of Mid-Michigan by Blue Cross Blue Shield of Michigan (commercial health insurance); and August 27, 2010 – proposed merger of Continental Airlines and United Airlines (takeoff and landing rights at Newark Liberty Airport). In the other six instances, the Division informed the parties of its concerns, but did not issue a press release: proposed acquisition of National Amusements, Inc. by New Rave (movie theatres); proposed

In [*United States et al. v. AT&T Inc. and Centennial Communications Corp.*](#),²¹ the Division and the State of Louisiana challenged the proposed acquisition of Centennial Communications Corp. by AT&T. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition for mobile wireless telecommunications services in eight cellular marketing areas (CMAs), as defined by the Federal Communications Commission (FCC), likely resulting in higher prices, lower quality and reduced network investments. AT&T and Centennial were each other's closest competitor for a significant set of customers in the eight CMAs. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, which was entered by the court on February 10, 2010, AT&T was required to divest assets in the eight affected CMAs in southwestern and central Louisiana and southwestern Mississippi in order to proceed with the acquisition. The Division coordinated with the FCC throughout its investigation, and the acquisition was also subject to FCC review.

In [*United States v. Cameron International Corporation and NATCO Group Inc.*](#),²² the Division challenged both Cameron's proposed \$780 million acquisition of NATCO and Cameron's previous \$8.5 million acquisition of assets of Howe Baker Engineers Ltd. The complaint alleged that the NATCO transaction, as originally proposed, would have substantially lessened competition in the manufacture of refinery desalters in the United States. The complaint also alleged that Cameron's acquisition of the Howe Baker assets in 2005 had substantially lessened competition and created a monopoly in that market. Refinery desalters are used to remove salt from crude oil at the oil refining stage of production. The desalting process is a critical initial stage of the refining process. Cameron and NATCO, a recent entrant, were each other's closest competitor for a significant set of refinery customers domestically. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, Cameron was required to divest the desalter and dehydrator assets it purchased from Howe Baker. The decree also required Cameron to divest a non-exclusive, worldwide, irrevocable license to NATCO's refinery desalter technology that utilizes dual frequency transformers. The court entered the consent decree on May 11, 2010.

In [*United States et al. v. Stericycle, Inc., ATMW Acquisition Corp., Medserve, Inc., and Avista Capital Partners, L.P.*](#),²³ the Division and the States of Missouri and Nebraska challenged the acquisition of Medserve by Stericycle. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in infectious waste collection and treatment services to hospitals and other critical healthcare facilities in Kansas, Missouri, Nebraska, and Oklahoma, resulting in higher prices and reduced service. Stericycle and Medserve were the two largest providers of infectious waste collection and treatment services in the United States, and were the only two firms able to compete for customers that generated

acquisition of NSTAR Corporation's thermal distribution system in the Boston, Massachusetts area by Morgan Stanley Infrastructure Partners and Veolia North America Holdings, Inc. (steam distribution); proposed acquisition of Spheris Holding II, Inc. by Nuance Communications, Inc. (automatic speech recognition); proposed acquisition of Lewis Brothers Bakeries' Butternut brand by Hostess Brands, Inc. (white pan bread); proposed acquisition of CPI International, Inc. by Comtech Telecommunications Corp. (traveling wave tube amplifiers); and Continental Airlines and AirTran Airways (exchange of slots at Newark, LaGuardia, and Reagan Washington National airports).

²¹ *United States et al. v. AT&T Inc. and Centennial Communications Corp.*, No. 1:09-CV-01932 (D.D.C. filed October 13, 2009).

²² *United States v. Cameron International Corporation and NATCO Group Inc.*, No. 1:09-CV-02165 (D.D.C. filed November 17, 2009).

²³ *United States et al. v. Stericycle, Inc., ATMW Acquisition Corp., Medserve, Inc., and Avista Capital Partners, L.P.*, No. 1:09-CV-02268 (D.D.C. filed November 30, 2009).

large quantities of infectious waste in the affected geographic areas. The Division filed a proposed consent decree simultaneously with the complaint, requiring divestiture of all of MedServe's assets primarily used in the provision of infectious waste collection and treatment services to large customers in Kansas, Missouri, Nebraska, and Oklahoma to a viable purchaser approved by the Department. The court entered the decree on April 30, 2010.

In [*United States et al. v. Dean Foods Company*](#),²⁴ the Division and the States of Illinois, Michigan, and Wisconsin sued seeking to undo Dean's April 2009 acquisition of the Consumer Products Division of Foremost Farms USA, which included two dairy processing plants, located in Waukesha and DePere, Wisconsin. Dairy processors, such as Dean and Foremost, purchase raw milk from dairy farms and agricultural cooperatives and then pasteurize and package the milk for sale to school districts, supermarkets and other commercial customers. The complaint alleged that the acquisition was likely to substantially lessen competition both in the sale of school milk to individual school districts located throughout Wisconsin and the Upper Peninsula of Michigan and in the sale of fluid milk to purchasers located in those areas and in Northeastern Illinois. Dean and Foremost were the first and fourth largest sellers of school milk and fluid milk in the region, and the acquisition resulted in Dean accounting for more than 57% of fluid milk sales. Because the acquisition was valued at \$35 million, premerger notification to the federal antitrust agencies under the HSR Act had not been required. On April 7, 2010, the district court denied defendant's motion to dismiss the complaint, and the suit remains in litigation.

In [*United States et al. v. Ticketmaster Entertainment, Inc. and Live Nation, Inc.*](#),²⁵ the Division, joined by 17 state attorneys general (Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Massachusetts, Nebraska, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, and Wisconsin), challenged the acquisition of Live Nation by Ticketmaster Entertainment. The complaint alleged that the transaction, as originally proposed, would be likely to lessen competition substantially for primary ticketing services to major concert venues located in the United States, and thus likely to result in higher prices and less innovation for consumers. Primary ticketing services facilitate the initial sale of tickets to concertgoers through websites, call centers, and retail networks. Ticketmaster was the largest primary ticketing company in the United States. Live Nation, the largest concert promoter in the United States, had entered the market for primary ticketing services in December, 2008. A proposed consent decree was filed simultaneously with the complaint. Under the terms of the decree, entered by the court on July 30, 2010, the merged firm must license ticket software and divest ticketing assets to two companies, Anschutz Entertainment Group and either Comcast-Spectacor or another buyer suitable to the Division, allowing both companies to compete head-to-head with the merged entity. The decree also prohibits the merged firm from engaging in certain conduct, such as retaliating against any venue owner that chooses to use another company's ticketing services, and requires firewalls to protect confidential and valuable competitor data by preventing the merged firm from using information gleaned from its ticketing business in the day-to-day operations of its promotions or artist management business.

In [*United States v. Bemis Company, Inc., Rio Tinto plc and Alcan Corporation*](#),²⁶ the Division challenged the proposed \$1.2 billion acquisition of the Alcan Packaging Food Americas business by Bemis from Rio Tinto, the parent of Alcan Corporation. The complaint alleged that

²⁴ *United States et al. v. Dean Foods Company*, No. 10-C-0059 (E.D. WI filed January 22, 2010).

²⁵ *United States et al. v. Ticketmaster Entertainment, Inc. and Live Nation, Inc.*, No. 1:10-CV-00139 (D.D.C. filed January 25, 2010).

²⁶ *United States v. Bemis Company, Inc., Rio Tinto plc and Alcan Corporation*, No. 1:10-CV-00295 (D.D.C. filed February 24, 2010).

the acquisition, as originally proposed, likely would have substantially lessened competition in the United States and Canada for the development, production, and sale of both flexible-packaging rollstock for chunk, sliced and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat. Flexible packaging products for natural cheese and fresh meat are unique in that they must meet strict performance standards to prevent spoilage, maintain product appearance, operate properly on customers' packaging equipment, and adhere to unique standards specific to the particular products. As a result, these types of flexible packaging are difficult to manufacture and commercialize successfully. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, Bemis was required to divest certain assets, including plants and intellectual property, used in the production and sale of flexible packaging for natural cheese and fresh meat. The court entered the decree on July 13, 2010.

In *United States et al. v. Election Systems and Software, Inc.*,²⁷ the Division, joined by nine state attorneys general (Arizona, Colorado, Florida, Maine, Maryland, Massachusetts, New Mexico, Tennessee, and Washington), challenged the 2009 acquisition of Premier Election Solutions, Inc. and PES Holdings, Inc. (collectively, "Premier") by Election Systems and Software, Inc. ("ES&S"). The complaint alleged that the acquisition substantially lessened competition in the market for voting equipment systems, as it combined the two largest providers of systems used to tally votes in federal, state, and local elections in the United States. As a result of the acquisition, which did not require notification under the HSR Act because its \$5 million value fell below the Act's reporting threshold, ES&S became the provider of more than 70 percent of the voting equipment systems in the United States. The Division filed a proposed consent decree simultaneously with the complaint. The decree, which was entered by the court on June 30, 2010, required that ES&S divest Premier voting equipment systems assets it had acquired, including the means to produce all versions of Premier's hardware, software, and firmware used to record, tabulate, transmit, or report votes.

In *United States v. Baker Hughes Incorporated and BJ Services Company*,²⁸ the Division challenged the proposed \$5.5 billion acquisition of BJ Services by Baker Hughes. The complaint alleged that the acquisition, as originally proposed, would likely substantially lessen competition by combining two of only four companies that provide specialized pumping services, called vessel stimulation services, necessary for the production of oil and gas from wells in the U.S. Gulf of Mexico. These critical services prevent sand from interfering with the flow of oil and gas from wells in the Gulf and are performed using specially designed and equipped vessels that are operated by experienced crews and supported by scientists, engineers, and other lab technicians who customize the stimulation job for the specific well formation. The Division filed a proposed consent decree simultaneously with the complaint, requiring divestiture of two vessels used for providing stimulation services. The court entered the decree on July 26, 2010.

In *United States et al. v. AMC Entertainment Holdings, Inc. and Kerasotes Showplace Theatres, LLC*,²⁹ the Division and the States of Illinois, Colorado, and Indiana challenged AMC Entertainment Holdings' proposed acquisition of most of the movie theaters operated by Kerasotes Showplace Theatres. The complaint alleged that the transaction, as originally

²⁷ *United States et al. v. Election Systems and Software, Inc.*, No.1:10-CV-00380 (D.D.C. filed March 8, 2010).

²⁸ *United States v. Baker Hughes Incorporated and BJ Services Company*, No. 1:10-CV-00659 (D.D.C. filed April 27, 2010).

²⁹ *United States et al. v. AMC Entertainment Holdings, Inc. and Kerasotes Showplace Theatres, LLC*, No. 1:10-CV-00846 (D.D.C. filed May 21, 2010).

proposed, would likely substantially lessen competition among movie theaters that show first-run, commercial movies in the Chicago, Illinois, Denver, Colorado, and Indianapolis, Indiana metropolitan areas, resulting in higher ticket prices and a decreased quality viewing experience for moviegoers. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, which was entered by the court on August 9, 2010, AMC was required to divest the following movie theaters: AMC Gardens 13 and Kerasotes Glen 10 (North Suburban Chicago); AMC Cantera 30 (Upper Southwest Suburban Chicago); Kerasotes Showplace 12 Bolingbrook (Lower Southwest Suburban Chicago); Kerasotes Colony Square 12 (Upper Northwest Denver); Kerasotes Olde Town 14 (Lower Northwest Denver); AMC Castleton Square 14 or Kerasotes Showplace 12 Glendale Town (North Indianapolis); and AMC Greenwood 14 (South Indianapolis).

In [*United States v. Amcor Ltd., Rio Tinto Plc and Alcan Corporation*](#),³⁰ the Division challenged the proposed acquisition of Rio Tinto's Alcan Packaging Medical Flexibles business by Amcor Ltd. The complaint alleged that the transaction, as originally proposed, would substantially lessen competition in the development, production and sale of vented bags for medical use in the United States. Vented bags are a type of flexible packaging used to package large or bulky medical items such as drapes, gowns, and surgery trays and kits. Vented bags must meet rigorous performance and qualification standards because failure of the package in the sterilization process could expose the contents to microbes, bacteria, or particulates, which could cause injury, sickness, or even death to a patient. Under the terms of the proposed consent decree filed simultaneously with the complaint, the companies were required to divest Alcan Packaging's Marshall, North Carolina plant, which manufactured all of Alcan Packaging's vented bags for medical use. The court entered the decree on October 6, 2010.

Additionally during fiscal year 2010, the Division settled via consent decree a merger challenge brought in 2007. In [*United States v. Daily Gazette Company and MediaNews Group, Inc.*](#), Cv. No: 2:07-0329 (S.D.W.V. filed 5/22/07)³¹, the Division filed a proposed consent decree on January 20, 2010. Under the terms of the decree, which was entered by the court on July 19, 2010, the parties were required to restructure their newspaper joint operating arrangement and take other steps to remedy the anticompetitive effects of a series of transactions entered into in 2004. MediaNews Group (now known as Affiliated Media Inc.) will regain independent control over the operations of the *Charleston Daily Mail* and economic incentives to grow the newspaper. The settlement also requires the parties to offer substantial discounts of the *Charleston Daily Mail* in order to rebuild its subscriber base and prohibits the *Daily Gazette* from discriminating against the *Charleston Daily Mail* in circulation, advertising sales, and other key joint activities. In addition, the companies are required to continue publishing the *Charleston Daily Mail* as long as it has not failed financially.

³⁰ *United States v. Amcor Ltd., Rio Tinto Plc and Alcan Corporation*, No. 1:10-CV-00973 (D.D.C. filed June 10, 2010).

³¹ See the HSR Annual Report, Fiscal Year 2007 for a description of this case.

2. *The Federal Trade Commission*

During fiscal year 2010, the Commission challenged 22 transactions that it had reason to believe may have lessened competition if allowed to proceed as proposed or, in the case of consummated transactions, to remain unchallenged,³² leading to 18 consent orders in non adjudicative proceedings, one administrative complaint, and three transactions that were abandoned after Commission staff informed the parties of its antitrust concerns. In the one case in which the Commission issued an administrative complaint, the parties settled the charges by agreeing to a divestiture.

In *The Dun & Bradstreet Corporation/QED*,³³ the Commission issued an administrative complaint challenging The Dun & Bradstreet Corporation's February 2009 acquisition of Quality Education Data (QED) and alleging that the deal hurt consumers by eliminating nearly all competition in the market for kindergarten through twelfth-grade educational marketing databases. The data sold by these companies is used to sell books, education materials, and other products to teachers and other educators nationwide. The combination of the two companies gave Dun & Bradstreet, through its subsidiary Market Data Retrieval, more than 90% of the market for K-12 educational marketing data. To settle the charges, Dun & Bradstreet agreed to divest certain assets to an independent data company, restoring competition that had been eliminated as a result of the transaction.

In fiscal year 2010, the Commission accepted consent agreements and issued proposed orders for public comment in 18 merger cases. Thirteen of the consent orders became final in fiscal year 2010; five either became final in fiscal year 2011 or are still pending.

In *Pfizer Inc./Wyeth*,³⁴ the Commission challenged Pfizer Inc.'s proposed \$68 billion acquisition of Wyeth, alleging that the transaction would have reduced competition in several markets for the manufacture and sale of animal vaccines and pharmaceutical products, leaving veterinarians and other animal health product customers with limited options. To settle the Commission's claims, the companies agreed to sell animal health business assets to a Commission-approved buyer.

In *Merck/Schering-Plough*,³⁵ the Commission's review of Schering-Plough's proposed \$41.1 billion acquisition of Merck resulted in significant divestitures to resolve concerns that the merger would have reduced competition in several animal health care markets and in the market for drugs used to treat nausea and vomiting in surgical and chemotherapy patients. Before the merger, the companies were two of the leading animal health pharmaceutical suppliers in the United States, and competed head-to-head in several markets. In addition, Merck's Emend product is the first and only drug in its class, NK 1 receptor antagonists, approved for human use to treat side effects of chemotherapy. Schering-Plough was in the process of licensing an equivalent drug to a third party when its transaction with Merck was announced. According to the complaint, the merger would likely have reduced the combined firm's incentives to launch Schering-Plough's competing drug. To resolve the Commission's concerns in the market for NK 1 receptor antagonist drugs for nausea and vomiting, Schering-Plough agreed to divest its related

³² To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2010.

³³ *FTC v. The Dun & Bradstreet Corporation*, Dkt. No. 9342 (administrative complaint issued May 7, 2010).

³⁴ In the matter of *Pfizer Inc./Wyeth*, Docket No. C-4267 (proposed order issued Oct. 14, 2009).

³⁵ In the matter of *Merck/Schering-Plough*, Docket No. C-4268 (proposed order issued Oct. 29, 2009).

assets to Opko Health, Inc. To remedy concerns about animal health product competition, Merck agreed to sell its interest in Merial (an animal health joint venture) to Sanofi-Aventis, its joint venture partner.

In [*Panasonic/Sanyo*](#),³⁶ the Commission challenged major consumer electronics manufacturer Panasonic Corporation's proposed \$9 billion acquisition of Sanyo Electric Co., Ltd., requiring that Sanyo sell its portable nickel metal hydride (NiMH) battery business, including a premier manufacturing plant in Japan. NiMH batteries power two-way radios, among other products, which are used by police and fire departments nationwide. Panasonic and Sanyo were the two largest manufacturers and sellers of these batteries. The Commission order will maintain competition through the divestiture to FDK Corporation.

In [*SCI/Palm Mortuary*](#),³⁷ the Commission challenged Service Corporation International's (SCI) proposed acquisition of Palm Mortuary, Inc., a competitor in the cemetery services business in Las Vegas, Nevada. The Commission required that SCI, the nation's largest cemetery operator, must sell a cemetery and funeral home in Las Vegas to complete its proposed acquisition of Palm Mortuary.

In [*Watson Pharmaceuticals/Arrow Group*](#),³⁸ the Commission challenged Watson Pharmaceutical's proposed \$1.7 billion acquisition of rival generic drug company Arrow Pharmaceuticals, alleging that the transaction would have substantially reduced competition in the U.S. markets for important generic drugs used to treat Parkinson's disease and the side effects of chemotherapy. To remedy the Commission's concerns, Watson and Arrow agreed to sell certain rights and assets related to the two drugs to Commission-approved buyers to ensure continued competition in these markets.

In [*Agrium/CF Industries*](#),³⁹ agricultural products supplier Agrium Inc. agreed to sell a range of assets as part of an agreement with the Commission that will allow the company to move forward with its acquisition of competitor CF Industries Holdings, Inc. The consent order settles charges that the acquisition would have eliminated competition in the market for anhydrous ammonia fertilizer, a product that farmers rely on to grow their crops.

In [*Danaher Corp./MDS*](#),⁴⁰ the Commission challenged Danaher's proposed acquisition of MDS Analytical Technologies, requiring that MDS divest assets related to its laser microdissection business. Danaher and MDS were two of only four firms in North America selling microdissection devices – a key tool for scientific research. The settlement is designed to preserve competition in this market.

In [*PepsiCo Inc./Pepsi Bottling*](#),⁴¹ the Commission required that carbonated soft drink company PepsiCo, Inc. restrict its access to confidential competitive information of rival Dr Pepper Snapple Group as a condition for proceeding with PepsiCo's proposed \$7.8 billion acquisition of its two largest bottlers and distributors, which also distribute Dr Pepper Snapple Group carbonated soft drinks. Under the order, PepsiCo is required to set up a firewall to ensure

³⁶ In the matter of *Panasonic/Sanyo*, Docket No. C-4274 (proposed order issued Nov. 24, 2009).

³⁷ In the matter of *SCI/Palm Mortuary*, Docket No. C-4275 (proposed order issued Nov. 25, 2009).

³⁸ In the matter of *Watson Pharmaceuticals/Arrow Group*, Docket No. C-4276 (proposed order issued Dec. 2, 2009).

³⁹ In the matter of *Agrium/CF Industries*, Docket No. C-4277 (proposed order issued Dec. 23, 2009).

⁴⁰ In the matter of *Danaher Corp/MDS*, Docket No. C-4283 (proposed order issued Jan. 27, 2010).

⁴¹ In the matter of *PepsiCo Inc./Pepsi Bottling*, Docket No. C-4301 (proposed order issued Feb. 26, 2010).

that its ownership of these bottlers does not give PepsiCo employees access to commercially sensitive and confidential Dr Pepper Snapple marketing and brand plans.

In [*SCI/Keystone North America*](#),⁴² Service Corporation International (SCI), the nation's largest provider of funeral and cemetery services, settled Commission charges that its proposed acquisition of Keystone North America Inc., the fifth-largest funeral and cemetery services provider in North America, would have raised antitrust concerns in the markets for both funeral services and cemetery services. The order requires SCI to sell 22 funeral homes and four cemeteries in 19 local markets to ensure competition is preserved following its acquisition of Keystone.

In [*Varian, Inc./Agilent, Inc.*](#),⁴³ Agilent Technologies, Inc. and Varian, Inc., two leading global suppliers of high-performance scientific measurement instruments, agreed to sell three of their product lines in order to proceed with their proposed \$1.5 billion merger. According to the Commission's complaint, Agilent's acquisition of Varian would have violated U.S. antitrust laws by reducing competition for three types of scientific measurement instruments because the companies currently compete with one another in those markets. To resolve these competitive concerns, the parties agreed to an order requiring them to sell assets related to the manufacture and sale of Micro Gas Chromatography instruments, Triple Quadrupole Gas Chromatography-Mass Spectrometry instruments, and Inductively Coupled Plasma-Mass Spectrometry instruments.

In [*Flying J/Pilot Corp.*](#),⁴⁴ the Commission required Pilot Corporation, owner of the largest travel center network in the U.S., to sell 26 travel centers as part of a settlement to replace the competition that would have been lost because of Pilot's proposed \$1.8 billion acquisition of Flying J Inc.'s travel center network. Pilot agreed to sell the travel centers, which provide diesel, food, parking, and other amenities for truckers, to Love's Travel Stops and Country Stores. According to the Commission's complaint, the deal between Pilot and Flying J would have reduced competition for certain long-haul trucking fleets for which Pilot and Flying J were the first and second best choices to fulfill their diesel needs.

In [*AEA Investors/D.A. Stuart GmbH*](#),⁴⁵ Houghton International, Inc., the leading North American provider of hot rolling oil used to process aluminum, agreed to sell some of the assets it acquired in 2008 through its purchase of D.A. Stuart GmbH, a transaction that included multiple product markets. The Commission's investigation found that Houghton's acquisition of D.A. Stuart GmbH combined the two largest suppliers of aluminum hot rolling oil (AHRO) in North America, giving the combined firm control of almost 75% of the North American market. The Commission's complaint alleges that through its purchase of Stuart, Houghton could unilaterally raise AHRO prices to U.S. consumers. The complaint also alleged that the acquisition could decrease innovation for this vital input into aluminum manufacturing. Under the order settling the Commission's charges, Houghton will sell Stuart's AHRO business to Quaker Chemical Corporation.

⁴² In the matter of *SCI/Keystone North America*, Docket No. C-4284 (proposed order issued Mar. 26, 2010).

⁴³ In the matter of *Varian, Inc./Agilent, Inc.*, Docket No. C-4292 (proposed order issued May 14, 2010).

⁴⁴ In the matter of *Flying J/Pilot Corp.*, Docket No. C-4293 (proposed order issued Jun. 30, 2010).

⁴⁵ In the matter of *AEA Investors/ D.A. Stuart GmbH*, Docket No. C-4297 (proposed order issued Jul. 14, 2010).

In [*Fidelity/LandAmerica*](#),⁴⁶ to settle Commission charges that its 2008 acquisition of three LandAmerica Financial, Inc. subsidiaries was anticompetitive, Fidelity National Financial, Inc. agreed to sell several title plants and related assets in the Portland, Oregon, and Detroit, Michigan, metropolitan areas and in four other Oregon counties. Fidelity sells title insurance and provides title information services. Land America also sold title insurance and services. Title plants are databases used by abstractors, title insurers, title insurance agents, and others to determine the ownership of, and interests in, real property in connection with underwriting and issuance of title insurance policies and for other purposes. According to the Commission, Fidelity's acquisition of the LandAmerica assets was anticompetitive in several local markets for the provision of title insurance information services by title plants. The consent will restore independent title plant owners and competition in these markets.

In [*NuFarm/A.H. Marks Holdings, Ltd.*](#),⁴⁷ Australian chemical company Nufarm Limited agreed to sell certain assets and modify some of its business agreements to settle charges that its 2008 acquisition of rival A.H. Marks Holding Limited hurt competition in the U.S. market for three herbicides that are relied upon by farmers, landscapers, and consumers. Under the settlement, Nufarm agreed to sell rights and assets associated with two of the herbicides to competitors and to modify agreements with two other companies to allow them to fully compete in the market for the other herbicide. Nufarm's acquisition of United Kingdom-based A.H. Marks gave Nufarm monopolies in the U.S. markets for two herbicides called MCPA and MCPP-P, which also are known as phenoxy herbicides. The transaction also left only two competitors in the market for a third phenoxy herbicide, called 2,4DB. The three herbicides are widely used in the turf, lawn care, and agriculture industries to eliminate certain weeds safely and inexpensively.

In [*Tops/Penn Traffic*](#),⁴⁸ the Commission reached a settlement agreement with Tops Markets LLC that protects consumers from the potential anticompetitive effects of Tops' recent acquisition of the bankrupt Penn Traffic Company supermarket chain. To settle Commission charges that the acquisition was anticompetitive in several areas of New York and Pennsylvania, Tops agreed to sell seven Penn Traffic supermarkets to Commission-approved buyers. Because the Commission adopted a flexible process for reviewing the potential anticompetitive effects of the acquisition, none of the 79 Penn Traffic stores was liquidated in the bankruptcy proceeding.

In [*Nestle/Novartis*](#),⁴⁹ to settle Commission charges that its proposed acquisition of Alcon, Inc. from Nestle, S.A. would be anticompetitive, Novartis AG agreed to sell to a Commission-approved buyer the rights and assets related to an injectable miotic, an eye care drug used in cataract surgery to constrict the pupil to help check for ruptures in the eye. Novartis and Alcon are the only two U.S. providers of injectable miotics, and the Commission alleged that the acquisition would have created a monopoly in injectable miotics. The settlement requires Novartis to sell its drug Miochol-E to Bausch & Lomb, Inc.

In [*Airgas/Air Products and Chemicals*](#),⁵⁰ industrial gas supplier Air Products and Chemicals, Inc. reached an agreement with the Commission requiring the company to sell certain

⁴⁶ In the matter of *Fidelity/LandAmerica*, Docket No. C-4300 (proposed order issued Jul. 16, 2010).

⁴⁷ In the matter of *NuFarm/A.H. Marks Holdings, Ltd.* Docket No. C-4298 (proposed order issued Jul. 28, 2010).

⁴⁸ In the matter of *Tops/Penn Traffic*, Docket No. C-4295 (proposed order issued Aug. 4, 2010).

⁴⁹ In the matter of *Nestle/Novartis*, Docket No. C-4296 (proposed order issued Aug. 16, 2010).

⁵⁰ In the matter of *Airgas/Air Products and Chemicals*, Docket No. C-4299 (proposed order issued Sep. 9, 2010).

liquid gas assets to resolve Commission charges that Air Products' proposed acquisition of Airgas, a competing industrial gas supplier, would be anticompetitive. The Commission alleged that the takeover would have harmed competition in five regional markets for bulk liquid oxygen and bulk liquid nitrogen, which are used in a range of applications from hospital patient care to the manufacture of frozen foods. The Commission order would restore this competition.

In [*Coca-Cola/Coca-Cola Enterprise*](#),⁵¹ The Coca-Cola Company agreed to restrict its access to confidential competitive business information of rival Dr Pepper Snapple Group as a condition for completing Coca-Cola's proposed \$12.3 billion acquisition of its largest North American bottler, which also distributes Dr Pepper Snapple carbonated soft drinks. Under the settlement, Coca-Cola will set up a "firewall" to ensure that its ownership of the bottling company does not give certain Coca-Cola employees access to commercially sensitive confidential Dr Pepper Snapple marketing information and brand plans. In a complaint filed with the settlement, the Commission charged that access to this information likely would have harmed competition in the U.S. markets for carbonated soft drinks.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

The Commission and the Antitrust Division continually review the impact of the premerger notification program on the business community and antitrust enforcement. As indicated in past annual reports, the HSR program ensures that virtually all relatively large mergers or acquisitions that affect consumers in the United States will be reviewed by the antitrust agencies prior to consummation. The agencies generally have the opportunity to challenge unlawful transactions before they occur, thus avoiding the problem of constructing effective post-acquisition relief. As a result, the HSR Act is doing what Congress intended, giving the government the opportunity to investigate and challenge those relatively large mergers that are likely to harm consumers *before* injury can arise. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions that raised significant antitrust concerns before the antitrust agencies had the opportunity to consider adequately their competitive effects. The enforcement agencies were forced to pursue lengthy post-acquisition litigation, during the course of which harm from the consummated transaction continued (and afterwards as well, where achievement of effective post-acquisition relief was not practicable). Because the premerger notification program requires reporting before consummation, this problem has been significantly reduced.

Always cognizant of the program's impact and effectiveness, the enforcement agencies continue to seek ways to speed up the review process and reduce burdens for companies. As in past years, the agencies will continue their ongoing assessment of the HSR program to increase accessibility, promote transparency, and reduce the burden on the filing parties without compromising the agencies' ability to investigate and interdict proposed transactions that may substantially lessen competition.

In August 2010, the Commission proposed giving the HSR form its most extensive overhaul since its creation. The proposed form changes are an attempt to provide the agencies

⁵¹ In the matter of *Coca-Cola/Coca-Cola Enterprise*, Docket No. C-4305 (proposed order issued Sep. 27, 2010).

with some additional information that would be useful in making an initial evaluation of whether a transaction may raise competitive issues warranting investigation, while at the same time eliminating the need to provide certain information that the agencies have found not as helpful as originally anticipated. The public comment period ended on October 18, and the agencies are considering those comments before implementing HSR form changes.⁵²

⁵² 75 Fed. Reg. 57110 (September 17, 2010).

LIST OF APPENDICES

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- Appendix B - Number of Transactions reported and Filings Received by Month for Fiscal Years 2001 - 2010

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal year 2010, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interests

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 2001 – 2010

APPENDIX A
SUMMARY OF TRANSACTION BY YEAR

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Transactions Reported	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166
Filings Received ¹	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1411	2,318
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	2,237	1,142	968	1,377	1,610	1,746	2,108	1,656	684	1,128
Investigations in Which Second Requests Were Issued	70	49	35	35	50	45	63	41	31	46
FTC ³	27	27	15	20	25	28	31	21	15	20
Percent ⁴	1.2%	2.4%	1.5%	1.5%	1.6%	1.6%	1.5%	1.3%	2.2%	1.8%
DOJ ³	43	22	20	15	25	17	32	20	16	26
Percent ⁴	1.9%	1.9%	2.1%	1.1%	1.6%	1.0%	1.5%	1.2%	2.3%	2.3%
Transactions Involving a Request For Early Termination ⁵	2,063	1,042	700	1,241	1,385	1,468	1,840	1,385	575	953
Granted ⁵	1,603	793	606	943	997	1,098	1,402	1,021	396	704
Not Granted ⁵	460	249	94	298	388	370	438	364	179	249

Note: The data for FY 2004 and FY 2005 “Transactions Reported” and for FY 2004 – FY 2007 “Filings Received” reflect corrections to some prior Annual reports to account for a coding error.

¹ Usually, two filings are received, one from the acquiring person and one from the acquired person when a transaction is reported. Only one application is received when an acquiring party files for an exemption under Section 7A (c)(6) or (c)(8) of the Clayton Act.

² These figures omit from the total number of transactions reported all transactions for which the agencies were not authorized to request additional information. These include (1) incomplete transactions (only one party filed a complete notification); (2) transactions reported pursuant to the exemption provisions of Sections 7A (c) (6) and 7A(c)(8) of the Act; and (3) transactions which were found to be non-reportable. In addition, where a party filed more than one notification in the same year to acquire voting securities of the same corporation, e.g., filing one threshold and later filing for a higher threshold, only a single consolidated transaction has been counted because as a practical matter the agencies do not issue more than one Second Request in such a case. These statistics also omit from the total number the transactions reported secondary acquisitions filed pursuant to 801.4 of the Premerger Notification rules. Secondary acquisitions have been deducted in order to be consistent with the statistics presented in most of the prior annual reports.

³ These statistics are based on the date the request was issued and not the date the investigation was opened.

⁴ Second Requests investigations are a percentage of the total number of adjusted transactions. The total percentage reflected in Figure 2 may not equal the sum of reported component values due to rounding.

⁵ These statistics are based on the date of the HSR filing and not the date action was taken on the request.

APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 2001 - 2010

APPENDIX B
TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR
FISCAL YEARS 2001 - 2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
October	360	89	77	93	139	130	201	158	91	66
November	451	105	104	127	160	148	189	191	85	135
December	345	95	78	143	126	137	151	172	37	84
January	245	111	93	85	138	142	143	158	42	62
February	66	87	71	109	99	124	157	119	32	61
March	120	109	74	137	121	150	194	131	42	116
April	94	99	92	127	121	125	156	128	60	92
May	153	111	83	125	171	158	250	150	58	108
June	190	88	80	117	153	172	202	146	51	108
July	94	121	86	123	118	141	219	128	62	94
August	163	97	85	134	170	186	200	126	77	120
September	95	75	91	108	159	155	139	119	79	120
TOTAL	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166

Note: The data for FY 2004 and FY 2005 “Transactions Reported” reflect corrections to some prior Annual reports to account for a coding error.

APPENDIX B
TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR
FISCAL YEARS 2001 - 2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
October	751	190	148	185	277	261	401	319	185	146
November	920	211	206	254	324	311	376	380	165	242
December	686	183	150	280	238	260	294	343	79	177
January	499	224	179	161	259	279	288	316	77	126
February	144	174	146	207	201	257	317	246	63	116
March	243	230	144	277	239	309	381	242	81	232
April	188	203	182	245	242	270	312	272	119	182
May	296	212	168	258	337	300	481	294	114	216
June	378	170	158	241	297	346	403	293	99	213
July	182	230	170	234	236	255	441	259	121	187
August	332	191	164	270	328	367	396	251	149	238
September	181	151	186	213	309	295	288	240	159	243
TOTAL	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1,411	2,318

Note: The data for FY 2004 – FY 2007 “Filings Received” reflect corrections to some prior Annual reports to account for a coding error.

¹ Usually, two filings are received, one from the acquiring person and one from the acquired person, when the transaction is reported. Only one filing is received when an acquiring person files for a transaction that is exempt under Sections 7A(c)(6) and (c)(8) of the Clayton Act.

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2010

**DATA PROFILING HART-SCOTT-RODINO PREMERGER
NOTIFICATION FILINGS AND ENFORCEMENT INTERESTS**

TABLE I
FISCAL YEAR 2010¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M⁵	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	215	19.1%	19	14	8.8%	6.5%	15.3%	3	3	1.4%	1.4%	2.8%
100M - 150M	208	18.4%	18	12	8.7%	5.8%	14.4%	1	5	0.5%	2.4%	2.9%
150M - 200M	104	9.2%	9	1	8.7%	1.0%	9.6%	0	0	0.0%	0.0%	0.0%
200M - 300M	144	12.8%	25	8	17.4%	5.6%	22.9%	6	2	4.2%	1.4%	5.6%
300M - 500M	146	12.9%	25	8	17.1%	5.5%	22.6%	2	5	1.4%	3.4%	4.8%
500M - 1000M	186	16.5%	24	14	12.9%	7.5%	20.4%	2	4	1.1%	2.2%	3.2%
Over 1000M	124	11.0%	29	16	23.4%	12.9%	36.3%	6	7	4.8%	5.6%	10.5%
ALL TRANSACTIONS	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

TABLE II
FISCAL YEAR 2010¹
ACQUISITIONS BY SIZE OF TRANSACTION²(CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENTAGE OF TOTAL NUMBER OF SECOND REQUESTS		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50⁵	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100	216	19.1%	19	14	8.6%	6.3%	14.9%	3	3	6.5%	6.5%	13.0%
LESS THAN 150	424	37.6%	37	26	16.7%	11.7%	28.4%	4	8	8.7%	17.4%	26.1%
LESS THAN 200	528	46.8%	46	27	20.7%	12.2%	32.9%	4	8	8.7%	17.4%	26.1%
LESS THAN 300	672	59.6%	71	35	32.0%	15.8%	47.7%	10	10	21.7%	21.7%	43.5%
LESS THAN 500	818	72.5%	96	43	43.2%	19.4%	62.6%	12	15	26.1%	32.6%	58.7%
LESS THAN 1000	1,002	88.8%	120	56	54.1%	25.2%	79.3%	14	19	30.4%	41.3%	71.7%
ALL TRANSACTIONS	1,128		149	73	67.1%	32.9%	100.0%	20	26	43.5%	56.5%	100.0%

**TABLE III
FISCAL YEAR 2010¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$MILLIONS)	CLEARANCES GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF:								
				TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
Below 50M ⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
50M - 100M	19	14	33	8.8%	6.5%	15.3%	12.8%	19.2%	8.6%	6.3%	14.9%	
100M - 150M	18	12	30	8.7%	5.8%	14.4%	12.1%	16.4%	8.1%	5.4%	13.5%	
150M - 200M	9	1	10	8.7%	1.0%	9.6%	6.0%	1.4%	4.1%	0.5%	4.5%	
200M - 300M	25	8	33	17.4%	5.6%	22.9%	16.8%	11.0%	11.3%	3.6%	14.9%	
300M - 500M	25	8	33	17.1%	5.5%	22.6%	16.8%	11.0%	11.3%	3.6%	14.9%	
500M - 1000M	24	14	38	12.9%	7.5%	20.4%	16.1%	19.2%	10.8%	6.3%	17.1%	
Over 1000M	29	16	45	23.4%	12.9%	36.3%	19.5%	21.9%	13.1%	7.2%	20.3%	
<i>ALL TRANSACTIONS</i>	149	73	222	13.2%	6.5%	19.7%	100.0%	100.0%	67.1%	32.9%	100.0%	

**TABLE IV
FISCAL YEAR 2010¹
TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
Below 50M⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50M - 100M	3	3	6	0.3%	0.3%	0.5%	1.4%	1.4%	2.8%	6.5%	6.5%	13.0%
100M - 150M	1	5	6	0.1%	0.4%	0.5%	0.5%	2.4%	2.9%	2.2%	10.9%	13.0%
150M - 200M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
200M - 300M	6	2	8	0.5%	0.2%	0.7%	4.2%	1.4%	5.6%	13.0%	4.3%	17.4%
300M - 500M	2	5	7	0.2%	0.4%	0.6%	1.4%	3.4%	4.8%	4.3%	10.9%	15.2%
500M - 1000M	2	4	6	0.2%	0.4%	0.5%	1.1%	2.2%	3.2%	4.3%	8.7%	13.0%
Over 1000M	6	7	13	0.5%	0.6%	1.2%	4.8%	5.6%	10.5%	13.0%	15.2%	28.3%
<i>ALL TRANSACTIONS</i>	20	26	46	1.8%	2.3%	4.1%	1.8%	2.3%	4.1%	43.5%	56.5%	100.0%

TABLE V
FISCAL YEAR 2010¹
ACQUISITIONS BY REPORTING THRESHOLD

THRESHOLD ⁶	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF THRESHOLD GROUP			NUMBER		PERCENT OF THRESHOLD GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
\$50M (as adjusted)	67	5.9%	2	2	3.0%	3.0%	6.0%	0	2	0.0%	3.0%	3.0%
\$100M (as adjusted)	68	6.0%	4	1	5.9%	1.5%	7.4%	0	2	0.0%	2.9%	2.9%
\$500M (as adjusted)	21	1.9%	1	0	4.8%	0.0%	4.8%	0	0	0.0%	0.0%	0.0%
25%	3	0.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	589	52.2%	97	44	16.5%	7.5%	23.9%	14	16	2.4%	2.7%	5.1%
ASSETS ONLY	380	33.7%	45	26	11.8%	6.8%	18.7%	6	6	1.6%	1.6%	3.2%
ALL TRANSACTIONS	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

TABLE VI
FISCAL YEAR 2010¹
TRANSACTION BY ASSETS OF ACQUIRING PERSON

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	69	6.1%	2	2	2.9%	2.9%	5.8%	0	2	0.0%	2.9%	2.9%
50M - 100M	19	1.7%	1	0	5.3%	0.0%	5.3%	0	0	0.0%	0.0%	0.0%
100M - 150M	24	2.1%	0	1	0.0%	4.2%	4.2%	0	0	0.0%	0.0%	0.0%
150M - 200M	18	1.6%	4	0	22.2%	0.0%	22.2%	0	0	0.0%	0.0%	0.0%
200M - 300M	42	3.7%	1	2	2.4%	4.8%	7.1%	0	0	0.0%	0.0%	0.0%
300M - 500M	59	5.2%	5	6	8.5%	10.2%	18.6%	1	1	1.7%	1.7%	3.4%
500M - 1000M	127	11.3%	13	6	10.2%	4.7%	15.0%	2	4	1.6%	3.1%	4.7%
Over 1000M	770	68.3%	123	56	16.0%	7.3%	23.2%	17	19	2.2%	2.5%	4.7%
<i>ALL TRANSACTIONS</i>	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

**TABLE VII
FISCAL YEAR 2010¹
TRANSACTION BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	74	6.6%	1	3	1.4%	4.1%	5.4%	0	1	0.0%	1.4%	1.4%
50M - 100M	19	1.7%	1	1	5.3%	5.3%	10.5%	0	0	0.0%	0.0%	0.0%
100M - 150M	36	3.2%	2	1	5.6%	2.8%	8.3%	0	0	0.0%	0.0%	0.0%
150M - 200M	29	2.6%	1	0	3.4%	0.0%	3.4%	0	0	0.0%	0.0%	0.0%
200M - 300M	49	4.3%	4	2	8.2%	4.1%	12.2%	0	1	0.0%	2.0%	2.0%
300M - 500M	67	5.9%	2	6	3.0%	9.0%	11.9%	1	1	1.5%	1.5%	3.0%
500M - 1000M	110	9.8%	14	6	12.7%	5.5%	18.2%	1	5	0.9%	4.5%	5.5%
Over 1000M	681	60.4%	122	52	17.9%	7.6%	25.6%	18	17	2.6%	2.5%	5.1%
Sales Not Available⁷	63	5.6%	2	2	3.2%	3.2%	6.3%	0	1	0.0%	1.6%	1.6%
ALL TRANSACTIONS	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

**TABLE VIII
FISCAL YEAR 2010¹
TRANSACTION BY ASSETS OF ACQUIRED ENTITIES⁸**

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	176	15.6%	25	9	14.2%	5.1%	19.3%	2	1	1.1%	0.6%	1.7%
50M - 100M	152	13.5%	17	13	11.2%	8.6%	19.7%	3	2	2.0%	1.3%	3.3%
100M - 150M	117	10.4%	16	10	13.7%	8.5%	22.2%	2	6	1.7%	5.1%	6.8%
150M - 200M	74	6.6%	7	1	9.5%	1.4%	10.8%	0	0	0.0%	0.0%	0.0%
200M - 300M	84	7.4%	9	6	10.7%	7.1%	17.9%	4	0	4.8%	0.0%	4.8%
300M - 500M	84	7.4%	11	4	13.1%	4.8%	17.9%	3	5	3.6%	6.0%	9.5%
500M - 1000M	117	10.4%	15	13	12.8%	11.1%	23.9%	1	3	0.9%	2.6%	3.4%
Over 1000M	205	18.2%	34	11	16.6%	5.4%	22.0%	5	7	2.4%	3.4%	5.9%
Assets Not Available⁸	119	10.5%	15	6	12.6%	5.0%	17.6%	0	2	0.0%	1.7%	1.7%
ALL TRANSACTIONS	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

TABLE IX
FISCAL YEAR 2010¹
TRANSACTION BY SALES OF ACQUIRED ENTITIES ⁹

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	181	16.0%	26	8	14.4%	4.4%	18.8%	1	1	0.6%	0.6%	1.1%
50M - 100M	177	15.7%	20	8	11.3%	4.5%	15.8%	3	2	1.7%	1.1%	2.8%
100M - 150M	108	9.6%	16	11	14.8%	10.2%	25.0%	3	4	2.8%	3.7%	6.5%
150M - 200M	95	8.4%	8	8	8.4%	8.4%	16.8%	0	3	0.0%	3.2%	3.2%
200M - 300M	100	8.9%	10	7	10.0%	7.0%	17.0%	1	1	1.0%	1.0%	2.0%
300M - 500M	99	8.8%	10	5	10.1%	5.1%	15.2%	1	2	1.0%	2.0%	3.0%
500M - 1000M	131	11.6%	14	12	10.7%	9.2%	19.8%	1	3	0.8%	2.3%	3.1%
Over 1000M	185	16.4%	36	12	19.5%	6.5%	25.9%	5	5	2.7%	2.7%	5.4%
Sales not Available ¹⁰	52	4.6%	9	2	17.3%	3.8%	21.2%	5	5	9.6%	9.6%	19.2%
ALL TRANSACTIONS	1,128	100.0%	149	73	13.2%	6.5%	19.7%	20	26	1.8%	2.3%	4.1%

**TABLE X
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 ¹³	Not Available	77	6.8%	-1.2%	3	2	5	0	1	1
112	Animal Production	1	0.1%	0.0%	1	0	1	0	0	0
114	Fishing, Hunting and Trapping	1	0.1%	0.1%	0	0	0	0	0	0
211	Oil and Gas Extraction	21	1.9%	0.4%	3	0	3	0	0	0
212	Mining (except Oil and Gas)	5	0.4%	-0.3%	0	0	0	0	0	0
213	Support Activities for Mining	6	0.5%	-0.4%	0	1	1	0	2	2
221	Utilities	39	3.5%	0.9%	1	5	6	0	3	3
237	Heavy and Civil Engineering Construction	14	1.2%	0.6%	0	1	1	0	0	0
238	Specialty Trade Contractors	3	0.3%	-0.4%	0	0	0	0	0	0
311	Food and Kindred Products	35	3.1%	1.6%	13	2	15	2	0	2
312	Beverage and Tobacco Product Manufacturing	3	0.3%	-0.2%	1	0	1	0	0	0
314	Textile Products	2	0.2%	0.2%	0	0	0	0	0	0
316	Leather and Allied Product Manufacturing	2	0.2%	0.2%	0	0	0	0	0	0
321	Wood Product Manufacturing	2	0.2%	0.1%	1	1	2	0	0	0
322	Paper Manufacturing	9	0.8%	0.0%	0	3	3	0	0	0
323	Printing and Related Support Activities	3	0.3%	0.0%	2	0	2	1	0	1
324	Petroleum and Coal Products Manufacturing	7	0.6%	0.2%	0	0	0	0	0	0
325	Chemical Manufacturing	67	5.9%	0.7%	19	1	20	2	0	2
326	Plastics and Rubber Manufacturing	12	1.1%	0.1%	3	2	5	0	2	2
327	Nonmetallic Mineral Product Manufacturing	4	0.4%	-0.6%	1	1	2	1	1	2
331	Primary Metal Manufacturing	7	0.6%	-1.1%	1	1	2	0	1	1

**TABLE X
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
332	Fabricated Metal Product Manufacturing	17	1.5%	-0.1%	3	1	4	0	0	0
333	Machinery Manufacturing	16	1.4%	-1.3%	2	4	6	1	0	1
334	Computer and Electronic Product Manufacturing	47	4.2%	1.0%	11	5	16	0	3	3
335	Electrical Equipment, Appliance, and Component Manufacturing	8	0.7%	-0.3%	2	0	2	0	0	0
336	Transportation Equipment Manufacturing	35	3.1%	1.4%	6	3	9	0	0	0
339	Miscellaneous Manufacturing	18	1.6%	0.6%	10	0	10	0	0	0
422	Wholesale Trade, Nondurable Goods	1	0.1%	0.1%	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	63	5.6%	-0.9%	14	8	22	1	3	4
424	Merchant Wholesales, Nondurable Goods	64	5.7%	1.5%	11	1	12	0	0	0
441	Motor Vehicle and Parts Dealers	2	0.2%	0.0%	0	0	0	0	0	0
444	Electronics and Appliance Stores	3	0.3%	0.0%	1	0	1	0	0	0
445	Food and Beverage Stores	6	0.5%	0.2%	2	0	2	0	0	0
446	Health and Personal Care Stores	7	0.6%	0.3%	1	0	1	0	0	0
447	Gasoline Stations	3	0.3%	0.1%	1	0	1	0	0	0
448	Clothing and Clothing Accessories Stores	5	0.4%	0.2%	0	0	0	0	0	0
453	Miscellaneous Store Retailers	4	0.4%	0.3%	0	0	0	0	0	0
454	Nonstore Retailers	14	1.2%	0.9%	1	0	1	0	0	0
481	Air Transportation	4	0.4%	-0.1%	0	1	1	0	1	1
483	Water Transportation	1	0.1%	-0.1%	0	0	0	0	0	0
484	Truck Transportation	1	0.1%	-0.1%	0	0	0	0	0	0
486	Pipeline Transportation	6	0.5%	0.2%	1	0	1	0	0	0

TABLE X
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
488	Support Activities for Transportation	2	0.2%	-0.2%	0	0	0	0	0	0
493	Warehousing and Storage	2	0.2%	-0.1%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	39	3.5%	-0.1%	3	8	11	0	2	2
512	Motion Pictures and Sound Recording Industries	3	0.3%	-0.2%	0	1	1	0	0	0
514	Information Services and Data Processing Services	1	0.1%	0.1%	0	0	0	0	0	0
515	Broadcasting (except Internet)	10	0.9%	0.4%	0	1	1	0	1	1
516	Internet Publishing and Broadcasting	4	0.4%	-0.1%	2	0	2	1	0	1
517	Telecommunications	32	2.8%	0.3%	0	3	3	0	2	2
518	Internet Service Providers, Web Search Portals, and Data Processing Services	16	1.4%	0.8%	3	1	4	1	0	1
519	Other Information Services	1	0.1%	-0.1%	0	0	0	0	0	0
522	Credit Intermediation and Related Activities	30	2.7%	0.2%	1	3	4	0	0	0
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	88	7.8%	-3.4%	2	3	5	0	0	0
524	Insurance Carriers and Related Activities	40	3.5%	-0.4%	2	4	6	0	1	1
525	Funds, Trusts, and Other Financial Vehicles	25	2.2%	0.2%	0	0	0	0	0	0
531	Real Estate	1	0.1%	-0.6%	0	0	0	0	0	0
532	Rental and Leasing Services	9	0.8%	0.0%	2	0	2	2	0	2
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	4	0.4%	0.0%	0	0	0	0	0	0
541	Professional, Scientific, and Technical Services	64	5.7%	0.4%	0	2	2	1	1	2
551	Management Companies and Enterprises	6	0.5%	0.2%	1	0	1	0	0	0
561	Administrative and Support Services	27	2.4%	0.4%	2	0	2	0	0	0
562	Waste Management and Remediation Services	1	0.1%	-0.6%	0	0	0	0	0	0

TABLE X
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
611	Educational Services	3	0.3%	0.0%	0	1	1	0	0	0
621	Ambulatory Health Care Services	13	1.2%	0.6%	5	0	5	1	1	2
622	Hospitals	28	2.5%	1.3%	9	0	9	4	0	4
623	Nursing Care Facilities	2	0.2%	0.1%	0	0	0	0	0	0
624	Social Assistance	3	0.3%	-0.3%	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	5	0.4%	0.1%	0	1	1	0	1	1
713	Amusement, Gambling, and Recreation Industries	3	0.3%	-0.2%	0	1	1	0	0	0
721	Accommodation	2	0.2%	0.1%	0	0	0	0	0	0
722	Food Services and Drinking Places	6	0.5%	-0.2%	1	0	1	0	0	0
811	Repairs and Maintenance	3	0.3%	0.1%	0	0	0	0	0	0
812	Personal and Laundry Services	4	0.4%	0.1%	1	0	1	2	0	2
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	2	0.2%	0.2%	0	1	1	0	0	0
924	Administration of Environmental Quality Programs	4	0.4%	0.3%	0	0	0	0	0	0
		1,128	100.0%		149	73	222	20	26	46

TABLE XI
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 ¹³	Not Available	59	5.2%	0.1%	10	1	11	0	1	1	0
211	Oil and Gas Extraction	29	2.6%	1.7%	2	0	2	0	0	0	11
212	Mining (except Oil and Gas)	7	0.6%	-0.5%	0	0	0	0	0	0	1
213	Support Activities for Mining	9	0.8%	-0.1%	0	0	0	0	2	2	3
221	Utilities	45	4.0%	-0.3%	1	6	7	0	3	3	26
236	Construction of Buildings	1	0.1%	-0.2%	0	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	16	1.4%	0.5%	0	1	1	0	0	0	10
238	Specialty Trade Contractors	8	0.7%	0.3%	0	0	0	0	0	0	1
311	Food and Kindred Products	46	4.1%	1.9%	7	3	10	2	0	2	21
312	Beverage and Tobacco Product Manufacturing	5	0.4%	-0.4%	3	0	3	0	0	0	1
316	Leather and Allied Product Manufacturing	1	0.1%	0.1%	0	0	0	0	0	0	0
321	Wood Product Manufacturing	2	0.2%	0.0%	1	1	2	0	0	0	2
322	Paper Manufacturing	6	0.5%	0.4%	1	2	3	0	0	0	2
323	Printing and Related Support Activities	4	0.4%	0.2%	2	0	2	1	0	1	2
324	Petroleum and Coal Products Manufacturing	4	0.4%	-0.1%	0	1	1	0	0	0	0
325	Chemical Manufacturing	48	4.3%	-1.9%	14	0	14	2	0	2	11
326	Plastics and Rubber Manufacturing	17	1.5%	-0.2%	3	2	5	0	2	2	6
327	Nonmetallic Mineral Product Manufacturing	3	0.3%	0.0%	0	0	0	1	1	2	1
331	Primary Metal Manufacturing	9	0.8%	0.5%	1	1	2	0	1	1	2
332	Fabricated Metal Product Manufacturing	16	1.4%	0.4%	3	3	6	0	0	0	6
333	Machinery Manufacturing	14	1.2%	-0.8%	3	2	5	1	0	1	5

TABLE XI
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
334	Computer and Electronic Product Manufacturing	46	4.1%	1.0%	13	4	17	0	3	3	16
335	Electrical Equipment, Appliance, and Component Manufacturing	10	0.9%	0.4%	1	2	3	0	0	0	3
336	Transportation Equipment Manufacturing	20	1.8%	-1.0%	8	1	9	0	0	0	9
337	Furniture and Related Product Manufacturing	3	0.3%	0.0%	1	0	1	0	0	0	0
339	Miscellaneous Manufacturing	25	2.2%	1.0%	8	0	8	0	0	0	7
423	Merchant Wholesalers, Durable Goods	72	6.4%	1.0%	11	8	19	1	3	4	20
424	Merchant Wholesales, Nondurable Goods	59	5.2%	-0.3%	10	0	10	0	0	0	12
425	Wholesale Electric Markets and Agent and Brokers	2	0.2%	0.2%	0	0	0	0	0	0	0
441	Motor Vehicle and Parts Dealers	5	0.4%	0.2%	0	0	0	0	0	0	0
443	Miscellaneous Repair Services	1	0.1%	0.1%	0	0	0	0	0	0	0
444	Electronics and Appliance Stores	1	0.1%	0.1%	0	0	0	0	0	0	0
445	Food and Beverage Stores	7	0.6%	-0.5%	3	0	3	0	0	0	2
446	Health and Personal Care Stores	3	0.3%	0.3%	1	0	1	0	0	0	1
447	Gasoline Stations	4	0.4%	-0.1%	0	0	0	0	0	0	2
448	Clothing and Clothing Accessories Stores	3	0.3%	-0.6%	0	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	2	0.2%	-0.6%	1	0	1	0	0	0	0
452	General Merchandise Stores	2	0.2%	0.2%	0	0	0	0	0	0	0
453	Miscellaneous Store Retailers	3	0.3%	0.3%	0	0	0	0	0	0	2
454	Nonstore Retailers	12	1.1%	0.3%	0	0	0	0	0	0	3
481	Air Transportation	6	0.5%	0.1%	0	1	1	0	1	1	4
482	Railroad Transportation	1	0.1%	0.1%	0	0	0	0	0	0	0

TABLE XI
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
483	Water Transportation	1	0.1%	-0.2%	0	0	0	0	0	0	0
484	Truck Transportation	1	0.1%	-0.1%	0	0	0	0	0	0	0
486	Pipeline Transportation	11	1.0%	0.4%	3	0	3	0	0	0	1
488	Support Activities for Transportation	3	0.3%	0.3%	0	1	1	0	0	0	0
492	Couriers	2	0.2%	0.2%	0	0	0	0	0	0	0
493	Warehousing and Storage	1	0.1%	-0.1%	0	0	0	0	0	0	0
509	Miscellaneous Durable Goods	1	0.1%	0.1%	0	0	0	0	0	0	0
511	Publishing Industries (except Internet)	51	4.5%	0.4%	3	6	9	0	2	2	19
512	Motion Pictures and Sound Recording Industries	7	0.6%	-0.1%	0	2	2	0	0	0	2
514	Information Services and Data Processing Services	1	0.1%	0.1%	0	0	0	0	0	0	0
515	Broadcasting (except Internet)	4	0.4%	-1.0%	0	2	2	0	1	1	3
516	Internet Publishing and Broadcasting	6	0.5%	0.2%	1	0	1	1	0	1	1
517	Telecommunications	25	2.2%	-1.1%	0	3	3	0	2	2	17
518	Internet Service Providers, Web Search Portals, and Data Processing Services	30	2.7%	1.5%	0	6	6	1	0	1	4
522	Credit Intermediation and Related Activities	26	2.3%	-1.6%	0	0	0	0	0	0	10
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	34	3.0%	-0.8%	1	3	4	0	0	0	13
524	Insurance Carriers and Related Activities	41	3.6%	-1.2%	1	4	5	0	1	1	22
525	Funds, Trusts, and Other Financial Vehicles	3	0.3%	0.0%	0	0	0	0	0	0	1
531	Real Estate	2	0.2%	0.2%	0	0	0	0	0	0	0
532	Rental and Leasing Services	6	0.5%	-1.1%	2	0	2	2	0	2	2
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	5	0.4%	0.0%	0	0	0	0	0	0	2

TABLE XI
FISCAL YEAR 2010¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2009 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
541	Professional, Scientific, and Technical Services	84	7.4%	0.1%	8	3	11	1	1	2	20
551	Management Companies and Enterprises	1	0.1%	0.1%	0	0	0	0	0	0	1
561	Administrative and Support Services	31	2.7%	1.0%	3	1	4	0	0	0	9
562	Waste Management and Remediation Services	6	0.5%	-0.2%	0	1	1	0	0	0	1
611	Educational Services	14	1.2%	0.8%	0	2	2	0	0	0	2
621	Ambulatory Health Care Services	23	2.0%	1.0%	7	0	7	1	1	2	6
622	Hospitals	32	2.8%	0.4%	8	0	8	4	0	4	21
623	Nursing Care Facilities	2	0.2%	0.2%	1	0	1	0	0	0	0
624	Social Assistance	1	0.1%	0.1%	0	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	6	0.5%	0.1%	0	0	0	0	1	1	2
713	Amusement, Gambling, and Recreation Industries	8	0.7%	0.3%	0	0	0	0	0	0	1
721	Accommodation	5	0.4%	0.2%	0	0	0	0	0	0	1
722	Food Services and Drinking Places	10	0.9%	-0.6%	2	0	2	0	0	0	1
811	Repairs and Maintenance	5	0.4%	0.3%	0	0	0	0	0	0	0
812	Personal and Laundry Services	3	0.3%	-0.2%	1	0	1	2	0	2	1
		1,128	100.0%		149	73	222	20	26	46	355

¹ Fiscal year 2010 figures include transactions reported between October 1, 2009 and September 30, 2010.

² The size of transaction is based on the aggregate total amount of voting securities, non-corporate interests and/or assets held by the acquiring person as a result of the transaction and are taken from the response to Item 3 (b)(ii) and 3 (c) of the Notification and Report Form.

³ These statistics are based on the date the Second Request was issued.

⁴ During fiscal year 2010, 1166 transactions were reported under the HSR Premerger Notification program. The smaller number, 1128, reflects the adjustments to eliminate the following types of transactions: (1) transactions reported under Section 7A(c)(6) and (c)(8) (transactions involving certain regulated industries and financial businesses); (2) transactions deemed non-reportable; (3) incomplete transactions (only one party in each transaction filed a compliant notification); and (4) transactions withdrawn before the waiting period began. The table does not, however, exclude competing offers or multiple HSR transactions resulting from a single business transaction (where there are multiple acquiring persons or acquired persons).

⁵ The filings for transactions valued under \$50M submitted in Fiscal Year 2010 reflects corrective filings.

⁶ In February 2001, legislation raised the size of transaction from \$15 million to \$50 million with annual adjustments beginning in February 2005.

⁷ The category labeled "Sales Not Available" includes newly-formed acquiring persons, foreign acquiring person with no United States revenues, and acquiring persons who had not derived any revenues from their investments at the time of filing.

⁸ Assets of an acquired entity are not available when the acquired entity's financial data is consolidated within its ultimate parent.

⁹ Sales of an acquired entity are taken from responses to Item 4(a) and (b) (SEC documents and annual reports) or item 5 (dollar revenues) of the Premerger Notification and Report Form.

¹⁰ This category includes acquisition of newly-formed entities from which no sales were generated, and acquisitions of assets which produced no sales revenues during the prior year to filing the Notification and Report Form.

¹¹ The 3-digit codes are part of the North American Industrial Classification System (NAICS) established by the United States Government North American Industrial Classification System 1997, Executive Office of the President, Office of Management and Budget. The NAICS groups used in this table were determined from responses submitted by the parties to Item 5 of the Premerger Notification and Report Form.

¹² This represents the deviation from the fiscal year 2009 percentage.

¹³ This category includes transactions by newly-formed entities.

¹⁴ The intra-industry transactions column identifies the number of acquisitions in which both the acquiring and acquired person derived revenues from the same 3-digit NAICS code.