



THIRTEENTH ANNUAL REPORT
TO CONGRESS
PURSUANT TO SECTION 201
OF THE
HART-SCOTT-RODINO ANTITRUST
IMPROVEMENTS ACT OF 1976
(Fiscal Year 1990)

FEDERAL TRADE COMMISSION
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INTRODUCTION

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. Section 18a ("the Act"). Subsection (j) of Section 7A provides as follows:

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and the need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

This is the thirteenth annual report to Congress pursuant to this provision. It covers fiscal year 1990.

In general, Section 7A requires that certain proposed acquisitions of stock or assets must be reported to the Federal Trade Commission and the Department of Justice prior to consummation. The parties must then wait a specified period, usually thirty days (fifteen days in the case of a cash tender offer), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Small acquisitions, acquisitions involving small parties and other 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 to conduct this antitrust review. Much of the information needed for a preliminary antitrust evaluation is included in the notification filed with the agencies and thus is immediately available for review during the waiting period.

If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) to request additional information or documentary materials from either or both of the parties to a reported transaction. Such a request extends the waiting period for a specified period, usually twenty days (ten days in the case of a cash tender offer), after the parties have complied with the request (or in the case of a tender offer, after the acquiring person complies).

This additional time provides the agencies with the opportunity to review the information and to take appropriate action before the transaction is consummated. If either agency believes that a proposed transaction may violate the antitrust laws, the agency may seek an injunction in federal district court to prohibit consummation of the transaction.

Final rules implementing the premerger notification program were promulgated by the Commission, with the concurrence of the Assistant Attorney General, on July 31, 1978.¹ 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 Premerger Notification and Report Form. The program became effective on September 5, 1978. In 1983, the Commission, with the concurrence of the Assistant Attorney General, made several changes in the premerger notification rules. Those amendments became effective on August 29, 1983.² Additional amendments were published in the Federal Register on March 6, 1987,³ and May 29, 1987.⁴

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 each fiscal year in which the program has been in operation the number of transactions reported,⁵ the number of

¹ 43 Fed. Reg. 33,450 (1978). The rules also appear in 16 C.F.R. Parts 801 through 803. For more information concerning the development of the rules and operating procedures of the premerger notification program, see the second, third and seventh annual reports covering the years 1978, 1979 and 1983, respectively.

² 48 Fed. Reg. 34,427 (1983) (codified at 16 C.F.R. Parts 801 through 803).

³ 52 Fed. Reg. 7,066 (1987) (codified at 16 C.F.R. Parts 801 through 803).

⁴ 52 Fed. Reg. 20,058 (1987) (codified at 16 C.F.R. Parts 801 through 803).

⁵ The term "transactions", as used in Appendices A, B, and C, and Exhibit A to this report, does not refer to separate mergers or deals; rather, it refers to types of structures such as cash tender offers, options to acquire voting securities from the issuer, options to acquire voting securities from someone other than the issuer, and multiple acquiring or acquired persons
(continued...)

filings received, the number of merger investigations in which requests for additional information or documentary material (hereinafter referred to as "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. Appendix A also shows for calendar years 1981 through 1984 and fiscal years 1985 through 1990 the number of transactions in which second requests could have been issued. (This information appears in Appendix C and is explained in footnote 1 of that appendix.) Appendix B provides a month-by-month comparison of the number of filings received (Table 1) and the number of transactions reported (Table 2) for fiscal years 1979 through 1990. Appendix C shows, for calendar years 1981 through 1984 and fiscal years 1985 through 1990, the number of transactions in which the agencies could have issued second requests, the number of merger investigations in which second requests were issued, and the percentage of transactions in which second requests were issued. As we explained in the Eighth Annual Report, we believe that Appendix C provides a more meaningful measure of the second request rate than Appendix A because Appendix C eliminates from the total number of transactions certain transactions in which the agencies could not, or as a practical matter would not, issue second requests.⁶

The statistics set out in these appendices show that the number of transactions reported in 1990 decreased approximately 21.5 percent from the number of transactions reported in 1989 (2,262 transactions were reported in 1990 while 2,883 were reported in 1989). The statistics in Appendix A also show that

⁵(...continued)

that necessitate separate HSR identification numbers to track the filing parties and waiting periods. A particular merger or deal may involve more than one transaction. Indeed, some have involved as many as four or five transactions.

⁶ See Appendix C, note 1. As we explained in the Eleventh and Twelfth Annual Reports, the information regarding second requests in Appendices A and C differs from that reported in those appendices in the annual reports for fiscal years 1979-1987. Appendix A and C in prior reports identified the number of transactions in which a second request was issued, while Appendices A and C in the present report show the number of merger investigations in which second requests were issued. A merger investigation may include several transactions. We believe that reporting the number of merger investigations in which second requests were issued better reflects the agencies' enforcement activities because it represents the number of mergers or acquisitions that were investigated to this extent under the Act by the agencies.

the number of merger investigations in which second requests were issued in 1990 increased approximately 39 percent over the number of merger investigations in which second requests were issued in 1989 (second requests were issued in 89 merger investigations in 1990 while second requests were issued in 64 merger investigations in 1989). These numbers indicate an increase in the number of second requests issued as a percentage of reported transactions from 1989 to 1990 (from 2.2 percent in 1989 to 3.9 percent in 1990 based on Appendix A, and from 2.5 percent in 1989 to 4.6 percent in 1990, based on Appendix C).

The statistics also show that in recent years, early termination was requested for most transactions. In 1990, early termination was requested in 87.3 percent (1,975) of the transactions reported, while in 1989 it was requested in 89.6 percent (2,582) of the transactions reported. The number of requests granted decreased in 1990 compared to 1989 (from 1,937 in 1989 to 1,299 in 1990). Also, the percentage of requests granted decreased (from 75 percent in 1989 to 65.8 percent in 1990).

We have also included in the report, as Exhibit A, statistical tables (Tables I - XI) containing information about the agencies' enforcement interest in transactions reported in fiscal year 1990. The tables provide, for various statistical break downs, 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; the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification; the number of transactions based on the sales or assets of the acquiring person or the sales or assets of the acquired entity; and the number of transactions based on the industry group (2-digit SIC code) in which the acquiring person or the acquired entity derived most of their revenues. These statistics have been included in prior annual reports for the calendar years 1981-1984, and for fiscal years 1985-1989 (excluding 1986).

⁷ See the Twelfth Annual Report, Exhibit A, for fiscal year 1989, the Eleventh Annual Report, Exhibits A and B, for fiscal years 1987 and 1988, the Tenth Annual Report, Exhibit A, for fiscal year 1985, the Ninth Annual Report, Exhibit A, for calendar year 1984 transactions, the Eighth Annual Report, Exhibit A, for calendar year 1983 transactions, the Seventh Annual Report, Exhibit B for calendar year 1982 transactions, and the Sixth Annual Report, Exhibit A for calendar year 1981 transactions. Due to resource constraints, statistics for fiscal 1986 have not been prepared.

DEVELOPMENTS IN FISCAL YEAR 1990 RELATING TO PREMERGER
NOTIFICATION RULES AND PROCEDURES

1. Amendment to Rules

On August 2, 1990, the Commission published in the Federal Register a Notice of Final Rulemaking to amend the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the "Form").⁸ The rule amended the Form to require parties filing premerger notification to provide 1987 revenue data and to use 1987 Bureau of Census Standard Industrial Classification ("SIC") Codes, instead of the 1982 revenue data and the codes previously used in response to certain items.

The Form requires data for two time periods: the most recent year for which the requested information is available, and the "base year" that coincides with the Bureau of the Census' most recently available quinquennial economic census and the Annual Survey of Manufactures. The amendment changed the "base year" for which revenue information is required from 1982 to 1987. The amendment enables the agencies to use effectively the recent Bureau of the Census' publications which provide the most readily available and reliable statistical information on industry components and market universes. The agencies compare this statistical data to the reporting persons' revenue data to determine whether a proposed transaction may raise serious antitrust concerns.

2. Filing Fee

On November 8, 1989, Congress, as part of the Commerce, Justice, and State Appropriations Bill, mandated that beginning November 29, 1989, a fee of \$20,000 be paid by persons acquiring voting securities or assets who are required to file premerger notifications under the Act and the rules promulgated thereunder. The bill provided that the waiting period required under the Act would not begin until payment of the filing fee was received. The Commission issued a statement advising the public about the filing fee obligation and setting forth procedures for payment of

⁸ 55 Fed. Reg. 31,371 (1990).

the filing fee.⁹ The bill was signed into law on November 21, 1989.¹⁰

3. Compliance

The Commission and the Department of Justice continue to monitor compliance with the premerger notification program's filing requirements, and initiated a number of investigations to assure compliance in fiscal year 1990. The Department of Justice filed one complaint in fiscal year 1990 which alleged that a corporation had violated the Hart-Scott-Rodino Act and sought civil penalties under Section 7A(g)(1) of the Act.¹¹

In United States v. Baker Hughes Incorporated, Eimco Secoma S.A. and Oy Tampella AB,¹² the Antitrust Division alleged in Count Two of the complaint that Oy Tampella had violated the premerger notification requirements by acquiring assets after failing to submit an important strategic document as part of its premerger notification, as required by the rules implementing the Act. Under the terms of a consent decree, Oy Tampella agreed to pay a civil penalty of \$275,000 to settle that count.

In addition to investigations, the agencies continue to monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. Industry sources, such as competitors, customers and suppliers, and interested members of the public often provide the agencies with further information about transactions and possible violations of the filing requirements.

⁹ 54 Fed. Reg. 48,726 (1989). See Exhibit B for the Commission statement on Hart-Scott-Rodino filing fees.

¹⁰ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990, Pub. L. No. 101-162, §605, 103 Stat. 1031 (1989).

¹¹ Under Section 7A(g)(1) of the Act, any person or company that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$10,000 for each day the violation continues.

¹² United States v. Baker Hughes Incorporated, Eimco Secoma S.A. and Oy Tampella AB, 1990-1 Trade Cas. ¶ 68,976 (D.D.C. March 22, 1990).

MERGER ENFORCEMENT ACTIVITY DURING FISCAL YEAR 1990¹³

1. Department of Justice

The Antitrust Division filed eleven complaints in merger cases during fiscal year 1990.¹⁴ Five of these cases, United States v. American Safety Razor Company, United States v. The Gillette Company, United States v. Baker Hughes Incorporated, Hughes Tool Company, Norton Company and Eastman Christensen Company, United States v. North American Salt Company, and United States v. Brown & Root, Inc., were settled by the entry of consent decrees.

¹³ The cases mentioned in this report were not necessarily reportable under the premerger notification program. Because of the Hart-Scott-Rodino Act's provisions regarding the confidentiality of the information obtained pursuant to this program, it would be inappropriate to identify which cases were initiated under the premerger notification program.

¹⁴ United States v. Baker Hughes Incorporated, Eimco Secoma S.A. and Oy Tampella AB, Cv. No. 89-3333 (D.D.C. filed December 13, 1989); United States v. American Safety Razor Company and Ardell Industries, Inc., Cv. No. 90-0188 (E.D. Pa., filed January 9, 1990, and amended on August 15, 1990); United States v. The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB and Eemland Management Services BV, Cv. No. 90-0053 (D.D.C. filed January 10, 1990); United States v. Country Lake Foods, Inc., Superior-Dairy Fresh Milk Co., Penny C. Van Beek, individually and as co-personal representative of the Estate of Philip E. Peteler, Deceased; First Bank National Association, co-personal representative of the Estate of Philip E. Peteler, Deceased; Georgene H. Peteler, Lynn Rudersdorf, Thomas D. Campbell, Sr. and Diane Campbell, Cv. No. 3-90-CIV-101 (D. Minn. filed February 22, 1990); United States v. United Tote, Inc., Cv. No. CIV-CA-90-130, (D. Del. filed March 14, 1990); United States v. Baker Hughes Incorporated, Hughes Tool Company, Norton Company and Eastman Christensen Company, Cv. No. 90-0825 (D.D.C. filed April 10, 1990); United States v. North American Salt Company, Cv. No. 90-C-2631 (N.D. Ill. filed May 8, 1990); United States v. The Rank Organisation Plc, Rank America Inc. and Fox, Inc., Cv. No. CIV-90-33795 TJH (TX) (C.D. Cal. filed July 19, 1990); United States v. Pacific Amphitheatre Partnership, Irvine Meadows Amphitheater Partnership and Ogden Allied Services Corporation, Cv. No. CIV 90-3797KN (SX) (C.D. Cal. filed July 19, 1990); United States v. The Procter & Gamble Company and Rhone-Poulence Rorer, Inc., Cv. No. 90-5144 (E.D. Pa. filed August 7, 1990); United States v. Brown & Root, Inc., Halliburton Company and Offshore Pipelines, Inc., Cv. No. 90-1986 (D.D.C. filed August 17, 1990).

Preliminary injunctions were sought in six cases, United States v. Baker Hughes Incorporated, Eimco Secoma S.A. and Oy Tampella AB, United States v. The Gillette Company, United States v. Country Lake Foods, Inc., United States v. United Tote, Inc. (requesting a Hold Separate Order), United States v. Pacific Amphitheatre Partnership, and United States v. The Rank Organisation Plc. Preliminary injunctions were denied in three cases.

In United States v. Baker Hughes Incorporated, Eimco Secoma S.A. and Oy Tampella AB, the Division challenged Oy Tampella's proposed acquisition of the Eimco Secoma subsidiary of Baker Hughes. Oy Tampella, through its Tamrock Division of Tampere, Finland, and Secoma, of Meyzieu, France, were the two largest sellers in the United States of underground hardrock hydraulic drilling rigs, which are used to extract metals and minerals. In 1988, total sales in the United States of hardrock hydraulic drilling rigs were about \$10 million. Count One of the complaint alleged that the transaction would lessen competition in the production and sale of underground hardrock hydraulic drilling rigs. On February 12, 1990, after a consolidated trial on the merits and hearing on the motion for preliminary injunction, the district court denied the preliminary injunction, dismissing Count One of the complaint, holding that foreign manufacturers of these machines would be likely to enter the United States market if the merger led to the exercise of market power. The Court of Appeals affirmed the district court's decision.¹⁵ As previously discussed in the Developments section of this report, the Division also alleged in Count Two of the complaint that Oy Tampella had violated the premerger notification requirements of the Hart-Scott-Rodino Act and sought civil penalties under Section 7A(g)(1) of the Act.

In United States v. American Safety Razor Company, the Division challenged the acquisition of Ardell Industries, Inc., of Union, New Jersey, by American Safety Razor Company ("ASR") of Verona, Virginia. The complaint alleged that the transaction would lessen competition in the production and sale of industrial blades. ASR had acquired all of the outstanding shares of Ardell in April, 1989 for \$12,796,000. Prior to the acquisition, ASR and Ardell, respectively, were the first and second largest United States sellers of single-edge industrial blades and the first and fourth largest United States sellers of all other types of industrial blades. Industrial blades are disposable, razor-sharp blades manufactured for cutting, trimming, chopping and scraping applications. In 1988, sales of all types of industrial blades were about \$90 million. The consent decree required Ardell and ASR to divest four backer and sheller machines and

¹⁵ United States v. Baker Hughes Incorporated, 731 F. Supp. 3 (D.D.C. 1990), aff'd, 908 F. 2d 981 (D.C. Cir. 1990).

related technology. Backers and shellers are necessary for the production of single edge industrial blades, but are not readily available and are difficult to design. The acquisition of backing and shelling equipment is the principal barrier to entry into the production of single edge blades. The decree also required ASR to terminate an April 28, 1989 agreement giving ASR a right of first refusal to acquire Techni-Edge Manufacturing Corporation, a competitor. In addition, the decree required ASR to release an expert in the design of industrial blade-making equipment from a consulting agreement that precluded his providing services to competitors or potential competitors for the production of industrial blades.

In United States v. The Gillette Company, the Division challenged the acquisition of the non-European Economic Community ("EEC") wet shaving razor blade business of Wilkinson Sword of Atlanta, Georgia, by The Gillette Company of Boston, Massachusetts. The complaint alleged that the transaction would lessen competition in the sale of wet shaving razor blades in the United States. Wilkinson Sword was formerly owned by a Swedish corporation, Stora Kopparbergs Bergslags AB. In a leveraged buyout partially financed by Gillette, Stora sold Wilkinson Sword's worldwide operations to Eemland Management Services BV, a Netherlands corporation, which in turn agreed to sell Wilkinson's non-EEC business to Gillette. Gillette was the leading seller of wet shaving razor blades in the United States accounting for 50 percent of all units sold with about \$450 million of retail sales in 1988. Wilkinson Sword was the fourth or fifth largest seller of wet shaving razor blades in the United States, accounting for about 3 percent of all units sold with about \$7 million of retail sales in 1988. Gillette and Wilkinson Sword were two of only five suppliers of wet shaving razor blades in the United States. On January 16, 1990, the Division's motion for a temporary restraining order was denied. The court noted that defendants had stated that Wilkinson's United States wet shaving razor blade assets would not be transferred to Gillette without providing the government ten days advance notice, and found that there was no need for immediate relief. The court permitted the government to renew its motion at any time. The court also observed that significant antitrust issues were presented by the transaction which might require remedial relief. The case was resolved by consent decree. Under the consent decree, Gillette may not acquire Wilkinson's wet-shaving razor blade business in the United States, Wilkinson's razor blade production facilities in the EEC that are used to supply its United States business, and the trademarks under which those razor blades are sold in the United States and the EEC without the consent of the United States.

In United States v. Country Lake Foods, Inc., the Division challenged the acquisition of all of the stock of Superior-Dairy Fresh Milk Co. by Country Lake Foods Inc., two of the three

largest processors of milk sold in the Minneapolis-St. Paul metropolitan area. Country Lake's sales of fluid milk in 1989 in the Minneapolis-St. Paul area were approximately \$29.3 million. Superior's sales of fluid milk in 1989 in this area were approximately \$28.6 million. The complaint alleged that the acquisition would lessen competition in the sale of fluid milk products, which include homogenized whole milk, two-percent milk, one-percent milk, skim milk, chocolate milk, buttermilk and half-and-half. Dairies such as Country Lake and Superior processed, packaged and sold these products to grocery and other food stores and to institutional customers such as schools. Country Lake, which is 70% owned by Land O'Lakes, Inc., controlled about 18.2 percent of fluid milk sales in the Minneapolis-St. Paul area. Superior controlled about 17.8 percent of fluid milk sales in the area. The complaint alleged that the acquisition would significantly increase the level of concentration in the sale of fluid milk products in the Twin Cities area and increase the risk that milk consumers there would face higher prices in the near future. A temporary restraining order was issued and, on June 1, 1990, after an evidentiary hearing, the district court denied the government's motion for a preliminary injunction. The court held that the relevant geographic market was broader than the Twin Cities area, and included distant dairies that would begin to ship milk into the Twin Cities if prices there were to rise. Subsequent to this decision, the government dismissed the complaint with prejudice.

In United States v. United Tote, Inc., the Division challenged the acquisition of Autotote Systems Inc. of Newark, Delaware, by United Tote, Inc., of Shepherd, Montana. United Tote acquired all of the outstanding shares of Autotote on December 11, 1989, for \$85 million. The complaint alleged that the acquisition lessened competition in the totalisator systems and services market. A totalisator is a computer system that calculates and displays odds and payout amounts at racetracks. The system consists of unique electronic ticket issuing terminals and a central computer complex controlled by proprietary software. Prior to the acquisition, Autotote and United Tote were two of only three significant suppliers of totalisator systems to horse and greyhound racetracks and jai alai frontons in the United States, together accounting for approximately 49 percent of sales in the market. In 1989, total sales in the North American totalisator market were approximately \$92 million. On May 10, 1991, the court ruled in favor of the government and ordered United Tote to divest Autotote. The court entered a final judgment setting forth the terms of divestiture on August 28, 1991. A hold separate order remains in effect until the divestiture is completed.

In United States v. Baker Hughes Incorporated, Hughes Tool Company, Norton Company and Eastman Christensen Company, the Division challenged the \$550 million acquisition by Baker Hughes

of Houston, Texas, of Eastman Christensen Company of Salt Lake City, Utah. The complaint alleged that the proposed acquisition would lessen competition in the United States market for each of three types of diamond drill bits: natural diamond bits; synthetic diamond bits called polycrystalline diamond compact ("PCC") bits; and thermally stable synthetic polycrystalline diamond ("TSP") bits. Diamond drill bits are used for drilling oil and gas wells. Baker Hughes and Eastman Christensen were major manufacturers of these three types of diamond drill bits. In 1989, total sales of the three types of diamond drill bits in the United States were over \$30 million, with Baker Hughes accounting for about 15 percent of total domestic sales, while Eastman Christensen accounted for 25 percent. Baker Hughes and Eastman Christensen also were large, diversified suppliers of a wide variety of oil field products and services. Baker Hughes had 1989 sales of \$2.3 billion; Eastman Christensen had 1989 sales of \$211 million. Under the consent decree, Baker Hughes was required to divest its entire diamond drill bit business, and divestiture occurred on June 21, 1990.

In United States v. North American Salt Company, the Division challenged the 1988 acquisition of Carey Salt, Inc., by one of North American Salt Company's ("NAMSCO") predecessors, Carey Salt Holdings, Inc., of Mission, Kansas. NAMSCO produces and distributes salt products, including rock salt. It reported net sales of about \$51 million in 1988. The complaint alleged that the acquisition lessened competition in the production and sale of rock salt used in highway de-icing and agricultural applications in two central U.S. markets. The acquisition combined, under NAMSCO's ownership, Carey's rock salt mine in Hutchinson, Kansas, and the rock salt mine of another NAMSCO subsidiary, American Salt Company, in Lyons, Kansas. De-icing rock salt, which is applied to roadways to melt ice and snow, represents the largest end-use segment of rock salt by volume. Under the consent decree, NAMSCO was required to divest either Carey's or American's rock salt business to a purchaser approved by the Department. The decree also enjoined NAMSCO from acquiring another rock salt mine in Cote Blanche, Louisiana, from Domtar, Inc., of Montreal, Canada, unless NAMSCO also divested the second of its Kansas rock salt mines to a different qualified purchaser. Divestiture of both Kansas mines has occurred.

In United States v. The Rank Organisation Plc, the Division challenged the proposed acquisition of Deluxe Laboratories, an unincorporated division of Fox, Inc., by the Rank Organisation Plc, which owns Rank America, Inc. The lawsuit alleged that the effect of the acquisition would lessen competition in the North American market for the production of wide-release motion picture prints. The complaint alleged that in 1989 Deluxe and Rank had a combined market share of 42 percent, based on capacity, and about 51 percent based on production. In 1989, total sales in the wide-release print market were more than \$140 million. After a

consolidated trial on the merits and a hearing on a motion for preliminary injunction, the district court dismissed the complaint, holding that the government had failed to establish that the relevant geographic market was North America.

In United States v. Pacific Amphitheatre Partnership, the Division challenged the proposed combination of assets and operations of Pacific Amphitheatre of Costa Mesa, California, and the Irvine Meadows Amphitheater Partnership of Irvine, California. Total revenues from concerts at both Irvine Meadows and Pacific Amphitheatres were approximately \$16 million to \$19 million annually. The complaint alleged that the proposed merger would lessen competition in the rental of concert venues in Orange County, California. The parties abandoned the transaction upon filing of the complaint and, on November 27, 1990, an order was signed and entered by the court dismissing the complaint without prejudice.

In United States v. The Procter & Gamble Company, the Division challenged the proposed exclusive marketing and distribution agreement under which The Procter & Gamble Company would acquire exclusive rights to market and distribute Maalox, a product of Rhone-Poulenc Rorer, Inc. (formerly Rorer Group). The complaint alleged that the proposed agreement would lessen competition in the sale of over-the-counter ("OTC") stomach remedies. Procter & Gamble manufactures and markets Pepto-Bismol and this proposed agreement would have made it the Nation's largest manufacturer of OTC remedies used for relief of common stomach and digestive discomforts. In 1989, total retail sales of OTC stomach remedies in the United States were in excess of \$900 million. After the complaint was filed, the parties abandoned the transaction and the government agreed to a voluntary dismissal of the complaint without prejudice. The complaint was dismissed on August 27, 1990.

In United States v. Brown & Root, Inc., the Division challenged the proposed \$80 million acquisition by Offshore Pipelines, Inc. ("OPI"), of marine construction vessels and associated assets from Brown & Root, Inc. OPI and Brown & Root, both of Houston, Texas, operated marine construction barges, including barges capable of laying and burying oil and natural gas pipelines on the sea bottom. They sold such services to crude oil and natural gas transmission companies in connection with the offshore production of oil and gas. Both companies were major providers of these services in the United States portion of the Gulf of Mexico. In 1989, OPI had revenues of \$104 million in the Gulf, while Brown & Root's worldwide revenues were \$130 million in such services. The complaint alleged that the proposed acquisition would lessen competition in the United States section of the Gulf of Mexico in providing barge services in the "intermediate pipelay/pipebury market," which involves water depths of approximately 200 feet to 400 feet, or pipe with

12-inch or larger diameters. Brown & Root and OPI were two of four companies operating in this market. In 1989, total revenues in the pipelay/pipeburey market were \$25 million, with OPI accounting for about 27 percent and Brown & Root accounting for about 31 percent. Under the consent decree, OPI was required to divest two combination pipelay/pipeburey barges capable of performing services for the intermediate market. One of the divestitures has occurred and the other has not yet been accomplished.

Additionally, the Division filed a complaint and comments before the Interstate Commerce Commission ("ICC") on November 17, 1989, in response to a Notice of Exemption, opposing the proposed acquisition by Brink's Incorporated of Loomis Armored, Inc., and requesting the ICC to order discovery from Loomis and Brink's (which the ICC did).¹⁶ Thereafter, Loomis withdrew its Notice of Exemption, the Division filed a motion to dismiss the proceeding and, on March 29, 1990, the ICC dismissed the proceeding without prejudice.

During fiscal year 1990, the Division investigated one bank merger transaction for which divestiture was required prior to or concurrently with the acquisition. The transaction involved the acquisition of Trustcorp Inc., Toledo, Ohio, by Society Corporation, Cleveland, Ohio. A "not significantly adverse" letter conditioned on divestiture prior to or concurrently with consummation of the transaction was sent by the Division to the Board of Governors of the Federal Reserve System on October 25, 1989.

Finally, on two occasions during fiscal year 1990 the Division informed the parties to a proposed transaction that it would file suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.¹⁷ The parties abandoned the proposed transactions. On one occasion, during fiscal year 1990,

¹⁶ Department of Justice Press Release issued November 20, 1989, involving the proposed acquisition of Loomis Armored, Inc., headquartered in Piscataway, New Jersey, by Brink's Incorporated of Darien, Connecticut.

¹⁷ Department of Justice Press Release issued May 3, 1990, involving the management agreement and other agreements between American Multi-Cinema Inc. and Mid-American Cinema Corp., two Kansas City exhibitors of first-run motion pictures; and Department of Justice Press Release issued September 11, 1990, involving the proposed consolidation between Boringuen Container Corporation and Proalfa-Puerto Rico Inc. of Puerto Rico.

the Department issued a press release stating its intention not to challenge, since the transaction was restructured.¹⁸

2. Federal Trade Commission

The Commission authorized its staff to seek preliminary injunctions in seven merger cases in fiscal year 1990. In four of these cases, the parties abandoned the transaction before the motion for preliminary injunction was filed in court.¹⁹

¹⁸ Department of Justice Press Release issued December 29, 1989, involving the proposed acquisition of International Banknote Company, Inc., by United States Banknote Company, L.P., both of New York, New York.

¹⁹ FTC news release issued December 15, 1989, involving the proposed acquisition by SKW Alloys, Inc., of K.B. Alloys, Inc. The press release reported that the Commission had reason to believe the acquisition would substantially lessen competition in the manufacture and sale of aluminum-grain refiners. These refiners are used to make aluminum more malleable for use in such products as aerospace parts, automotive components and beverage cans. SKW is directly owned by SKW Trotberg AG, which also directly owns a British subsidiary, Anglo Blackwells, which is a direct competitor of K.B. Alloys.

FTC news release issued March 9, 1990, involving the proposed acquisition by Bayer A.G. of Columbian Chemicals, Inc.'s synthetic iron oxide business. Synthetic iron oxides are primarily used to impart color to paints, cement and plastics. The press release reported that the Commission had reason to believe that the acquisition would substantially reduce competition in the manufacture and sale of synthetic iron oxides in the United States. Bayer A.G. and Columbian Chemicals were two of only three producers of synthetic iron oxides in the United States.

FTC news release issued June 26, 1990, involving the proposed acquisition by FlightSafety International, Inc., of flight simulator assets used in Bicoastal Corp.'s SimuFlite businesses. The press release reported that the Commission had reason to believe that the acquisition would substantially lessen competition or tend to create a monopoly in the provision of simulator training services to business jet pilots in North America. FlightSafety International and Bicoastal were the two largest providers of such simulator training

FTC news release issued June 28, 1990, involving the proposed acquisition by Rhone-Poulenc, Inc., of Olin Corporation's sulfuric acid assets. The press release reported
(continued...)

In Federal Trade Commission v. Imo Industries, Inc.,²⁰ the Commission filed for a preliminary injunction alleging that the proposed acquisition by Imo Industries of Texas Optic-Electronic Corp. ("OEC"), a wholly-owned subsidiary of United Scientific Holdings plc, a British corporation, would substantially lessen competition in the production of certain image intensifier night vision tubes sold primarily to the defense industry. Imo and OEC are two of the largest manufacturers of the products in the United States. On November 22, 1989, the district court granted the Commission's motion for a preliminary injunction. The Commission also issued an administrative complaint and, on April 25, 1990, issued a decision and order.²¹ The order requires Imo to obtain Commission approval before acquiring any company that has manufactured and sold 25 millimeter second generation image intensifier tubes to the U.S. Department of Defense at any time since January 1, 1988.

In Federal Trade Commission v. Atlantic Richfield Company,²² the Commission filed for a preliminary injunction rescinding Atlantic Richfield Company's ("ARCO") acquisition of Union Carbide Corporation's ("UCC") urethane polyether polyol ("UPP") and propylene glycol ("PG") assets and to prevent ARCO's further acquisition of Union Carbide's UPP and PG assets. The Commission stated the acquisition would substantially lessen competition in the manufacture and sale of UPP and PG as well as potential competition in propylene oxide. ARCO and UCC were reported to be leading producers in both these highly concentrated markets. The Commission also issued an administrative complaint. The complaint filed in the district court was stayed pending the Commission's final order. The

¹⁹(...continued)

that the Commission had reason to believe that the proposed acquisition would substantially lessen competition in regeneration of sulfuric acid used as a catalyst in industrial processes including production of a component of high octane gasoline.

²⁰ Federal Trade Commission v. Imo Industries, Inc., Civ. No. 89-2955 (D.D.C. filed November 22, 1989; preliminary injunction order entered November 22, 1989).

²¹ Imo Industries, Inc., Docket No. D.9235 (issued April 25, 1990).

²² Federal Trade Commission v. Atlantic Richfield Company, Civ. No. 90-1657 (D.D.C. filed July 18, 1990; preliminary injunction dismissed without prejudice September 21, 1990).

Commission issued a decision and order on November 26, 1990.²³ Under the order, ARCO was required to divest the PG and UPP assets and businesses to a Commission approved acquirer within twelve months after the order became final. ARCO and UCC also agreed to the entry of a final federal court judgment calling for each company to pay civil penalties to settle charges that they failed to report the acquisition to the government in a timely manner.

In Federal Trade Commission v. R. R. Donnelley & Sons Co.,²⁴ the Commission filed for a preliminary injunction alleging that Donnelley's proposed acquisition of Meredith/Burda Companies would substantially lessen competition in high volume publication rotogravure printing in the United States and the western United States. Donnelley was the largest high volume rotogravure printer in the United States and Meredith/Burda was the third largest. On August 27, 1990, the district court denied the Commission's motion for a preliminary injunction. The acquisition between Donnelley and Meredith/Burda was consummated on or about September 4, 1990. The Commission issued an administrative complaint on October 11, 1990.²⁵ The complaint alleged that Donnelley's acquisition of Meredith/Burda created a firm whose share of the market was so high that it had become a dominant firm. Also, the complaint alleged that the acquisition had increased the likelihood of successful anticompetitive conduct, non-rivalrous behavior, and actual or tacit collusion among the remaining companies offering high volume publication gravure printing.

In fiscal year 1990, the Commission also issued two administrative complaints.

In Harold Honickman,²⁶ the complaint alleged that Harold Honickman's 1987 acquisition of Seven-Up Brooklyn Bottling Company, Inc., substantially lessened competition in the production, distribution and sale of branded carbonated soft drinks in the New York Metropolitan area. A consent agreement,

²³ Atlantic Richfield Company, Docket No. C3314 (issued November 26, 1990).

²⁴ Federal Trade Commission v. R. R. Donnelley & Sons Co., 1990-2 Trade Cas. ¶ 69,240 (D.D.C. filed August 27, 1990; preliminary injunction denied August 27, 1990).

²⁵ R. R. Donnelley & Sons Co., Docket No. D.9243 (complaint issued October 11, 1990).

²⁶ Harold Honickman, Docket No. D.9233 (complaint issued November 1, 1989).

decision and order resolving this matter were issued in fiscal year 1991.

In Adventist Health System/West,²⁷ the complaint alleged that Ukiah Adventist Hospital's agreement to purchase substantially all of the assets of Ukiah Hospital Corp. ("UHC"), including Ukiah General Hospital, substantially lessened competition in general acute care hospital services in the Ukiah, California area. An administrative law judge dismissed the complaint on jurisdictional grounds. On appeal, the matter was reversed by the Commission and remanded to the judge.

The Commission accepted consent agreements for comment and issued a complaint and decision and order in eight merger cases during fiscal year 1990.

In Reading Hospital and Medical Center,²⁸ the complaint alleged that the merger of The Reading Hospital and Community General Hospital would substantially lessen competition in general acute-care hospital services in the Reading, Pennsylvania, area. Under the order, The Reading Hospital and Community General Hospital were required to obtain Commission approval before merging with each other or with any other hospital in Berks County, Pennsylvania.

In Rhone-Poulenc S.A.,²⁹ the complaint alleged that Rhone-Poulenc's acquisition of Marschall Dairy Products from Miles, Inc., would substantially lessen competition in the manufacture and sale of dairy cultures, which are used to make cheese and other dairy products. Under the order, Rhone-Poulenc was permitted to acquire Marschall but, for five years, Rhone-Poulenc must grant licenses for a \$50 fee for any of Marschall's dairy culture products to anyone who requests them, with the exception of two of its major competitors, Dairyland and Hansen.

In Archer-Daniels-Midland Company,³⁰ the complaint alleged that Archer-Daniels-Midland Company's ("ADM") proposed

²⁷ Adventist Health System/West, Docket No. D.9234 (complaint issued November 17, 1989; dismissed by the administrative law judge on August 2, 1990, remanded by the Commission on August 2, 1991).

²⁸ The Reading Hospital and Medical Center, Docket No. C3284 (issued April 10, 1990).

²⁹ Rhone-Poulenc S.A., Docket No. C3287 (issued May 1, 1990).

³⁰ Archer-Daniels-Midland Company, Docket No. C3289 (issued May 22, 1990).

acquisition of Dixie Portland Flour Mills, Inc. ("Dixie"), would substantially lessen competition in the manufacture and sale of bakery flour delivered in bulk in the southeastern United States. Under the order, ADM was required to divest Dixie mills located in Knoxville, Tennessee, and Milner, Georgia. However, the Commission, at its discretion, may permit ADM to sell the Dixie Mill in Cleveland, Tennessee, rather than the mill in Knoxville.

In Emerson Electric Co.,³¹ the complaint alleged that Emerson's acquisition of McGill Manufacturing Co. would substantially lessen competition in the manufacture and sale of mounted ball bearings in the United States. Under the order, Emerson was permitted to acquire McGill, but it was required to sell McGill's mounted ball bearing assets to a Commission approved acquirer within twelve months after the order became final. Emerson also was required to hold separate all of McGill's Bearing Division assets until the divestiture was made.

In Institut Merieux S.A.,³² the complaint alleged that Merieux's acquisition of Connaught BioSciences, Inc., would substantially lessen competition in the manufacture and sale of rabies vaccine and inactivated polio vaccine in the United States. Under the order, Merieux was required to lease Connaught's rabies vaccine business in Toronto, Ontario, for at least 25 years to a lessee approved by both the Commission and Investment Canada, the government agency responsible for foreign investment in Canada.

In Central Soya Company,³³ the complaint alleged that Soya's acquisition of A.E. Staley Manufacturing Co.'s soy-protein concentrate ("SPC") assets substantially lessened competition in the SPC market in the United States by eliminating actual competition between the two companies; increasing Soya's ability unilaterally to exercise market power; and increasing the likelihood of collusion. The order requires Soya and its parent company, Beghin-Say, S.A., to obtain Commission approval before acquiring any SPC assets or the stock of any company engaged in the manufacture of SPC within the United States. However, Soya was permitted to make certain small purchases of SPC and SPC equipment and take non-exclusive licenses without obtaining prior Commission approval.

³¹ Emerson Electric Co., Docket No. C3291 (issued June 22, 1990).

³² Institut Merieux S.A., Docket No. C3301 (issued August 8, 1990).

³³ Central Soya Company, Docket No. C3303 (issued August 27, 1990).

In Amersham International plc,³⁴ the complaint alleged that Amersham's acquisition of Medi-Physics, Inc., would substantially lessen competition in the manufacture and sale of radiopharmaceutical brain perfusion imaging agents for use with Single Positron Emission Controlled Tomography ("SPECT") equipment. Under the order, Amersham was required to divest Medi-Physics' "SPECTamine" business assets to IMP, Inc., a newly formed Houston company.

In Reckitt & Colman plc,³⁵ the complaint alleged that Reckitt & Colman's ("R&C") acquisition of the Boyle-Midway Division of American Home Products Corporation would substantially lessen competition and tend to create a monopoly in the business of manufacturing, marketing and selling rug cleaning products. Under the order, R&C was required to divest its rug cleaning products business to a Commission approved acquirer within eight months of the date the order became final. If it did not divest its assets in that time, it was required to divest the Woolite rug cleaning assets of Boyle within six months thereafter.

In fiscal year 1990, the Commission also accepted for public comment three consent agreements which became final after September 30, 1990.

In E-Z-EM, Inc.,³⁶ the Commission accepted for public comment a consent agreement to settle its complaint that E-Z-EM, Inc.'s, ("EZM") acquisition of Lafayette Pharmacal, Inc., substantially lessened competition and created a monopoly in the United States market for barium diagnostic products. The Commission issued a complaint and decision and order on October 29, 1990. EZM manufactured medical products, including barium sulfate products used by radiologists in x-ray diagnostic applications. Prior to its acquisition by EZM in 1988, Lafayette manufactured barium sulfate diagnostic products at its Lafayette, Indiana, plant. Under the order, EZM agreed to divest all of the assets it acquired from Lafayette. Also, it agreed to obtain Commission approval before selling or acquiring assets related to the barium diagnostic products business or before selling any EZM shares to anyone already engaged in the business in the United States, or acquiring the same assets or interest from anyone already engaged in the business in the United States.

³⁴ Amersham International plc, Docket No. C3305 (issued September 14, 1990).

³⁵ Reckitt & Colman plc, Docket No. C3306 (issued September 26, 1990).

³⁶ E-Z-EM, Inc., Docket No. C3311 (issued October 29, 1990).

In T&N PLC,³⁷ the Commission accepted for public comment a consent agreement to settle its complaint that T&N PLC's ("T&N") proposed acquisition of J.P. Industries, Inc. ("JPI"), would substantially lessen competition or tend to create a monopoly in the manufacture and sale of thinwall and tri-metal heavywall engine bearings in the United States. The Commission issued a complaint and decision and order on November 8, 1990. T&N and JPI both manufactured and sold engine bearings. Under the order, T&N was permitted to complete the acquisition, but it had to divest certain assets used in the production, manufacture and sale of thinwall and tri-metal heavywall engine bearings.

In Roche Holding Ltd.,³⁸ the Commission accepted for public comment a consent agreement to settle its complaint that Roche Holdings Ltd.'s ("Roche") acquisition of a controlling interest in Genentech, Inc., would substantially lessen competition in certain markets for vitamin C; for therapeutic drugs for the treatment of growth deficiency, including human-growth hormone and growth hormone releasing factor; and, for CD4-based therapeutics for the treatment of AIDS/HIV infection. The Commission issued a complaint and decision and order on November 28, 1990. Roche is a Swiss pharmaceutical company which had developed and marketed many pharmaceuticals in the United States and has conducted extensive research and development in biotechnology. Genentech is a leading biotechnology company based in San Francisco. Under the order, Roche was required to divest either Genentech's interest in GLC Associates (a partnership between Genentech and Lubrizol, which had researched and patented a new vitamin C production process) or the partnership's vitamin C assets. Roche also was required to divest its human growth hormone releasing factor business. In addition, Roche must license its CD4-based therapeutic United States' patents for a modest royalty to anyone who requests a license for ten years after the date of the final order.

The Commission issued decisions and orders in four merger cases during fiscal year 1990 involving acquisitions in which the administrative complaint was issued before October 1, 1989.

In The Coca-Cola Bottling Company of the Southwest and Dr. Pepper/Seven-Up Company,³⁹ Dr. Pepper/Seven-Up Company ("Dr.

³⁷ T&N PLC, Docket No. C3312 (issued November 8, 1990).

³⁸ Roche Holding Ltd., Docket No. C3315 (issued November 28, 1990).

³⁹ The Coca-Cola Bottling Company of the Southwest and Dr. Pepper/Seven-Up Company, Docket No. D.9215 (order issued, with respect to Dr. Pepper/Seven-Up Company, on December 20, 1989; (continued...))

pepper") agreed to settle charges stemming from The Coca-Cola Bottling Company of the Southwest ("CCSW") acquisition of certain San Antonio Dr. Pepper Bottling Company assets from Dr. Pepper in 1984. The Commission alleged in a complaint that CCSW's acquisition substantially lessened competition in the production, distribution and sale of carbonated soft drinks in at least a ten county area, which included San Antonio, Texas. Under the order, Dr. Pepper agreed not to take actions that would interfere with any relief the Commission might order if it is determined that CCSW violated the law. An administrative law judge subsequently dismissed the complaint against CCSW. The dismissal is on appeal to the Commission.

In Illinois Cereal Mills, Inc.,⁴⁰ Illinois Cereal Mills, Inc. ("Illinois Cereal"), agreed to settle charges stemming from its acquisition of Lincoln Grain Co. from Elders Grain, Inc., in 1988. The Commission alleged in a complaint that Illinois Cereal's acquisition of Lincoln Grain would substantially lessen competition in the production and sale of dry corn mill products in the United States. The Commission authorized its staff to seek rescission of the acquisition which was later granted by the district court and affirmed on appeal.⁴¹ Under the order, Illinois Cereal was required to obtain Commission approval before acquiring any assets of, or interest in, any company in the industrial dry corn milling industry, with certain exceptions for relatively small acquisitions. On May 31, 1990, the Commission issued a final order dismissing the complaint against Elders.

In Promodes S.A., Red Food Stores, Inc.,⁴² Red Food Stores, Inc., and its French grocery company parent, Promodes S.A., agreed to settle charges stemming from its acquisition of all seven of Kroger Company's grocery stores in the Chattanooga metropolitan area. The Commission alleged that the proposed acquisition would substantially lessen competition among stores in that area. The Commission authorized its staff to seek a preliminary injunction to block the transaction which was denied

³⁹(...continued)
dismissed, regarding The Coca-Cola Bottling Company of the Southwest, by the administrative law judge on June 14, 1991).

⁴⁰ Illinois Cereal Mills, Inc., Docket No. D.9213 (order issued, regarding Illinois Cereal Mills, on March 12, 1990; complaint dismissed, regarding Elders Grain, on May 31, 1990).

⁴¹ Federal Trade Commission v. Illinois Cereal Mills, Inc., 691 F. Supp. 1131 (N.D. Ill. 1988), aff'd sub nom. Federal Trade Commission v. Elders Grain, Inc., 868 F. 2d 901 (1989).

⁴² Promodes S.A., Docket No. D.9228 (issued May 17, 1990).

by the district court.⁴³ Under the order, Red Food was required to divest four of the seven former Kroger stores it acquired and two Red Food stores.

In Olin Corporation,⁴⁴ the Commission upheld a decision by an administrative law judge which held that Olin Corporation's acquisition of FMC Corporation's swimming pool chemical business was likely to lessen competition in the manufacture and sale of sanitizing chemicals for swimming pools. Under the order, Olin was required to divest the FMC assets within twelve months.

The Commission issued a decision and order in three merger cases during fiscal year 1990 in which it had previously accepted consent agreements for public comment before October 1, 1989.

In Arkla, Inc.,⁴⁵ Arkla agreed to settle charges stemming from its acquisition of Transark Transmission Company. The Commission alleged in its complaint that Arkla's acquisition of Transark substantially lessened competition in the pipeline transportation of natural gas in both the Arkoma Basin area and the Russellville-Morrilton-Conway corridor of Arkansas. Under the order, Arkla was required to divest either the Transark pipeline or an undivided interest in the Arkla pipeline system.

In MTH Holdings, Inc.,⁴⁶ MTH agreed to settle charges stemming from its acquisition of the Grand Union Company ("GU") from GU Acquisition Corporation ("GUAC"). GUAC owned and operated GU which operated a chain of 304 retail grocery stores in the United States. Both MTH and Salomon, Inc., which was to acquire a minority stake in GUAC, were investment banking firms. MTH in turn controlled P&C Food Markets, Inc., a retail grocery store chain. The Commission alleged in its complaint that MTH's acquisition would substantially lessen competition among grocery stores in twelve towns and cities in New York and Vermont. Under the order, MTH was required to divest one retail grocery owned or operated by either P&C or GU in three towns in New York and in seven towns or areas in Vermont. MTH also was required to divest two retail grocery stores owned or operated by either P&C or GU

⁴³ Federal Trade Commission v. Promodes, S.A., Red Food Stores, Inc., The Kroger Company, 1989-2 Trade Cas. ¶ 68,688 (N.D. Ga. decided April 14, 1989 and entered April 18, 1989).

⁴⁴ Olin Corporation, Docket No. D.9196 (issued June 13, 1990).

⁴⁵ Arkla, Inc., Docket No. C3265 (issued October 10, 1989).

⁴⁶ MTH Holdings, Inc., Docket No. C3266 (issued October 6, 1989).

in the Rutland, Vermont, area, and four retail grocery stores owned or operated by either P&C or GU in the Burlington, Vermont, Metropolitan Statistical Area.

In Societe Nationale Elf Acquitaine,⁴⁷ Societe Nationale Elf Acquitaine ("Elf") agreed to settle charges stemming from its acquisition of Pennwalt Corporation. The Commission alleged in its complaint that Elf's acquisition of Pennwalt would substantially lessen competition in the production and sale of two chemical products, vinylidene fluoride monomer and polyvinlyedene fluoride. Under the order, Elf was permitted to acquire Pennwalt, but was required to divest Pennwalt's chemical manufacturing plant in Thorofare, New Jersey, and to hold separate Pennwalt's entire fluorocarbon division pending the divestiture. Elf also was required to obtain Commission approval before acquiring any interest in any company that manufactures or sells either of the two chemicals in the United States.

ASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

Although a complete assessment of the impact of the premerger notification program on the business community and on antitrust enforcement is not possible in this limited report, the following observations can be made.

First, as indicated in past annual reports, one of the premerger notification program's primary objectives, eliminating the so-called "midnight merger," has been achieved. The requirement that parties file and wait ensures that virtually all significant mergers or acquisitions occurring 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.

Second, in most cases the parties provide sufficient information to allow the enforcement agencies to determine promptly whether a transaction raises any antitrust problems. In addition, over the years, parties have increasingly supplied information voluntarily to the Commission and the Antitrust Division. This cooperation has resulted in fewer second requests than would otherwise have been necessary.

Finally, the existence of the premerger notification program alerts businesses to the antitrust concerns raised by proposed transactions. In addition, the greatly increased probability that antitrust violations will be detected prior to consummation

⁴⁷ Societe Nationale Elf Acquitaine, Docket No. C3270 (issued December 28, 1989).

may deter some competitively questionable transactions. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions which raised significant antitrust concerns, before the antitrust agencies had the opportunity to adequately consider their competitive effects. The enforcement agencies were forced to pursue lengthy post-acquisition litigation during the course of which the consummated transaction continued in place (and afterwards as well, where effective post-acquisition relief was not possible or available). Because the premerger notification program requires reporting before consummation, this problem has been significantly reduced.

The Assistant Attorney General of the Antitrust Division concurs with this annual report.

Insert date ~~JAN~~ 27 1990

List of Appendices

- Appendix A - Summary of Transactions, Fiscal Years 1979-1990
- Appendix B - Number of Filings Received and Transactions Reported by Month for Fiscal Years 1979-1990.
- Appendix C - Transactions in Which Additional Information Was Requested for Calendar Years 1981-1984 and Fiscal Years 1985-1990.

List of Attachments

- Exhibit A - Statistical tables for fiscal year 1990, presenting data profiling Hart-Scott-Rodino premerger notification filings and enforcement interest.
- Exhibit B - Statement of the Federal Trade Commission on Hart-Scott-Rodino filing fees.

APPENDIX A

APPENDIX A
SUMMARY OF TRANSACTIONS
FISCAL YEARS

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1990</u>	
TRANSACTIONS REPORTED	861	784	996	1203	1093	1340	1603	1949	2533	2746	2803	2262
FILINGS RECEIVED <u>1/</u>	1643	1552	1804	2056	1971	2418	2975	3611	4742	5172	5530	4272
TRANSACTIONS IN WHICH A SECOND REQUEST COULD HAVE BEEN ISSUED <u>2/</u>	NA	NA	762	713	903	1119	1301	1660	2170	2391	2535	1955
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED	113	68	69	65	34	61	67	71	58	68	64	89
FTC <u>3/</u>	63	31	34	39	12	25	24	32	18	39	35	55
DOJ <u>3/</u>	50	37	35	26	22	36	43	39	40	29	29	34
NUMBER OF TRANSACTIONS INVOLVING A REQUEST FOR EARLY TERMINATION <u>4/ 5/</u>	123	100	164	222	606	963	1281	1639	2264	2440	2582	1975
GRANTED <u>4/</u>	60	75	135	142	495	781	975	1263	1752	1885	1937	1299
NOT GRANTED <u>4/</u>	62	22	26	63	103	153	288	362	512	555	645	676

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

2 These figures are from Appendix C and are explained in footnote 1 of that Appendix. The figures for 1981 - 1984 are on a calendar basis, and for 1985 - 1990 on a fiscal year basis.

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

4 These statistics are based on the date of the H-S-R filing and not the date action was taken on the request.

5 Includes the following number of non-reportable transactions: three in both 1979 and 1980; two in 1981; fifteen in 1982; eight in 1983; twenty in 1984; eighteen in 1985; fourteen in 1986; sixteen in 1987; twenty-four in 1988; fifty-four in 1989 and fifty-seven in 1990.

Appendix B

APPENDIX B

TABLE 1. NUMBER OF FILINGS RECEIVED 1/ BY MONTH FOR FISCAL YEARS 1979 - 1990

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
October	122	228	159	249	199	155	229	350	523	443	550	489
November	158	207	142	200	181	210	269	348	921	421	602	693
December	108	108	152	200	167	212	194	263	404	455	485	289
January	127	105	134	144	149	131	211	199	177	311	350	298
February	150	113	108	104	116	180	210	221	193	358	362	269
March	146	103	145	181	148	255	295	287	278	437	468	343
April	112	108	111	152	129	212	267	236	314	445	371	306
May	166	94	163	169	139	199	286	350	351	442	472	351
June	142	110	161	213	191	193	232	308	360	453	504	349
July	168	104	183	178	169	211	302	337	417	403	423	288
August	141	143	162	144	199	260	239	351	376	583	517	315
September	103	129	184	122	184	200	241	361	428	421	426	282
TOTAL	1643	1552	1804	2056	1971	2418	2975	3611	4742	5172	5530	4272

1/ Usually, two filings are received, one from the acquiring person and one from the acquired person when a 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.

APPENDIX B

Table 2. Number of Transactions Reported by Month for the Fiscal Years 1979 - 1990

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
October	63	78	91	116	89	89	132	195	290	245	259	267
November	80	85	78	117	100	107	145	187	494	216	316	371
December	67	54	88	111	96	124	103	144	199	243	267	139
January	71	56	73	92	91	76	111	108	96	161	160	160
February	75	64	60	67	57	98	110	120	104	204	201	138
March	75	58	75	105	80	136	153	149	163	224	236	179
April	57	60	64	95	81	118	149	131	162	230	202	168
May	84	55	92	105	88	107	156	211	185	228	254	187
June	76	64	87	131	104	112	126	145	197	241	264	182
July	88	60	107	102	92	120	160	180	218	223	223	156
August	75	82	92	91	116	144	136	187	194	310	273	163
September	50	68	89	71	99	109	122	192	231	221	228	152
TOTAL	861	784	996	1203	1093	1340	1603	1949	2533	2746	2883	2262

Appendix C

Appendix C

Investigations Where Additional Information Was Requested
Calendar Years 1981 - 1984 and Fiscal Years 1985 - 1990

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Transactions <u>1/</u>	762	713	903	1119	1301	1660	2170	2391	2535	1955

Investigations In Which
Second Requests
Were Issued 2/

	FTC		DOJ	
	Number <u>3/</u>	Percent	Number <u>3/</u>	Percent
	34	4.5	35	4.6
	25	1.3	22	3.6
	24	1.8	26	3.6
	1.8	2.2	36	3.2
	32	1.9	43	3.3
	18	0.8	39	2.3
	39	1.6	40	1.8
	35	1.4	29	1.2
	55	2.8	29	1.1
			34	1.7

1 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 compliant 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 for the 15% threshold and later filing for the 25% 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. Similarly, where a party has filed for a cash tender offer to acquire 50% of a target's voting securities and has also filed for the exercise of an option to acquire shares from the target issuer and for a subsequent merger, the transaction is assigned three numbers by the Premerger Office but is treated in this table as one transaction. In contrast, the same transaction would be counted as three transactions in the "transactions reported" category in Appendix A. These statistics also omit from the total number of 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. Appendix C in the Eighth Annual Report did not exclude secondary acquisitions. Accordingly, the numbers of transactions for 1981 - 1984 appearing herein differ from those that appear in Appendix C in that report. Note also that Appendix C in the Ninth Annual Report contained calendar year 1985

that report. Note also that the figures while this chart shows fiscal 1995 figures.

Exhibit A

TABLE I

FISCAL YEAR 1990 1/
ACQUISITIONS BY SIZE OF TRANSACTION 2/
(BY SIZE RANGE)

TRANSACTION RANGE (\$ MILLIONS)	M-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ		SECOND REQUEST INVESTIGATIONS 3/				
	NUMBERS 4/	PERCENTS 5/	NUMBER	PERCENTS 6/	NUMBER	PERCENTS 6/			
			FTC	DOJ	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	153	7.0	10	3	6.5	2.0	0.5	3	3.9
15 UP TO 25	457	23.4	60	5	13.1	1.1	14.2	8	2.4
25 UP TO 50	533	27.3	55	15	10.3	2.0	13.1	11	2.8
50 UP TO 100	366	18.7	38	12	10.4	3.3	13.7	9	3.0
100 UP TO 150	120	6.1	20	3	16.7	2.5	19.2	5	7.5
150 UP TO 200	74	3.8	7	6	9.5	0.1	17.6	3	0.1
200 UP TO 300	74	3.8	13	2	17.6	2.7	20.3	4	6.8
300 UP TO 500	68	3.5	9	4	13.2	5.9	19.1	3	10.3
500 UP TO 1000	55	2.8	13	5	23.6	9.1	32.7	4	16.4
1000 AND UP	55	2.8	10	6	18.2	10.9	29.1	5	12.7
ALL TRANSACTIONS	1955	100.0	235	61	12.0	3.1	15.1	55	4.6

* The footnotes for all tables in this exhibit appear at the end following Table XI.

TABLE II

FISCAL 1990 1/
ACQUISITIONS BY SIZE OF TRANSACTION 2/
(CUMULATIVE)

TRANSACTION RANGE	N-B-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/						
	NUMBERS/	PERCENTS/	NUMBER	PERCENTAGE OF TOTAL NUMBER OF CLEARANCES GRANTED		NUMBER	PERCENTAGE OF TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS 3/						
			FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	153	7.8	10	3	3.4	1.0	3	3	3.4	3	3.4	3	6.7
LESS THAN 25	610	31.2	70	8	23.6	2.7	6	11	12.4	6	6.7	6	19.1
LESS THAN 50	1143	58.5	125	23	42.2	7.8	10	22	24.7	10	11.2	10	36.0
LESS THAN 100	1509	77.2	163	35	55.1	11.8	15	31	34.8	15	16.9	15	51.7
LESS THAN 150	1629	83.3	183	38	61.8	12.8	19	36	40.4	19	21.3	19	61.8
LESS THAN 200	1703	87.1	190	44	64.2	14.9	22	39	43.8	22	24.7	22	68.5
LESS THAN 300	1777	90.9	203	46	68.6	15.5	23	43	46.3	23	25.0	23	74.2
LESS THAN 500	1845	94.4	212	50	71.6	16.9	27	46	51.7	27	30.3	27	82.0
LESS THAN 1000	1900	97.2	225	55	76.0	18.6	32	50	56.2	32	36.0	32	92.1
ALL TRANSACTIONS	1955	100.0	235	61	79.4	20.6	34	55	61.8	34	38.2	34	100.0

TABLE III

FISCAL YEAR 1990 1/
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

CLEARANCE GRANTED AS A PERCENTAGE OF:

TRANSACTION RANGE (\$MILLIONS)	CLEARANCE GRANTED BY AGENCY			TOTAL NUMBER OF TRANSACTIONS/			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP/			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
LESS THAN 15	10	3	13	.5	.2	.7	6.5	2.0	8.5	3.4	1.0	4.4
15 UP TO 25	60	5	65	3.1	.3	3.3	13.1	1.1	14.2	20.3	1.7	22.0
25 UP TO 50	55	15	70	2.8	.8	3.6	10.3	2.8	13.1	18.6	5.1	23.6
50 UP TO 100	38	17	55	1.9	.6	2.6	10.4	3.3	13.7	12.8	4.1	16.9
100 UP TO 150	20	3	23	1.0	.2	1.2	16.7	2.5	19.2	6.8	1.0	7.8
150 UP TO 200	7	6	13	.4	.3	.7	9.5	0.1	17.6	2.4	2.0	4.4
200 UP TO 300	13	2	15	.7	.1	.8	17.6	2.7	20.3	4.4	.7	5.1
300 UP TO 500	9	4	13	.5	.2	.7	13.2	5.9	19.1	3.8	1.4	4.4
500 UP TO 1000	13	5	18	.7	.3	.9	23.6	9.1	32.7	4.4	1.7	6.1
1000 AND UP	10	6	16	.5	.3	.8	18.2	10.9	29.1	3.4	2.0	5.4
ALL CLEARANCES	235	61	296	12.0	3.1	15.1	12.0	3.1	15.1	79.4	20.6	100.0

TABLE IV

FISCAL YEAR 1990 1/
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

SECOND REQUEST INVESTIGATIONS 3/ AS A PERCENTAGE OF:

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED ^{3/}			TOTAL NUMBER OF TRANSACTIONS ^{4/}			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP ^{1/}			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS ^{3/}		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
LESS THAN 15	3	3	6	.2	.2	.3	2.0	2.0	3.9	3.4	3.4	6.7
15 UP TO 25	8	3	11	.4	.2	.6	1.8	.7	2.4	9.0	3.4	12.4
25 UP TO 50	11	4	15	.6	.2	.8	2.1	.8	2.8	12.4	4.5	16.9
50 UP TO 100	9	5	14	.5	.3	.7	2.5	1.4	3.8	10.1	5.6	15.7
100 UP TO 150	5	4	9	.3	.2	.5	4.2	3.3	7.5	5.6	4.5	10.1
150 UP TO 200	3	3	6	.2	.2	.3	4.1	4.1	8.1	3.4	3.4	6.7
200 UP TO 300	4	1	5	.2	.1	.3	5.4	1.4	6.8	4.5	1.1	5.6
300 UP TO 500	3	4	7	.2	.2	.4	4.4	5.9	10.3	3.4	4.5	7.9
500 UP TO 1000	4	5	9	.2	.3	.5	7.3	9.1	16.4	4.5	5.6	10.1
1000 AND UP	5	2	7	.3	.1	.4	9.1	3.6	12.7	5.6	2.2	7.9
ALL TRANSACTIONS	55	34	89	2.8	1.7	4.6	2.8	1.7	4.6	61.8	38.2	100.0

TABLE V

FISCAL YEAR 1990 1/
ACQUISITIONS BY REPORTING THRESHOLD

THRESHOLD	M-8-R TRANSACTIONS		CLEARANCE GRANTED TO PTC OR DOJ				SECOND REQUEST INVESTIGATIONS ^{3/}					
	NUMBER ^{4/}	PERCENT	NUMBER	PTC	DOJ	TOTAL	PERCENTAGE OF THRESHOLD GROUP	NUMBER	PTC	DOJ	TOTAL	PERCENTAGE OF THRESHOLD GROUP
\$15 MILLION	66	3.4	6	6	-	9.1	-	9.1	1	-	1.5	-
150	60	3.1	4	4	2	6.7	3.3	10.0	-	1	-	1.7
250	70	3.6	4	4	-	5.7	-	5.7	-	-	-	-
500	959	49.1	145	145	20	15.1	2.9	18.0	29	17	3.0	1.0
ASSETS ONLY	800	40.9	76	76	31	9.5	3.9	13.4	25	16	3.1	2.0
ALL TRANSACTIONS	1955	100.0	235	235	61	12.0	3.1	15.1	55	34	2.0	1.7

TABLE VI

FISCAL YEAR 1990 1/
TRANSACTIONS BY ASSETS OF ACQUIRING PERSONS

ASSET RANGE (\$ MILLIONS)	R-S-R TRANSACTIONS		CLEARANCE GRANTED TO PTC OR DOJ		PERCENTAGE OF ASSET RANGE GROUP		SECOND REQUEST INVESTIGATIONS ³⁾		PERCENTAGE OF ASSET RANGE GROUP		
	NUMBERS/	PERCENT	NUMBER	PTC DOJ	PTC	DOJ	PTC	DOJ	PTC	DOJ	
LESS THAN 15	64	3.3	2	6	3.1	9.4	12.5	-	2	3.1	3.1
15 UP TO 25	34	1.7	3	-	8.8	-	8.8	-	-	-	-
25 UP TO 50	62	3.2	5	-	8.1	-	8.1	-	-	-	-
50 UP TO 100	120	6.1	11	4	9.2	3.3	12.5	2	3	3.2	3.2
100 UP TO 150	95	4.9	9	2	9.5	2.1	11.6	3	-	3.2	4.2
150 UP TO 200	75	3.8	7	-	9.3	-	9.3	2	-	2.7	2.7
200 UP TO 300	103	5.3	9	2	8.7	1.9	10.7	1	1	1.0	1.9
300 UP TO 500	173	8.6	18	6	10.4	3.5	13.9	2	3	1.2	2.9
500 UP TO 1000	201	10.3	22	7	10.9	3.5	14.4	3	5	1.5	4.0
1000 AND UP	1020	52.2	149	34	14.6	3.3	17.9	40	20	3.9	5.9
ASSETS NOT AVAILABLE ⁸⁾	0	.4	-	-	-	-	-	-	-	-	-
ALL TRANSACTIONS	1955	100.0	235	61	12.0	3.1	15.1	55	34	2.8	4.6

TABLE VII

FISCAL YEAR 1990 1/
TRANSACTIONS BY SALES OF ACQUIRING PERSONS

	R-S-R TRANSACTIONS		CLEARANCE GRANTED TO PTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/						
	NUMBERS/	PERCENT	NUMBER		PERCENTAGE OF		NUMBER		PERCENTAGE OF				
			PTC	DOJ	PTC	DOJ	PTC	DOJ	PTC	DOJ	PTC	DOJ	TOTAL
LESS THAN 15	92	4.7	-	1	4.5	2.3	-	-	1	-	-	2.3	2.3
15 UP TO 25	44	2.3	2	1	4.7	2.4	6.8	-	2	-	-	2.4	2.4
25 UP TO 50	85	4.3	4	2	7.5	.9	7.1	1	2	-	-	.9	.9
50 UP TO 100	107	5.5	8	1	11.2	2.5	8.4	4	1	3.0	1.2	4.5	6.2
100 UP TO 150	80	4.1	9	2	12.2	4.1	13.0	1	1	1.4	1.4	2.7	2.7
150 UP TO 200	74	3.8	9	3	10.2	2.3	16.2	4	1	4.5	1.1	5.7	5.7
200 UP TO 300	88	4.5	9	2	11.6	1.2	12.8	2	1	2.0	.6	2.6	2.6
300 UP TO 500	164	8.4	19	2	9.8	2.0	11.7	4	1	4.1	2.6	6.7	6.7
500 UP TO 1000	205	10.5	20	4	18.9	4.1	20.0	39	25	-	-	-	-
1000 AND UP	959	48.6	151	39	6.1	7.6	13.6	-	1	-	-	1.5	1.5
SALES NOT AVAILABLE 2/	66	3.4	4	5	12.0	3.1	15.1	55	34	2.0	1.7	4.6	4.6
ALL TRANSACTIONS	1955	100.0	235	61	6.1	7.6	13.6	55	34	2.0	1.7	4.6	4.6

TABLE VIII

FISCAL YEAR 1990 1/
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES 10/

ASSET RANGE (\$ MILLIONS)	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO PTC OR DOJ				SECOND REQUEST INVESTIGATIONS 2/					
	NUMBERS/ PERCENT	PERCENT	NUMBER PTC DOJ	PERCENTAGE OF ASSET RANGE GROUP		TOTAL	NUMBER PTC DOJ	PERCENTAGE OF ASSET RANGE GROUP		TOTAL		
LESS THAN 15	200	10.2	23	2	11.5	1.0	3	2	1.5	1.0	2.5	
15 UP TO 25	340	17.4	38	6	11.2	2.4	9	3	2.6	.9	3.5	
25 UP TO 50	439	22.5	48	14	10.9	3.2	14.1	9	2.1	1.4	3.4	
50 UP TO 100	301	15.4	37	9	12.3	3.0	15.3	8	2.7	1.3	4.0	
100 UP TO 150	135	6.9	15	3	11.1	2.2	13.3	3	2.2	2.2	4.4	
150 UP TO 200	79	4.0	10	6	12.7	7.6	20.3	2	2.5	3.8	6.3	
200 UP TO 300	91	4.7	13	4	14.3	4.4	18.7	5	5.5	2.2	7.7	
300 UP TO 500	93	4.8	7	6	7.5	6.5	14.0	4	4.3	4.3	8.6	
500 UP TO 1000	60	3.5	13	4	19.1	5.9	25.0	2	2.9	4.4	7.4	
1000 AND UP	115	5.9	19	5	16.5	4.3	20.9	7	6.1	3.5	9.6	
ASSETS NOT AVAILABLE 11/	94	4.8	12	-	12.0	-	12.0	3	3.2	-	3.2	
ALL TRANSACTIONS	1955	100.0	235	61	12.0	3.1	15.1	55	34	2.8	1.7	4.6

TABLE IX

FISCAL YEAR 1990 1/
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES 12/

SALES RANGE (\$MILLIONS)	N-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ/				SECOND REQUEST INVESTIGATIONS 3/					
	NUMBERS/	PERCENT	NUMBER	PERCENTAGE OF SALES RANGE GROUP		NUMBER	PERCENTAGE OF SALES RANGE GROUP		NUMBER	PERCENTAGE OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	365	10.7	23	3	6.3	0	7.1	6	1	1.6	0.3	1.9
15 UP TO 25	179	9.2	20	4	15.6	2.2	17.9	4	2	2.2	1.1	3.4
25 UP TO 50	391	20.0	41	11	10.5	2.8	13.3	9	7	2.3	1.8	4.1
50 UP TO 100	300	15.3	36	12	12.0	4.0	16.0	5	5	1.7	1.7	3.3
100 UP TO 150	144	7.4	21	6	14.6	4.2	18.8	7	4	4.9	2.8	7.6
150 UP TO 200	108	5.5	19	5	17.6	4.6	22.2	5	3	4.6	2.8	7.4
200 UP TO 300	87	4.5	7	6	8.0	6.9	14.9	3	3	3.4	3.4	6.9
300 UP TO 500	79	4.0	17	2	21.5	2.5	24.1	0	0	10.1	-	10.1
500 UP TO 1000	61	3.1	11	4	18.0	6.6	24.6	2	4	3.3	6.6	9.8
1000 AND UP	107	5.5	17	6	15.9	5.6	21.5	6	5	5.6	4.7	10.3
SALES NOT AVAILABLE 13/	134	6.9	15	2	11.2	1.5	12.7	-	-	-	-	-
ALL TRANSACTIONS	1955	100.0	235	61	12.0	3.1	15.1	55	34	2.8	1.7	4.6

TABLE 1

FISCAL YEAR 1990 1/
INDUSTRY GROUP OF ACQUIRING PERSONS2-DIGIT
SIC CODE 14/
INDUSTRY DESCRIPTION

2-DIGIT SIC CODE 14/ INDUSTRY DESCRIPTION	NUMBER 4/	ACQUIRING PERSON				SECOND REQUEST INVESTIGATIONS 2/		
		CLEARANCE GRANTED TO FTC OR DOJ		TOTAL		FTC	DOJ	TOTAL
		FTC	DOJ	FTC	DOJ			
33 Primary Metal Industries	13	2	2	4	1	2	3	
34 Fabricated Metal Products, Except Machinery and Transportation Equipment	12	4	1	5	-	1	1	
35 Machinery, Except Electrical	33	9	5	14	1	3	4	
36 Electrical and Electronic Machinery, Equipment and Supplies	16	3	-	3	-	-	-	
37 Transportation Equipment	5	1	-	1	-	-	-	
38 Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	0	1	-	1	-	-	-	
39 Miscellaneous Manufacturing Industries	3	1	-	1	1	-	1	
40 Railroad Transportation	1	-	-	-	-	-	-	
42 Motor Freight Transportation and Warehousing	4	1	1	2	-	-	-	
44 Water Transportation	5	-	-	-	-	-	-	
45 Transportation by Air	10	-	1	1	-	1	1	
48 Communication	56	3	2	5	-	-	-	
49 Electric, Gas, and Sanitary Services	36	9	1	10	3	-	3	
50 Wholesale Trade-Durable Goods	75	14	3	17	2	1	3	
51 Wholesale Trade-Nondurable Goods Supply and Mobile Home Dealers	44	5	-	5	3	-	3	
53 General Merchandise Stores	7	2	-	2	1	-	1	
54 Food Stores	0	4	-	4	4	-	4	
55 Automotive Dealers and Gasoline Service Stations	3	-	-	-	-	-	-	
56 Apparel and Accessory Stores	0	-	-	-	-	-	-	

FISCAL YEAR 1998 1/
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE 14/
INDUSTRY DESCRIPTION

2-DIGIT SIC CODE 14/ INDUSTRY DESCRIPTION	NUMBER 4/	ACQUIRING PERSON				SECURE REQUEST INVESTIGATIONS 2/			
		CLEARANCE GRANTED TO FTC OR DOJ		FTC DOJ TOTAL		FTC DOJ TOTAL		FTC DOJ TOTAL	
		FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ
59 Miscellaneous Retail	12	1	1	2	-	-	-	-	
60 Banking	30	1	-	1	-	-	-	-	
61 Credit Agencies other than Banks	10	-	-	-	-	-	-	-	
62 Security and Commodity Brokers, Dealers, Exchanges, and Services	13	1	-	1	-	-	-	-	
63 Insurance	43	-	-	-	-	-	-	-	
64 Insurance Agents, Brokers, and Services	5	1	-	1	-	-	-	-	
65 Real Estate	40	1	-	1	-	-	-	-	
67 Holding and other Investment Offices	47	-	-	-	-	-	-	-	
70 Motels, Rooming Houses, Camps, and other Lodging Places	27	-	-	-	-	-	-	-	
72 Personal Services	1	-	-	-	-	-	1	1	
73 Business Services	40	3	-	3	-	-	-	-	
75 Automotive Repair, Services, and Garages	1	-	-	-	-	-	-	-	
78 Motion Pictures	10	-	1	1	-	-	1	1	
79 Amusement and Recreation Services	3	-	-	-	-	-	-	-	
80 Health Services	40	5	3	8	4	1	5	5	
82 Educational Services	4	1	-	1	1	-	-	-	
86 Membership Organizations	1	-	-	-	-	-	-	-	
87 Engineering, Accounting, Research, Management, and Related Services	1	-	-	-	-	-	-	-	
89 Miscellaneous Services	3	-	-	-	-	-	-	-	
99 Nonclassifiable Establishments	7	1	-	1	-	-	-	-	
D7 Diversified Companies	941	127	25	152	30	14	44	44	
00 Not Available 15/	92	4	5	9	-	-	-	-	

TABLE II

FISCAL YEAR 1990 1/
INDUSTRY GROUP OF ACQUIRED ENTITY

2-DIGIT SIC CODE 14/	INDUSTRY DESCRIPTION	ACQUIRED ENTITY				NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS			
		CLEARANCE GRANTED TO FTC OR DOJ		SECOND REQUEST INVESTIGATIONS 2/					
		NUMBER 4/	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
01	Agricultural Production-Crops	4	-	-	-	-	-	-	2
02	Agricultural Production-Livestock and Animal Specialties	3	-	-	-	-	-	-	1
07	Agricultural Services	1	-	-	-	-	-	-	-
08	Forestry	1	-	-	-	-	-	-	-
10	Metal Mining	10	-	-	-	-	-	-	-
12	Bituminous Coal and Lignite Mining	13	1	-	1	-	-	-	2
13	Oil and Gas Extraction	85	-	-	-	-	-	-	2
14	Mining and Quarrying of Nonmetallic Minerals, Except Peels	9	4	2	6	-	1	1	32
15	Building Construction-General Contractors and Operative Builders	1	-	-	-	-	-	-	1
16	Construction other than Building Construction-General Contractors	4	-	2	2	-	1	1	2
17	Construction-Special Grade Contractors	6	-	-	-	-	-	-	-
20	Food and Kindred Products	55	5	6	11	1	5	6	-
22	Textile Mill Products	12	1	-	1	-	-	-	27
23	Apparel and other Finished Products made from Fabrics and Similar Materials	6	1	-	1	-	-	-	6
24	Lumber and Wood Products, Except Furniture	8	1	-	1	-	-	-	1
25	Furniture and Fixtures	11	2	-	2	-	-	-	2
26	Paper and Allied Products	27	5	3	8	1	1	2	6
27	Printing, Publishing and Allied Products	53	3	1	4	1	1	2	31
28	Chemicals and Allied Products	68	-	-	-	-	-	-	-

FISCAL YEAR 1990 1/
INDUSTRY GROUP OF ACQUIRED ENTITY

2-DIGIT SIC CODE 14/	INDUSTRY DESCRIPTION	ACQUIRED ENTITY				NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS			
		CLEARANCE GRANTED TO FTC OF DOJ		SECOND REQUEST INVESTIGATIONS 2/					
		NUMBER 4/	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
30	Rubber and Misc. Plastics Products	21	2	1	3	-	1	1	1
31	Leather and Leather Products	2	1	-	1	-	-	-	-
32	Stone, Clay, Glass, and Concrete Products	21	5	-	5	1	-	1	9
33	Primary Metal Industries	35	5	2	7	2	2	4	9
34	Fabricated Metal Products, Except Machinery and Transportation Equipment	35	14	2	16	1	2	3	8
35	Machinery, Except Electrical	72	19	5	24	3	3	6	19
36	Electrical and Electronic Machinery, Equipment and Supplies	47	9	1	10	-	-	-	9
37	Transportation Equipment	24	4	-	4	-	-	-	3
38	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	25	4	-	4	1	-	1	2
39	Miscellaneous Manufacturing Industries	12	-	-	-	-	-	-	-
40	Railroad Transportation	2	-	-	-	-	-	-	-
42	Motor Freight Transportation and Warehousing	9	1	-	1	-	-	-	1
44	Water Transportation	6	-	-	-	-	-	-	1
45	Transportation by Air	18	3	1	4	-	1	1	8
46	Pipe Lines, Except Natural Gas	1	-	-	-	-	-	-	-
47	Transportation Services	3	-	-	-	-	-	-	-
48	Communication	94	10	6	16	2	-	2	43
49	Electric, Gas, and Sanitary Services	38	11	1	12	3	-	3	23
50	Wholesale Trade-Durable Goods	79	9	1	10	1	1	2	38

TABLE II

FISCAL YEAR 1990 1/
INDUSTRY GROUP OF ACQUIRED ENTITY

3-DIGIT SIC CODE 14/	INDUSTRY DESCRIPTION	NUMBER 4/	ACQUIRED ENTITY			NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS				
			CLEARANCE GRANTED TO FTC OF DOJ		SECOND REQUEST INVESTIGATIONS 3/					
			FTC	DOJ			FTC	DOJ	TOTAL	
52	Building Materials, Hardware, Garden Supply and Mobile Home Dealers	1	-	-	-	-	-	-	-	-
53	General Merchandise Stores	6	3	-	3	1	-	1	-	3
54	Food Stores	16	5	-	5	5	-	5	-	6
55	Automotive Dealers and Gasoline Service Stations	8	-	-	-	-	-	-	-	-
56	Apparel and Accessory Stores	16	2	-	2	-	-	-	-	4
57	Furniture, Home Furnishing, and Equipment Stores	5	1	-	1	-	-	-	-	3
58	Eating and Drinking Places	12	1	-	1	1	-	1	-	3
59	Miscellaneous Retail	29	1	2	3	-	-	-	-	8
60	Banking	20	1	-	1	-	-	-	-	13
61	Credit Agencies other than Banks	56	2	-	2	-	-	-	-	7
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	11	-	1	1	-	1	1	1	2
63	Insurance	65	3	-	3	1	-	1	-	36
64	Insurance Agents, Brokers, and Services	13	1	-	1	-	-	-	-	3
65	Real Estate	54	-	-	-	-	-	-	-	22
67	Holding and other Investment Offices	19	-	1	1	-	-	-	-	1
70	Hotels, Rooming Houses, Camps, and other Lodging Places	56	-	-	-	-	-	-	-	23
72	Personal Services	5	-	1	1	-	1	1	1	1
73	Business Services	73	6	-	6	-	-	1	1	20

TABLE II

FISCAL YEAR 1950 1/
INDUSTRY GROUP OF ACQUIRED ENTITY

2-DIGIT SIC CODE 14/	INDUSTRY DESCRIPTION	ACQUIRED ENTITY				NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS			
		CLEARANCE GRANTED TO FTC OF DOJ		SECURED REQUEST INVESTIGATIONS 3/					
		FTC	DOJ	FTC	DOJ	TOTAL			
78	Motion Pictures	13	1	1	2	1	1	9	
79	Amusement and Recreation Services, Except Motion Pictures	15	-	-	-	-	-	1	
80	Health Services	40	6	0	14	9	2	7	32
82	Educational Services	3	1	-	1	1	-	1	2
83	Social Services	2	-	-	-	-	-	-	
87	Engineering, Accounting, Research, Management, and Related Services	1	-	-	-	-	-	-	
89	Miscellaneous Services	13	1	-	1	-	-	-	3
99	Nonclassifiable Establishments	2	-	-	-	-	-	-	1
DV	Diversified Companies	253	33	9	42	14	7	21	185
60	Not Available 15/	132	10	2	20	1	-	1	6
	ALL TRANSACTIONS	1955	235	61	296	55	34	89	734

FISCAL YEAR 1990
FOOTNOTES

- 1/ Fiscal 1990 includes transactions reported between October 1, 1989 and September 30, 1990.
- 2/ The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to Item 3 (c) of the notification and report form.
- 3/ Based on the date the second request was issued.
- 4/ During fiscal year 1990, 2262 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 1955, reflects adjustments to eliminate the following types of transactions: (1) 36 transactions reported under Section (c)(6) and 138 transactions reported under Section (c)(8) (transactions involving certain regulated industries and financial businesses); (2) 23 transactions which were followed by separate notifications for one or more additional transactions between the same parties during fiscal 1990 (such transactions are listed here as a single consolidated transaction); (3) 97 transactions found to be non-reportable; (4) 13 incomplete transactions (only one party in each transaction filed a compliant notification); and (5) 35 transactions withdrawn before the waiting period began. The table does not, however, exclude 10 competing offers or 178 multiple-party transactions (transactions involving two or more acquiring or acquired persons).
- 5/ Percentage of total transactions.
- 6/ Percentage of transaction range group.
- 7/ Percentages also appear in TABLE I.
- 8/ This category is composed of newly-formed acquiring persons and transactions withdrawn before staff could make a detailed analysis of the acquisition.
- 9/ This category is composed of newly-formed acquiring persons, foreign acquiring persons with no United States revenues, and acquiring persons who had not derived any revenues from their investments at the time of filing.
- 10/ The assets of the acquired entity were taken from responses to Item 2(d)(1) (Assets to be Acquired) or from Items 4(a) or (b) (SEC documents and annual reports) of the premerger notification and report form.
- 11/ The assets were not available primarily because the acquired firms' financials were consolidated with those of each respective acquired ultimate parent.
- 12/ The sales of the acquired entity were taken from Items 4(a) and (b) (SEC documents and annual reports) or responses to Item 5 (dollar revenues) of the premerger notification and report form.
- 13/ Transactions in this category are represented by the acquisitions of newly-formed corporations or corporate joint ventures from which no sales were generated, and acquisitions of assets which had produced no sales or revenues during the year prior to filing the notification and report form.
- 14/ 2-Digit SIC codes are part of the system of Standard Industrial Classification established by the UNITED STATES GOVERNMENT STANDARD CLASSIFICATION MANUAL, 1987, Executive Office of the President - Office of Management and Budget. The SIC groupings used in this table were determined from responses submitted by filing parties to Item 5 of the premerger notification and report form.
- 15/ Transactions included in this category represent newly-formed companies, companies with no United States operations, notifications filed by some individuals, and filings withdrawn before the industry classification could be determined.
- 16/ Transactions in this category include filings withdrawn before an industry group could be determined and newly-formed entities.

Exhibit B

STATEMENT OF THE
FEDERAL TRADE COMMISSION
ON
HART-SCOTT-RODINO FILING FEES

On November 8, 1989, the United States Congress, as part of the Commerce, Justice, and State Appropriations Bill¹, mandated that a fee of \$20,000 must be paid by "persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder" (the Act).² President Bush signed the Bill into law on November 21, 1989. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute further specifies that "[f]or purposes of said Act, no notification shall be considered filed until payment of the fee required by this Section." In other words, as of November 29, 1989, the waiting period required under the Act will not begin until payment of a filing fee.

¹ Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for the Fiscal Year Ending September 30, 1990 (H.R. 2991), Section 605.

² References to "the Act" refer to Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Pub. L. 95-435, 90 Stat. 1390.

The Commission issues this statement in order to advise the public about the filing fee obligation, and to set out procedures for payment of the filing fee.

I. PERSONS WITH A FEE PAYMENT OBLIGATION

The statute requires persons acquiring voting securities or assets who are required to file premerger notifications by the Act and the regulations³ promulgated thereunder to pay a filing fee. "Acquiring person" is defined, for purposes of the Act, in Rule 801.2.

In most transactions the Act and Rules specify only one acquiring person who is required to file a premerger notification, and who therefore is obligated by the statute to pay a filing fee. However, in some transactions more than one person is required under the Act and Rules to file a premerger notification. In these circumstances, each acquiring person required to file a premerger notification will be obligated by the statute to pay a filing fee. Some of the more common transactions in which this is likely to occur are set out below.

For consolidations in which more than one person is an acquiring person required to file a premerger notification, each such person must separately pay a filing fee. (See Rule 801.2(d)).

³ References to "Regulations" and "Rules" in this statement refer to the Premerger Notification Rules, 16 CFR Parts 801-803.

Example⁴: (1) Assume corporations A and B (each being its own ultimate parent entity) will be consolidated pursuant to an agreement in which a newly formed corporate entity, C, will be the surviving entity. The shareholders of A and B will receive newly issued shares of C as a result of the transaction. Under the Act and Rules A and B are each an acquiring person required to file a premerger notification and pay a filing fee. Any shareholder of A or B who is also an acquiring person required to file a premerger notification under Rule 801.2(a) and (e) must also pay a filing fee.

To the extent the formation of a joint venture or other corporation is reportable pursuant to Rule 801.40, each acquiring person (contributor) required to file a premerger notification under the Act and Rules must pay a filing fee.

When an entity making an acquisition is controlled by more than one person (e.g., a joint bid is being made), each acquiring person required to file a premerger notification under the Act and Rules must pay a filing fee.

Example: (2) Assume corporation A has two ultimate parent entities, "X" and "Y" under Rule 801.1(c). "X" and "Y" will cause A to make a cash tender offer for B's outstanding voting securities. "X" and "Y" must each file a premerger notification and pay a filing fee.

A person acquiring voting securities in secondary acquisitions, separately reportable under Rule 801.4, shall pay a filing fee for each secondary acquisition for which it is required by the Act and Rules to file a premerger notification. This fee shall be in addition to any filing fee that is required in the primary acquisition.

⁴ Throughout the examples, persons are designated ("A", "B", etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks. Unless otherwise indicated, assume the size-of-person, size-of-transaction and commerce tests are satisfied.

When persons file documents and information with the Commission pursuant to Section 7A(c)(5) and (8) of the Act and Rules 802.5(a) and 802.8 in order to obtain an exemption from the filing requirements of the Act, no filing fee is required.

II. MECHANICS OF PAYMENT

Filing fees shall be paid in accordance with the procedures set forth below.

(A) The filing fee requirement is effective as of November 29, 1989. Pursuant to Rule 803.10(c)(1) premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 are deemed effected on November 29, 1989. Premerger notification and report forms received prior to November 29, 1989, and which the Commission's Premerger Notification Office has certified in writing are complete (See Part (I) below), are not affected by the filing fee requirement.

(B) Fees are due and payable at the time of filing premerger notification and report forms. Fees are payable to the "Federal Trade Commission", omitting the name or title of any official of the Commission, by electronic wire transfer, United States postal money order, bank money order, bank cashier's check or certified check in U.S. currency.

(C) Fees paid by electronic wire transfer shall be deposited to the Treasury's account at the New York Federal Reserve Bank (the "Bank"). To insure fees paid are attributed to the proper acquiring person, the following information must be given at the time of transfer by the payor to the Bank:

1. Treasury's ABA number: 021030004
2. Commission's ALC number: 29000001
3. Commission's Clearing Account: 29X3875.2
4. The payor's name, the acquiring person's name (or a pseudonym if preferred), and an identification of the payment as a "Pre-Merger Filing Fee."

(D) Fees paid by United States postal money order, bank money order, bank cashier's check, or certified check shall be submitted to the Commission's Premerger Notification Office along with the required premerger notification and report forms.

(E) A person required to pay a filing fee shall include in the letter of transmittal that accompanies its premerger notification and report forms a statement that a filing fee has been paid, the method of payment and, if payment was made by electronic wire transfer, the date of transfer and any pseudonym used to identify the acquiring person.

(F) Any filing that is not accompanied by payment of a filing fee is deficient within the meaning of Rule 803.10(c)(2). Payment of a filing fee does not preclude a determination that a filing is deficient for any other reason.

(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned.

(H) Filing fees are to be paid solely to the Commission. No additional fee is required to be submitted to the Antitrust Division of the Department of Justice.

(I) In accordance with past policy, the Commission staff will send a letter to persons filing under the Act to verify the receipt of completed notification and report forms and to identify the expiration date of the waiting period. Such notice will henceforth acknowledge receipt of a filing fee.