



**FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION**



**DEPARTMENT OF JUSTICE
ANTITRUST DIVISION**

ANNUAL REPORT TO CONGRESS FISCAL YEAR 2004

**Pursuant to Subsection (j) of Section 7A of the Clayton Act
Hart-Scott-Rodino Antitrust Improvements Act of 1976
(Twenty-Seventh Report)**

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INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act" or the "Act"), together with Section 13(b) of the Federal Trade Commission Act and Section 7A of the Clayton Act, gives the Federal Trade Commission (the "Commission") and the Antitrust Division of the Department of Justice (the "Antitrust Division" or "Division") the opportunity to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 2004 to protect consumers -- individuals, businesses, and government -- against anticompetitive mergers.

The Commission and the Antitrust Division continue their efforts to promote competition by identifying and investigating those mergers and acquisitions that raise potentially significant competitive concerns. In fiscal year 2004, 1,454 transactions were reported under the HSR Act, representing about a 43 percent increase from the 1,014 transactions reported in fiscal year 2003 and about a 70 percent decrease from the 4,926 transactions reported in fiscal year 2000, the last full fiscal year under the previous reporting thresholds.¹ (See Figure 1 below.)

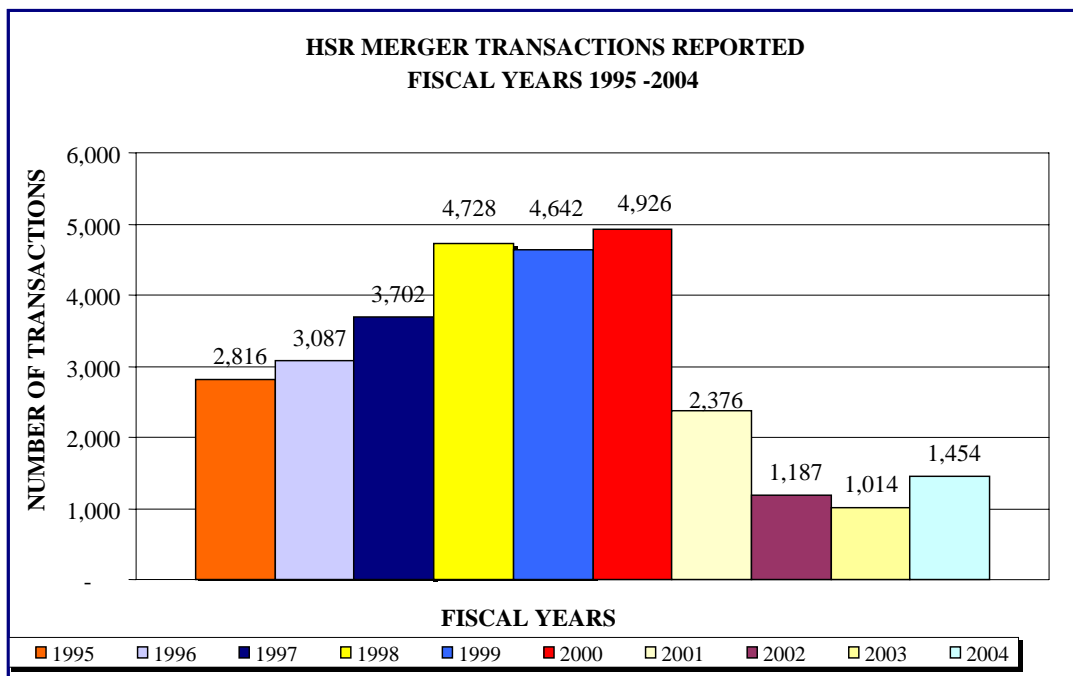


Figure 1

¹ The decrease in the number of reportable transactions since fiscal year 2000 is, to a considerable extent, a result of the significant statutory changes to the HSR Act that took effect on February 1, 2001. The legislation raised the size-of-transaction threshold from \$15 million to \$50 million and made other changes to the filing and waiting period requirements. Section 630 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 2001, Pub. L. No. 106-553, 114 Stat. 2762. See also Appendix A.

During the year, the Commission challenged fifteen transactions, leading to ten consent orders, one administrative complaint, one litigated case, and three abandoned transactions. The Commission also authorized staff to seek injunctive relief in one matter. Most notably, the Commission challenged the proposed merger of Sanofi-Synthelabo and Aventis.² The proposed merger would have substantially reduced competition and raised prices for factor Xa inhibitors, used to treat and prevent venous thromboembolism and other conditions related to excessive blood clot formation; cytotoxic drugs used to treat colorectal cancer; and prescription drugs used to treat insomnia. The Commission also challenged the proposed acquisition by Magellan Midstream Partners, L.P. of certain pipeline and terminal assets of Royal Dutch Petroleum Company from Shell Oil Company.³ The transaction, as proposed, would have eliminated direct competition between the parties, resulting in the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City metropolitan market would have increased.

The Antitrust Division challenged nine merger transactions, leading to one litigated case, five consent decrees, two abandoned transactions, and one other transaction that was restructured after the Division informed the parties of its antitrust concerns relating to the transaction. The Division's notable merger challenges included Oracle Corporation's acquisition of PeopleSoft, Inc.⁴ The Division filed a complaint alleging that the merger would reduce from three to two the number of competitors for high-function financial management and human resource management software. After a trial, a federal district court declined to block the transaction. The Division also challenged the proposed acquisition of Concord EFS, Inc. by First Data Corporation.⁵ The proposed transaction would have substantially reduced competition among PIN debit networks, and resulted in consumers paying higher prices for goods and services from merchants that offer debit transactions.

In fiscal year 2004, the Commission's Premerger Notification Office ("PNO") continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form ("the filing form"). The HSR website, www.ftc.gov/bc/hsr/hsr.htm, continued to provide improved access to information necessary to the notification process. The website includes such information as the premerger notification filing form and instructions, the premerger notification statute and rules, grants of early termination, filing fee instructions, HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, frequently asked questions regarding the HSR filing requirements, and other useful information. The website is the paramount source of information for HSR practitioners seeking information on changes to the Act and amendments to the premerger

² See *infra* p. 14.

³ See *infra* p. 16.

⁴ See *infra* p. 10.

⁵ See *infra* p. 9.

rules, including speeches, press releases, summaries and highlights, and Federal Register notices about the amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff continues their efforts to assist HSR practitioners and readily provides them with needed information.

BACKGROUND OF THE HSR ACT

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. §18a. Subsection (j) of Section 7A provides:

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 need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

This is the 27th annual report to Congress pursuant to this provision. It covers fiscal year 2004 -- October 1, 2003 through September 30, 2004.

In general, the Act requires that certain proposed acquisitions of voting securities or assets must be reported to the Commission and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days (15 days in the case of a cash tender offer or a bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and, in certain acquisitions, the size of the parties as measured by their sales and assets. Small acquisitions, acquisitions involving small parties, and 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 necessary to conduct this antitrust review. Much of the information for a preliminary antitrust evaluation is included in the notification filed with the agencies by the parties to the proposed transactions and is immediately available for review during the waiting period.

If either agency determines during the waiting period that further inquiry is necessary, however, the agency is authorized by Section 7A(e) of the Clayton Act to issue a request for additional information and documentary material (a "second request"). The second request extends the waiting period for a specified period after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated.

If the reviewing agency believes that a proposed transaction may substantially lessen competition, it may seek an injunction in federal district court to prohibit consummation of the transaction. The Commission may also challenge the transaction in administrative litigation.

The Commission, with the concurrence of the Assistant Attorney General for the Antitrust Division, promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form. The program became effective on September 5, 1978. The Commission, with the concurrence of the Assistant Attorney General, has amended the rules and the filing form on several occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules.⁶

A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported, the number of filings received, the number of merger investigations in which second requests were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted.⁷ Appendix A also shows for fiscal years 1995 through 2004 the number of transactions in which second requests could have been issued, as well as the percentage of transactions in which second requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 1995 through 2004.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2004 increased approximately 43 percent from the number of transactions reported in fiscal year 2003. In fiscal year 2004, 1,454 transactions were reported, while 1,014 were reported in fiscal year 2003. The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2004 remained the same as the number of merger investigations in which second requests were

⁶ 43 Fed. Reg. 3443 (August 4, 1978); 43 Fed. Reg. 36053 (August 15, 1978); 44 Fed. Reg. (November 21, 1979); 45 Fed. Reg. 14205 (March 5, 1980); 48 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (November 12, 1985); 51 Fed. Reg. 10368 (March 26, 1986); 52 Fed. Reg. 7066 (March 6, 1987); 52 Fed. Reg. 20058 (May 29, 1987); 54 Fed. Reg. 214251 (May 18, 1989); 55 Fed. Reg. 31371 (August 2, 1990); 60 Fed. Reg. 40704 (August 9, 1995); 61 Fed. Reg. 13666 (March 28, 1996); 63 Fed. Reg. 34592 (June 25, 1998); 66 Fed. Reg. 8680 (February 1, 2001); 66 Fed. Reg. 8723 (February 1, 2001); 66 Fed. Reg. 16241 (March 23, 2001); 66 Fed. Reg. 23561 (May 9, 2001); 66 Fed. Reg. 35541 (July 6, 2001); 67 Fed. Reg. 11898 (March 18, 2002); 67 Fed. Reg. 11904 (March 18, 2002); 68 Fed. Reg. 2425 (January 17, 2003); 70 Fed. Reg. 4988 (January 31, 2005); 70 Fed. Reg. 11501 (March 8, 2005); 70 Fed. Reg. 11526 (March 8, 2005).

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

issued in fiscal year 2003. Second requests were issued in 35 merger investigations in both fiscal year 2003 and 2004. While the number issued remained the same, the percentage of transactions resulting in second requests declined from 3.6 percent in fiscal year 2003 to 2.5 percent in fiscal year 2004. (See Figure 2 below.)

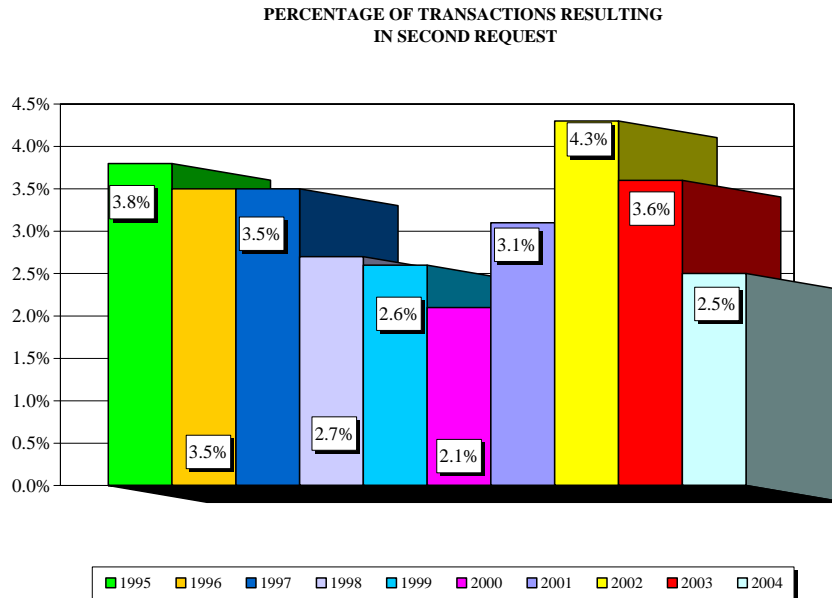


Figure 2

The statistics in Appendix A also show that early termination was requested in the majority of transactions. In fiscal year 2004, early termination was requested in 85 percent (1,241) of the transactions reported while in fiscal year 2003, it was requested in 69 percent (700) of the transactions reported. However, the percentage of requests granted out of the total requested decreased from 86.6 percent in fiscal year 2003, to 76 percent in fiscal year 2004, approximately the percentage of requests granted in fiscal year 2002.

Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2004. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued. Table III of Exhibit A shows that, in fiscal year 2004, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 17.1 percent of the total number of transactions in which a second request could have been issued.

The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. The total dollar value of reported transactions rose dramatically from fiscal years 1995 to 2000 from about \$508.8 billion to about \$3 trillion before declining to about \$1 trillion in fiscal year 2001, \$565.4 billion in fiscal year 2002, and \$406.8 billion in fiscal year 2003. During fiscal year 2004, the dollar value of reported transactions rose to about \$630 billion.

Tables X and XI provide the number of transactions in each industry group in which the acquiring person or the acquired entity derived revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 2004 based on the acquired entity's operations.

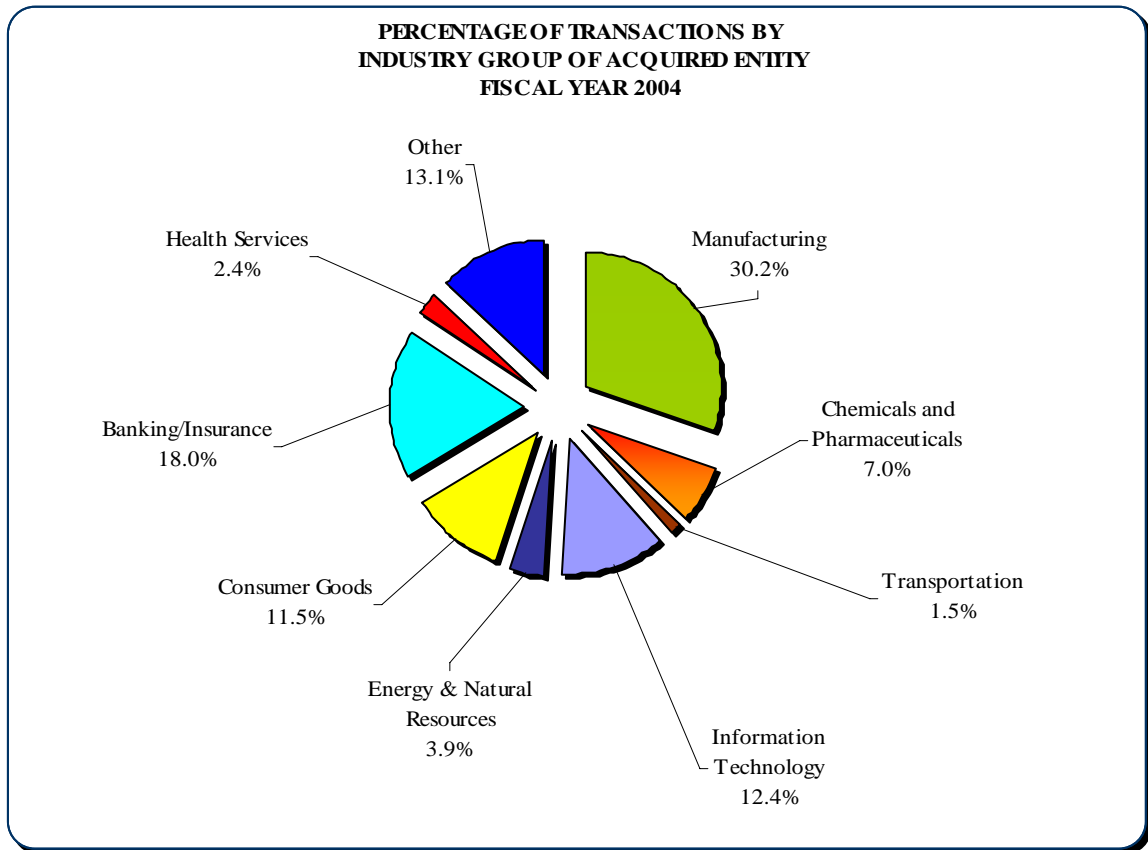


Figure 3

DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. *Compliance*

The Commission and the Antitrust Division continued to monitor compliance with the premerger notification program's filing and waiting period requirements and initiated a number of compliance investigations in fiscal year 2004. The agencies 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. In addition, industry sources, such as competitors, customers and suppliers, and interested members of the public, often provide the agencies with information about transactions and possible violations of the Act's requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$11,000 for each day the violation continues.⁸ The antitrust agencies examine the circumstances of each violation to determine whether penalties should be sought.⁹ During fiscal year 2004, 25 corrective filings for violations were received, and the agencies brought two enforcement actions, resulting in the payment of \$1.8 million in civil penalties.

In *United States v. Gates*,¹⁰ the complaint alleged that Bill Gates, through his personal investment company, acquired more than \$50 million of the voting securities of ICOS Corporation in 2002, without complying with HSR reporting requirements. According to the complaint, he did not qualify for the "solely for the purpose of investment" HSR Act exemption because he intended to participate in the basic business decisions of ICOS, a pharmaceutical company, through among other things, his longstanding membership on its board of directors. Under the terms of a consent decree filed simultaneously with the complaint, Gates agreed to pay a civil penalty of \$800,000 to settle the charges. The case was not related to Gates' position in Microsoft Corporation or the Antitrust Division's antitrust litigation with the company.

In *United States v. Manulife Financial Corporation*,¹¹ the complaint alleged that Manulife, a Canadian-based insurance and financial services company, violated the HSR Act when it acquired more than \$50 million of John Hancock common stock in the spring of 2003 without making a premerger notification filing. Manulife and John Hancock announced in September 2003 an intent to merge, and they consummated that transaction in April 2004. According to the complaint, the initial purchases in the spring of 2003 did not qualify for the "solely for the purpose of investment" HSR Act exemption because, at the time of the acquisitions, Manulife was considering a Manulife-John Hancock combination. Under the terms of a consent decree filed simultaneously with the complaint, Manulife agreed to pay a civil penalty of \$1 million to settle the charges.

2. *Proposed Rules*

⁸ Effective November 20, 1996, dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction were adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (April 26, 1996). The adjustments included, in part, an increase from \$10,000 to \$11,000 for each day during which a person is in violation under Section 7A(g)(1). 61 Fed. Reg. 54548 (October 21, 1996), corrected at 61 Fed. Reg. 55840 (October 29, 1996).

⁹ When the parties inadvertently fail to file, the enforcement agencies generally do not seek penalties where the parties promptly make corrective filings after discovering the failure to file, submit an acceptable explanation of their failure to file, and have not previously violated the Act.

¹⁰ *United States v. William H. Gates III*, No. 1:04CV00721 (D.D.C. filed May 3, 2004).

¹¹ *United States v. Manulife Financial Corporation*, No. 1:04CV00722 (D.D.C. filed May 3, 2004).

On April 8, 2004, the Commission published a Notice of Proposed Rulemaking¹² proposing changes to the premerger notification rules. The proposed rules attempted to reconcile, as far as practical, the disparate treatment of corporations, partnerships, limited liability companies and other types of non-corporate entities under the rules, particularly in the areas of acquisitions of interests in these entities, formations, and the application of certain exemptions.

MERGER ENFORCEMENT ACTIVITY¹³

1. *The Department of Justice*

During fiscal year 2004, the Antitrust Division challenged nine merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In six of these challenges, the Antitrust Division filed a complaint in U.S. district court. Five of these cases were settled by consent decree, and one case was litigated unsuccessfully in district court. In the other three challenges during fiscal year 2004, when apprised of the Antitrust Division's concerns regarding their proposed transaction, the parties in two instances abandoned the proposed transaction, and in the third, the parties restructured the proposed transaction to avoid competitive problems.¹⁴

In *United States et al. v. Waste Management, Inc., et al.*,¹⁵ the Division and the State of Florida required Waste Management to sell certain waste hauling assets before proceeding with its proposed multi-million dollar purchase of stock and assets from Allied Waste Industries, Inc., in Broward County and Palm Beach County, Florida. The complaint alleged that the transaction, as originally proposed, would have lessened competition and resulted in higher prices for small container commercial hauling services in Broward County, where the parties were two of only three significant firms providing this service. Small container commercial hauling involves the collection of waste from commercial sites such as retail stores, offices and restaurants, and the shipment of the collected waste to disposal sites. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Waste Management was required to divest small container commercial hauling assets on certain routes in Broward County. Additionally, Waste Management must notify both the Department of Justice and the State of Florida if it proposes to acquire small container commercial hauling assets in Broward County. The Court entered

¹² 69 Fed. Reg. 18686 (April 8, 2004). The proposed rules were modified after public comment and became final in fiscal year 2005; *see* 70 Fed. Reg. 11502 (March 8, 2005).

¹³ All cases in this report were not necessarily reportable under the premerger notification program. Because of provisions regarding the confidentiality of the information obtained pursuant to the Act, it would be inappropriate to identify which cases were initiated under the program.

¹⁴ In two instances, the Department of Justice issued press releases: October 29, 2003 - Sonoco Products Company proposed acquisition of Pasco Beverages Company (frozen juice can-making equipment); August 25, 2004 - Wachovia Corporation merger with SouthTrust Corporation (Florida and Georgia banking services). In the other instance, the Division informed the parties of its concerns but did not issue a press release.

¹⁵ *United States and the State of Florida v. Waste Management, Inc. and Allied Waste Industries, Inc.*, No. 1:03CV02076 (D.D.C. filed Oct. 14, 2003).

the consent decree on March 30, 2004.

In *United States, et al. v. First Data Corporation, et al.*,¹⁶ the Division sued to block the proposed \$7 billion acquisition of Concord EFS, Inc. by First Data Corporation. The complaint alleged that the merger would have substantially reduced competition among PIN debit networks, and resulted in consumers paying higher prices for goods and services from merchants that offer PIN debit transactions. PIN debit networks enable consumers to purchase goods and services from merchants through PIN debit transactions by swiping their bank card at a merchant's terminal and entering a Personal Identification Number, or PIN. According to the complaint, PIN debit networks provide an increasingly important method of payment because PIN debit is the least expensive, most efficient, and most secure form of card payment, and in 2002, consumers used PIN debit networks to purchase more than \$150 billion in goods and services. Concord owned STAR, the largest PIN debit network, and First Data owned 64 percent of NYCE Corporation, which operated NYCE, the third-largest PIN debit network. Just before trial was scheduled to begin, on December 15, 2003, First Data agreed to divest its full interest in NYCE Corporation in order to proceed with the proposed acquisition, and a consent decree was filed, settling the suit. Thereafter, the Court entered the consent decree on May 25, 2004.

In *United States v. DNH International Sar, et al.*,¹⁷ the Division required Dyno Nobel, Inc. to divest its 50 percent interest in an industrial grade ammonium nitrate (IGAN) production facility in Utah in order to proceed with a multimillion dollar acquisition of ammonium nitrate manufacturing facilities from El Paso Corporation. IGAN is an essential ingredient in the production of nearly all blasting agent explosives for commercial use in industries such as mining and construction. Dyno Nobel, which was a subsidiary of DNH International Sarl, and El Paso, through its wholly owned subsidiary, Coastal Chem Inc., were among the largest producers of IGAN in North America. The complaint alleged that the transaction, as originally proposed, would have resulted in higher prices for IGAN purchasers in the western United States, with two firms controlling almost 90 percent of IGAN sales in western North America. The Division filed a consent decree simultaneously with the complaint, settling the suit. The Court entered the consent decree on May 6, 2004.

In *United States v. Syngenta AG, et al.*,¹⁸ the Division challenged Syngenta's proposed \$475 million acquisition of Advanta B.V., alleging that the acquisition, as originally proposed, would have resulted in higher prices and reduced seed innovation for sugar beet growers in the United States. Sugar beets are sold to processors, who convert them to sugar. The complaint alleged that Syngenta and Advanta were two of only three significant developers of sugar beet seeds appropriate for growing in the United States, and that they

¹⁶ *United States and the State of Connecticut, State of Illinois, State of Louisiana, Commonwealth of Massachusetts, State of New York, State of Ohio, State of Texas, and District of Columbia v. First Data Corporation and Concord EFS, Inc.*, No. 1:03CV02169 (D.D.C. Oct. 23, 2003).

¹⁷ *United States v. DNH International Sarl, Dyno Nobel, Inc., El Paso Corporation, and Coastal Chem, Inc.*, No. 1: 03CV02486 (D.D.C. Dec. 12, 2003).

¹⁸ *United States v. Syngenta AG, AstraZeneca PLC, Koninklijke Cooperatie Cosun U.A. and Advanta B.V.*, No. 1:04CV01442 (D.D.C. Aug. 25, 2004).

devoted considerable research and development efforts to seed innovation. Syngenta was the third largest agricultural seed company in the world and Advanta was the fifth largest. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Syngenta was required to divest the worldwide sugar beet business of Advanta. The Court entered the consent decree on December 16, 2004.

In *United States v. Connors Bros. Income Fund, et al.*,¹⁹ the Division challenged the acquisition of Bumble Bee Seafoods by Connors Bros. Income Fund, a Canadian income trust, alleging that combining the two companies would have resulted in higher prices for U.S. consumers of mainstream canned sardine snack products. The complaint alleged that Connors and Bumble Bee owned the four dominant sardine snack brands and were the only two significant sellers of mainstream sardine snacks. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Connors is required to divest its Port Clyde sardine snack business. The Court entered the consent decree on April 19, 2005.

In *United States, et al. v. Oracle Corporation*,²⁰ the Division sued to prevent Oracle Corporation from acquiring Peoplesoft, Inc. The complaint alleged that Oracle, Peoplesoft, and the German software company, SAP, were the only companies that competed to develop and sell high function integrated human resource management and financial management services software that met the needs of large, complex enterprises. At trial, the Division unsuccessfully sought to prove that the acquisition would likely reduce competition and result in higher prices, less innovation, and fewer choices for businesses, government agencies and other organizations that depend on this type of software. On September 9, 2004, the Court entered judgment for the defendant.

During fiscal year 2004, the Division investigated two bank merger transactions for which divestiture was required prior to or concurrently with the acquisition. In those instances, a “not significantly adverse” letter conditioned upon a letter agreement between the parties and the Division was sent to the appropriate bank regulatory agency.²¹

Additionally, on August 2, 2004, the Division petitioned the Court to enter an enforcement order against Allied Waste Industries for violating an order that was entered by the court on May 19, 2000, in *United States v. Allied Waste Industries, Inc. and Browning-*

¹⁹ *United States v. Connors Bros. Income Fund, and Bumble Bee Seafoods, LLC*, No. 1:04CV01494 (D.D.C. Aug. 31, 2004).

²⁰ *United States and the State of Texas, State of Hawaii, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, State of New York and State of North Dakota v. Oracle Corporation*, No. C-04-0807 (JCS) (N.D. CA Feb. 26, 2004).

²¹ The two letters were: August 25, 2004, letter to the Board of Governors of the Federal Reserve System regarding the application by Wachovia Corporation, Charlotte, NC, to acquire SouthTrust Corporation, Birmingham, AL; August 26, 2004, letter to the Board of Governors of the Federal Reserve System regarding the application by SunTrust Banks Inc., Atlanta, GA, to acquire National Commerce Financial Corporation, Memphis, TN.

*Ferris Industries, Inc.*²² Under the terms of the decree settling that merger challenge, Allied was required to grant ash and bypass waste disposal rights at the former Browning-Ferris landfill in Fall River, Massachusetts to the SEMASS incinerator owned by American Ref-Fuel Company. According to the Department's petition, Allied violated that provision of the decree by prematurely terminating SEMASS's disposal rights at Fall River. The enforcement order agreed to by Allied and the Department confirmed that Allied would accept ash and bypass waste from SEMASS at the Fall River landfill, as required by the 2000 decree. On August 9, 2004, the court entered the enforcement order.

On August 31, 2004, in *United States and Commonwealth of Kentucky v. Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC*,²³ the federal district court granted Dairy Farmers of America, Inc.'s motion for summary judgment and dismissed the complaint with prejudice. Thereafter, the Division filed its notice of appeal on October 28, 2004, and that appeal is pending.

2. *The Federal Trade Commission*

The Commission challenged fifteen transactions that it concluded would have lessened competition if allowed to proceed as proposed during fiscal year 2004,²⁴ leading to ten consent orders, one administrative complaint, and three abandonments.²⁵ In one matter, the Commission authorized staff to seek injunctive relief, which was litigated unsuccessfully in district court.

In *Federal Trade Commission v. Arch Coal, Inc., New Vulcan Coal Holdings, LLC, and Triton Coal Company, LLC*,²⁶ the Commission filed for a preliminary injunction to block Arch Coal's proposed acquisition of Triton Coal Company, LLC from New Vulcan Holdings, LLC alleging that the acquisition would have substantially lessened competition and increased the likelihood of coordinated interaction among coal producers in Wyoming's Southern Powder River Basin ("SPRB"), adversely affecting electricity customers throughout the United States. According to the complaint, of the approximately 1.1 billion tons of coal produced annually in the United States, about one-third is produced in the SPRB and is burned by electric generators in at least twenty-six states. The SPRB had vast reserves and a substantial production of low-sulfur coal with energy content between approximately 8400

²² See the Annual Report to Congress, Fiscal Year 1999 for a description of this case.

²³ See the Annual Report to Congress, Fiscal Year 2003 for a description of this case.

²⁴ To avoid double counting this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2004.

²⁵ The Commission did not make public statements about the transactions that were abandoned after the parties were told of the Commission's concerns about the proposed transactions.

²⁶ *Federal Trade Commission v. Arch Coal, Inc., New Vulcan Coal Holdings, LLC, and Triton Coal Company, LLC*, Civ. No. 1:04CV534 (D.D.C. filed April 1, 2004). On April 6, 2004, the FTC issued an administrative complaint. The administrative complaint was withdrawn from adjudication on September 10, 2004.

and 8800 British Thermal Units (“Btus”) per pound. The most highly valued SPRB coal was 8800 Btu SPRB coal, which was produced in the southern portion of the SPRB, known as Tier 1. Because of its lower sulfur content, higher energy content, and easy access to competing rail transport service, 8800 Btu SPRB coal demanded a price premium over other coal mined in the SPRB. Arch was the second largest producer of coal in the United States and was one of only four producers of 8800 Btu SPRB coal. Triton was one of five significant producers of coal in the SPRB and was also one of only four producers of 8800 Btu SPRB coal. The proposed acquisition would have combined two among only four producers in Tier 1 of the SPRB, substantially increasing concentration in 8800 Btu SPRB coal. The acquisition also would have combined the two firms that held the principal sources of excess capacity in the SPRB, and brought under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal. The district court denied the Commission’s motion for the preliminary injunction. On June 13, 2005, the Commission voted not to continue with its administrative litigation, and to close its investigation into the transaction.

The Commission issued an administrative complaint in *Evanston Northwestern Healthcare Corporation, and ENH Medical Group, Inc.*,²⁷ alleging that Evanston’s 2000 acquisition of Highland Park Hospital resulted in significantly higher prices charged to health insurers and therefore in higher costs to purchasers of insurance and consumers of hospital services. According to the complaint, with Highland Park added to its existing hospitals, Evanston became a more significant provider of healthcare to payors who needed hospital access in northeast Cook County and southeast Lake County, Illinois. As a result of the merger, Evanston was able to raise its prices far above price increases of other comparable hospitals. In a separate count challenging conduct, the complaint alleged that the resulting physicians’ group negotiated prices not only for physicians who were employed by the ENH Medical Group but also for several hundred independent physicians not employed by the Group who were previously affiliated with Highland Park, resulting in reduced competition and higher prices paid by health plans and other payors to the Group’s salaried and independent doctors. Under the terms of a consent order that settled only the conduct allegations, the ENH Medical Group was prohibited from bargaining on behalf of its members. An administrative hearing is pending concerning the Commission’s allegations surrounding Evanston’s acquisition of Highland Park.

²⁷ *Evanston Northwestern Healthcare Corporation, and ENH Medical Group, Inc.*, Docket No. 9315 (issued February 10, 2004).

In fiscal year 2004, the Commission accepted consent agreements for public comment in ten merger cases. Six of the consent agreements became final in fiscal year 2004; four became final in fiscal year 2005.

In *Gencorp Inc.*,²⁸ the complaint alleged that Gencorp's proposed acquisition of Atlantic Research Corporation ("ARC") from Sequa Corporation would have lessened competition in the market for the research, development, manufacture and sale of certain types of in-space propulsion thrusters in the United States. According to the complaint, Aerojet, a Gencorp subsidiary, and ARC were the closest competitors and the only viable suppliers of monopropellant, bipropellant apogee, and dual mode apogee thrusters to commercial, civil, and defense customers in the United States for most spacecraft programs. ARC was the nation's leading supplier of biopropellant attitude control thrusters. Although Aerojet did not produce biopropellant attitude control thrusters, it had substantial expertise in this area, had produced these thrusters in the past and was a likely potential entrant into this market. The proposed acquisition would have eliminated direct competition between the companies, increasing the likelihood that U.S. commercial, civil and defense customers would have been forced to pay higher prices for such products. To remedy the anticompetitive effects of the proposed transaction, Gencorp was required to divest ARC's in-space liquid propulsion business to a Commission-approved buyer.

In *General Electric Company*,²⁹ the complaint alleged that General Electric's proposed acquisition of Agfa-Gevaert N.V.'s nondestructive testing ("NDT") business would have substantially lessened competition in the market for certain ultrasonic NDT equipment in the United States. According to the complaint, the U.S. markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages were highly concentrated, and post-acquisition GE's market share in each of the markets would have exceeded 70 percent. GE, through its Panametrics subsidiary, and Agfa, through its Krautkramer subsidiary, were the two largest suppliers of ultrasonic NDT equipment in the United States. By eliminating competition between these two leading suppliers, the proposed acquisition would have allowed General Electric to exercise market power, increasing the likelihood that the purchasers of these products would have been forced to pay higher prices. Under the terms of the order, General Electric was required to divest its worldwide Panametrics ultrasonic NDT business to R/D Tech, Inc.

In *American Air Liquide, Inc.*,³⁰ the complaint alleged that American Air Liquide's proposed \$2 billion acquisition of Messer Griesheim GmbH would have substantially lessened competition in the market for liquid argon in the continental United States and in certain regional markets in the United States for liquid oxygen and liquid nitrogen. According to the complaint, American Air Liquide was the fourth largest supplier of industrial gases in the United States, with air separation units ("ASUs") located throughout the nation, primarily

²⁸ Gencorp Inc., Docket No. C-4099 (issued December 19, 2003).

²⁹ General Electric Company, Docket No. C-4103 (issued January 28, 2004).

³⁰ American Air Liquide, Docket No. C-4109 (issued June 29, 2004).

in Texas and the Gulf Coast region. Messer's U.S. subsidiary, Messer Griesheim Industries, Inc. ("MGI"), was the fifth largest producer of liquid atmospheric gases (including oxygen, nitrogen, and argon) in the United States. MGI owned and operated many ASUs, including several in Texas and the Gulf Coast region, as well as in northern and southern California. In the southern Texas and western Louisiana markets, MGI and American Air Liquide were the only producers capable of economically supplying customers with liquid oxygen and nitrogen. As proposed, the transaction would have increased the likelihood of consumers being forced to pay higher prices for these products in the relevant geographic areas. Under the order, American Air Liquide was required to divest six ASUs and related assets that were operated by MGI in California, Texas, Louisiana, and Mississippi.

In *Itron, Inc./Schlumberger Electricity, Inc.*,³¹ the complaint alleged that the proposed acquisition of Schlumberger by Itron would have substantially lessened competition in the market for the research, development, manufacture and sale of mobile radio frequency ("RF") automatic meter reading ("AMR") systems for electric utilities in the United States. Mobile RF AMR systems allow data from electricity meters to be read automatically and remotely, eliminating the need for a utility to send a meter reader to manually inspect each individual meter. According to the complaint, Itron was the leading supplier of mobile RF AMR systems to electric utilities in the United States. Schlumberger was the leading supplier of residential electricity meters in the United States and the second largest supplier of mobile RF AMR systems nationwide. The U.S. market for such systems was highly concentrated, with Itron and Schlumberger, together, accounting for more than 99 percent of the market. The other three firms in the market, together, had a market share of less than one-half of one percent. Direct competition between the companies resulted in lower prices for consumers of mobile RF AMR technology, improved service, and greater innovation. Such benefits would have been eliminated if the transaction as proposed was allowed to proceed with no relief. Under the order, Itron was required to grant a royalty-free, perpetual, and irrevocable license to Hunt Technologies, Inc. for Itron's mobile RF AMR technology for electric utilities, allowing Hunt to become a viable and significant competitor in this market.

In *Sanofi-Synthelabo/Aventis*,³² the complaint alleged that the proposed \$64 billion merger of Sanofi and Aventis would have substantially lessened competition in the markets for the research, development, manufacture, and sale of the following products in the United States: factor Xa inhibitors, used to treat and prevent venous thromboembolism and other conditions related to excessive blood clot formation; cytotoxic drugs used to treat colorectal cancer; and prescription drugs used to treat insomnia. According to the complaint, Aventis' market-leading Lovenox accounted for more than 90 percent of factor Xa inhibitor sales in the United States. Sanofi later entered the market with its product Arixtra. While other factor Xa inhibitors were available in the United States, they were not successful competitors. The two major cytotoxic treatments available to treat colorectal cancer were Sanofi's Eloxatin and Camptosar's Irinotecan, which was developed by Yakult Honsha and marketed in the United States by Pfizer. Yakult also licensed irinotecan to Aventis under the brand name Campto for

³¹ *Itron, Inc./Schlumberger Electricity, Inc.*, Docket No. C-4114 (issued August 5, 2004).

³² *Sanofi-Synthelabo/Aventis*, Docket No. C-4112 (issued September 20, 2004).

sale in other territories. Although Aventis did not market cytotoxic colorectal cancer drugs in the United States, significant contractual entanglements between Aventis and Pfizer affected the U.S. market, which included Aventis' conducting key clinical trials for Pfizer, Inc. – allowing Aventis to affect the Camptosar business. Sanofi's Ambien product also dominated the insomnia market with an 87 percent share. Although Aventis did not market a prescription drug for insomnia in the United States, the proposed transaction would have created an overlap between Sanofi's Ambien and Aventis' royalty rights to Estorra, which was under development by Sepracor. Estorra likely would have become a significant competitor of Ambien. The proposed transaction likely would have resulted in consumers being forced to pay higher prices for products in the relevant markets. Under the order, Sanofi was required to divest its Arixtra factor Xa inhibitor assets to GlaxoSmithKline, plc; divest to Pfizer key clinical studies for the Campto cytotoxic colorectal cancer treatment that were being conducted by Aventis; and divest Aventis' contractual rights to the Estorra insomnia drug to Sepracor or another Commission-approved buyer.

In *Cephalon, Inc./Cima Labs Inc.*,³³ the complaint alleged that Cephalon's proposed acquisition of Cima Labs would have substantially lessened competition in the United States for breakthrough cancer pain ("BTCP") products. BTCP drugs help to reduce or eliminate the spikes of severe pain that chronic cancer patients experience. According to the complaint, the market for drugs used to treat BTCP was a monopoly, with Cephalon marketing Actiq, the only product approved by the U.S. Food and Drug Administration for such use. However, Cima was developing a competing BTCP drug, OraVescent fentanyl, and intended to seek FDA approval by the end of 2004 or early 2005. The proposed acquisition would have allowed Cephalon to continue its monopoly of the BTCP drug market in the United States, likely forcing consumers to pay higher prices for BTCP drugs. Under the order, Cephalon was required to grant Barr Laboratories, Inc. a fully paid up, irrevocable license to manufacture and sell a generic formulation of Cephalon's BTCP drug Actiq in the United States.

In *General Electric Company*,³⁴ the complaint alleged that the proposed \$900 million acquisition of InVision Technologies, Inc. by General Electric would have substantially lessened competition in the market for the development, manufacture, and sale of certain x-ray and nondestructive testing ("NDT") and inspection equipment in the United States. NDT and inspection equipment is used in a wide range of industries to inspect the structure and tolerance of materials or identify objects inside materials without damaging the materials, or identify objects inside materials, without damaging the materials or impairing their future usefulness. According to the complaint, General Electric and InVision were the two leading U.S. producers and sellers of x-ray NDT and inspection equipment, including standard x-ray cabinets, automated defect recognition ("ADR")-capable NDT and inspection systems, and high energy x-ray generators. The U.S. markets for standard x-ray cabinets, ADR-capable x-ray systems, and high energy x-ray generators were highly concentrated, and post-acquisition General Electric would have become the dominant supplier in each of the relevant product

³³ *Cephalon, Inc./Cima Labs Inc.*, Docket No. C-4121 (issued September 20, 2004).

³⁴ *General Electric Company*, Docket No. C-4119 (issued October 25, 2004).

markets. Under the order, General Electric was required to divest InVision's YXLON NDT subsidiary to a Commission-approved buyer.

In *Buckeye Partners, L.P./Shell Oil Company*,³⁵ the complaint alleged that Buckeye Partners' proposed acquisition of certain refined petroleum pipelines and terminals from Shell would have substantially lessened competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area around Niles, Michigan. According to the complaint, the market for terminaling services in the Niles area was highly concentrated and would have significantly increased after the proposed transaction was consummated. The complaint also asserted that the elimination of direct competition between Buckeye Partners and Shell likely would have resulted in an increase in prices of gasoline, diesel fuel and other light petroleum products in the relevant market. In response to the Commission's competitive concerns, the parties subsequently modified their agreement to exclude the Niles terminal from the assets to be acquired. The parties were required for ten years to notify the Commission before acquiring, selling, or transferring the Niles terminal assets that were part of the parties' originally proposed transaction.

In *Magellan Midstream Partners, L.P./Shell Oil Company*,³⁶ the complaint alleged that Magellan's acquisition of certain pipeline and terminal assets from Shell would have substantially lessened competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City metropolitan area. According to the complaint, Magellan and Shell each owned a petroleum product terminal that supplied gasoline, diesel fuel, and other light petroleum products to buyers in the Oklahoma City metropolitan market. Marketers and other wholesale buyers of gasoline, diesel fuel, and other light petroleum products had no effective alternative to terminals located within this area, and because of costs and delivery logistics, terminals located outside of the Oklahoma City metropolitan area were too far away to supply buyers in that area. The market for terminaling services in the Oklahoma City metropolitan area was highly concentrated and would have become more highly concentrated as a result of the proposed transaction, increasing the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products would have increased in the relevant market. To remedy the anticompetitive effects of the proposed acquisition, the order required Magellan to hold the Shell Oklahoma City terminal assets separate and maintain their viability until they could be sold to a Commission-approved buyer.

In *Enterprise Products Partnership L.P./Dan L. Duncan*,³⁷ the complaint alleged that the proposed acquisition by Enterprise of Gulf Terra Energy Partners L.P. would have substantially lessened competition in the pipeline transportation of natural gas from the West Coast Deepwater region of the Gulf of Mexico and in propane storage and terminaling services in Hattiesburg, Mississippi. According to the complaint, both markets were highly

³⁵ *Buckeye Partners, L.P./Shell Oil Company*, Docket No. C-4127 (issued December 17, 2004).

³⁶ *Magellan Midstream Partners, L.P./Shell Oil Company*, Docket No. C-4122 (issued November 23, 2004).

³⁷ *Enterprise Products Partners L.P./Dan L. Duncan*, Docket No. C-4123 (issued November 23, 2004).

concentrated. Enterprise and Gulf Terra, together, accounted for approximately 60 percent of the natural gas pipeline capacity in the West Central Deepwater market and controlled approximately 53 percent of the propane storage capacity in the Hattiesburg, Mississippi market. The proposed acquisition would have provided Enterprise with a controlling interest in three of the four propane storage and terminaling facilities in Hattiesburg. By eliminating direct competition between Enterprise and Gulf Terra, the proposed acquisition likely would have caused significant competitive harm to producers of natural gas who purchased pipeline transportation services in the West Central Deepwater market. The proposed acquisition also may have caused significant competitive harm to propane marketers who incurred increased prices and fees for propane storage and terminaling services in Hattiesburg. These costs likely would have been passed on to propane customers. Under the order, Enterprise was required to divest an interest in a natural gas pipeline transportation system in the Western Central Deepwater region of the Gulf of Mexico and divest an interest in a propane storage and terminaling services facility in Hattiesburg, which served the Dixie Pipeline, the only common-carrier propane pipeline in the southeast United States.

The Commission also brought an action to enforce an order when the parties did not comply with the terms of a prior settlement. In *Federal Trade Commission v. RHI AG*,³⁸ the complaint alleged that RHI violated various provisions of an FTC order issued in 2001. According to the complaint, the 2001 order was issued pursuant to a 1999 consent agreement with RHI that followed the FTC's investigation of RHI's acquisition of Global Industrial Technologies, Inc., and resolved concerns that the acquisition would decrease competition in North American markets for refractory bricks used to line steel-making equipment. The order, as drafted in 1999, required RHI to divest to Resco Products, Inc. two refractories plants and other assets in Canada and the United States in a manner set out in contracts between Resco and NARCO, an RHI subsidiary. However, before the order became final, the FTC determined, in 2000, that NARCO failed to divest all of the requisite assets to Resco. The complaint also charged that NARCO manufactured refractory bricks in violation of a patent license that was part of the order, and in violation of specific order language. Finally, the complaint asserted that NARCO modified the settlement agreement with Resco without FTC approval. Under the terms of the final judgment, RHI agreed to pay a civil penalty of at least \$650,000 for the violations and to conduct asbestos remediation at a divested plant.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

The Commission and the Antitrust Division continually review the impact of the premerger notification program on the business community and antitrust enforcement. As indicated in past annual reports, the HSR program ensures that virtually all significant mergers or acquisitions that affect consumers in the United States will be reviewed by the antitrust agencies prior to consummation. The agencies generally have the opportunity to challenge unlawful transactions before they occur, thus avoiding the problem of constructing effective post-acquisition relief. As a result, the HSR Act is doing what Congress intended,

³⁸ Federal Trade Commission v. RHI AG, No. 1:04CV524 (D.D.C. filed March 31, 2004).

giving the government the opportunity to investigate and challenge mergers that are likely to harm consumers *before* injury can arise. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions that raised significant antitrust concerns before the antitrust agencies had the opportunity to consider adequately their competitive effects. The enforcement agencies were forced to pursue lengthy post-acquisition litigation, during the course of which harm from the consummated transaction continued (and afterwards as well, where achievement of effective post-acquisition relief was not practicable). Because the premerger notification program requires reporting before consummation, this problem has been significantly reduced.

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

LIST OF APPENDICES

- Appendix A - Summary of Transactions, Fiscal Years 1995 - 2004
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1995 - 2004

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal Year 2004, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 1995- 2004

APPENDIX A
SUMMARY OF TRANSACTIONS BY YEAR

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Transactions Reported	2,816	3,087	3,702	4,728	4,642	4,926	2,376	1,187	1,014	1,454
Filings Received ¹	5,439	6,001	7,199	9,264	9,151	9,941	4,800	2,369	2,001	2,866
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	2,612	2,864	3,438	4,575	4,340	4,749	2,237	1,142	968	1,377
Investigations in Which Second Requests Were Issued	101	99	122	125	111	98	70	49	35	35
FTC ³	58	36	45	46	45	43	27	27	15	20
Percent ⁴	2.2%	1.3%	1.3%	1.0%	1.0%	0.9%	1.2%	2.4%	1.5%	1.5%
DOJ ³	43	63	77	79	68	55	43	22	20	15
Percent ⁴	1.6%	2.2%	2.2%	1.7%	1.6%	1.2%	1.9%	1.9%	2.1%	1.1%
Transactions Involving a Request For Early Termination ⁵	2,471	2,861	3,363	4,323	4,110	4,324	2,063	1,042	700	1,241
Granted ⁵	1,869	2,044	2,513	3,234	3,103	3,515	1,603	793	606	943
Not Granted ⁵	602	817	850	1,089	1,007	809	460	249	94	298

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

² These figures omit from the total number of transactions reported all transactions for which the agencies were not authorized to request additional information. These include (1) incomplete transactions (only one party filed a complete notification); (2) transactions reported pursuant to the exemption provisions of §§ 7A(c)(6) and 7A(c)(8) of the Act; and (3) transactions 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 one threshold and later for a higher threshold, only a single consolidated transaction has been counted because, as a practical matter, the agencies do not issue more than one Second Request in such a case. These statistics also omit from the total number 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 statistics presented in most prior annual reports.

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

⁴ Second Requests investigations are a percentage of the total number of adjusted transactions.

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

APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 1995 - 2004

APPENDIX B

TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR FISCAL YEARS 1995–2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
OCTOBER	273	238	296	424	333	376	360	89	77	93
NOVEMBER	309	273	332	387	359	428	451	105	104	127
DECEMBER	216	249	267	426	394	468	345	95	78	143
JANUARY	180	238	263	306	282	335	245	111	93	86
FEBRUARY	170	231	250	336	330	440	66	87	71	109
MARCH	229	277	315	392	427	455	120	109	74	138
APRIL	177	252	302	384	364	343	94	99	92	135
MAY	281	304	328	401	438	398	153	111	83	131
JUNE	252	253	319	442	445	494	190	88	80	122
JULY	225	265	389	435	444	351	94	121	86	123
AUGUST	237	264	318	427	434	446	163	97	85	135
SEPTEMBER	267	243	323	368	392	392	95	75	91	112
TOTAL	2,816	3,087	3,702	4,728	4,642	4,926	2,376	1,187	1,014	1,454

APPENDIX B

TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR FISCAL YEARS 1995- 2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
OCTOBER	505	450	561	818	662	777	751	190	148	185
NOVEMBER	614	520	636	749	686	839	920	211	206	254
DECEMBER	419	474	521	836	785	922	686	183	150	280
JANUARY	360	445	514	614	548	677	499	224	179	168
FEBRUARY	326	480	483	650	658	867	144	174	146	209
MARCH	432	528	614	766	828	959	243	230	144	277
APRIL	350	498	599	763	719	695	188	203	182	251
MAY	534	584	640	787	851	859	296	212	168	267
JUNE	496	502	620	862	884	1,004	378	170	158	255
JULY	439	515	759	851	887	718	182	230	170	235
AUGUST	455	515	617	844	885	886	332	191	164	270
SEPTEMBER	509	490	635	724	758	738	181	151	186	215
TOTAL	5,439	6,001	7,199	9,264	9,151	9,941	4,800	2,369	2,001	2,866

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

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2004

DATA PROFILING HART-SCOTT-RODINO PREMERGER

NOTIFICATION FILINGS AND ENFORCEMENT INTERESTS

TABLE I
FISCAL YEAR 2004¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M⁵	4	0.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	514	37.3%	31	21	6.0%	4.1%	10.0%	1	4	0.2%	0.8%	1.0%
100M - 150M	192	13.9%	17	15	8.9%	7.8%	16.7%	2	2	1.0%	1.0%	2.0%
150M - 200M	117	8.5%	12	10	10.3%	8.5%	18.8%	1	2	0.9%	1.7%	2.7%
200M - 300M	177	12.8%	23	9	13.0%	5.1%	18.1%	1	1	0.6%	0.6%	1.2%
300M - 500M	158	11.5%	18	13	11.4%	8.2%	19.6%	3	1	1.9%	0.6%	2.5%
500M - 1000M	111	8.1%	13	15	11.7%	13.5%	25.2%	3	3	2.7%	2.7%	5.4%
Over 1000M	104	7.6%	28	11	26.9%	10.6%	37.5%	9	2	8.7%	1.9%	10.6%
ALL TRANSACTIONS	1,377	100.0%	142	94	10.3%	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

TABLE II
FISCAL YEAR 2004¹
ACQUISITIONS BY SIZE OF TRANSACTION² (CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES GRANTED			NUMBER		PERCENT		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50	4	0.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100	518	37.6%	31	21	13.1%	8.9%	22.0%	1	4	2.9%	11.4%	14.3%
LESS THAN 150	710	51.6%	48	36	20.3%	15.3%	35.6%	3	6	8.6%	17.1%	25.7%
LESS THAN 200	827	60.1%	60	46	25.4%	19.5%	44.9%	4	8	11.4%	22.9%	34.3%
LESS THAN 300	1,004	72.9%	83	55	35.2%	23.3%	58.5%	5	9	14.3%	25.7%	40.0%
LESS THAN 500	1,162	84.4%	101	68	42.8%	28.8%	71.6%	8	10	22.9%	28.6%	51.5%
LESS THAN 1000	1,273	92.4%	114	83	48.3%	35.2%	83.5%	11	13	31.4%	37.1%	68.5%
ALL TRANSACTIONS	1,377	100.0%	142	94	60.2%	39.8%	100.0%	20	15	57.1%	42.9%	100.0%

**TABLE III
FISCAL YEAR 2004¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$ MILLIONS)	CLEARANCE GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF								
				TOTAL NUMBER OF TRANSACTIONS			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
50M - 100M	31	21	52	2.3%	1.5%	3.8%	21.8%	22.3%	13.1%	8.9%	22.0%	
100M - 150M	17	15	32	1.2%	1.1%	2.3%	12.0%	16.0%	7.2%	6.4%	13.6%	
150M - 200M	12	10	22	0.9%	0.7%	1.5%	8.4%	10.6%	5.1%	4.2%	9.3%	
200M - 300M	23	9	32	1.7%	0.6%	2.3%	16.2%	9.6%	9.7%	3.8%	13.5%	
300M - 500M	18	13	31	1.3%	0.9%	2.2%	12.7%	13.8%	7.6%	5.5%	13.1%	
500M - 1000M	13	15	28	0.9%	1.1%	2.0%	9.2%	16.0%	5.5%	6.4%	11.9%	
Over 1000M	28	11	39	2.0%	0.8%	2.8%	19.7%	11.7%	11.9%	4.7%	16.6%	
<i>ALL CLEARANCES</i>	142	94	236	10.3%	6.8%	17.1%	100.0%	100.0%	60.2%	39.8%	100.0%	

TABLE IV
FISCAL YEAR 2004¹
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
50M - 100M	1	4	5	0.1%	0.3%	0.4%	0.2%	0.8%	1.0%	2.9%	11.4%	14.3%
100M - 150M	2	2	4	0.1%	0.1%	0.2%	1.0%	1.0%	2.0%	5.7%	5.7%	11.4%
150M -200M	1	2	3	0.1%	0.1%	0.2%	0.9%	1.7%	2.6%	2.9%	5.7%	8.6%
200M - 300M	1	1	2	0.1%	0.1%	0.2%	0.6%	0.6%	1.2%	2.9%	2.9%	5.8%
300M - 500M	3	1	4	0.2%	0.1%	0.3%	1.9%	0.6%	2.5%	8.6%	2.9%	11.5%
500M - 1000M	3	3	6	0.2%	0.2%	0.4%	2.7%	2.7%	5.4%	8.6%	8.6%	17.2%
Over 1000M	9	2	11	0.7%	0.1%	0.8%	8.7%	1.9%	10.6%	25.7%	5.7%	31.4%
<i>ALL TRANSACTIONS</i>	20	15	35	1.5%	1.1%	2.6%	1.5%	1.1%	2.6%	57.1%	42.9%	100.0%

**TABLE V
FISCAL YEAR 2004¹
ACQUISITIONS BY REPORTING THRESHOLD**

THRESHOLD ¹	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF THRESHOLD GROUP			NUMBER		PERCENTAGE OF THRESHOLD GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
\$50M	66	4.8%	5	1	7.6%	1.5%	9.1%	0	0	0.0%	0.0%	0.0%
\$100M	81	5.9%	3	6	3.7%	7.4%	11.1%	0	0	0.0%	0.0%	0.0%
\$500M	13	0.9%	2	2	15.4%	15.4%	30.8%	1	0	7.7%	0.0%	7.7%
25%	3	0.2%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	773	56.1%	97	57	12.5%	7.4%	19.9%	16	12	2.1%	1.6%	3.7%
ASSETS ONLY	441	32.0%	35	28	7.9%	6.3%	14.2%	3	3	0.7%	0.7%	1.4%
ALL TRANSACTIONS	1,377	100.0%	142	94	10.3%	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

**TABLE VI
FISCAL YEAR 2004¹
TRANSACTIONS BY ASSETS OF ACQUIRING PERSON**

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF ASSET RANGE GROUP			NUMBER		PERCENTAGE OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	96	7.0%	2	0	2.1%	0.0%	2.1%	0	0	0.0%	0.0%	0.0%
50M - 100M	40	2.9%	2	1	5.0%	2.5%	7.5%	0	0	0.0%	0.0%	0.0%
100M - 150M	49	3.6%	3	3	6.1%	6.1%	12.2%	0	0	0.0%	0.0%	0.0%
150M - 200M	38	2.8%	1	2	2.6%	5.3%	7.9%	0	1	0.0%	2.6%	2.6%
200M - 300M	75	5.4%	5	7	6.7%	9.3%	16.0%	0	2	0.0%	2.6%	2.6%
300M - 500M	115	8.3%	12	4	10.4%	3.5%	13.9%	1	0	0.9%	0.0%	0.9%
500M - 1000M	176	12.8%	12	11	6.8%	6.3%	13.1%	1	0	0.6%	0.0%	0.6%
OVER 1000M	788	57.2%	105	66	13.3%	8.4%	21.7%	18	12	2.3%	1.5%	3.8%
ALL TRANSACTIONS	1377	100.0%	142	94	10.3%	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

**TABLE VII
FISCAL YEAR 2004¹
TRANSACTIONS BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF SALES RANGE GROUP			NUMBER		PERCENTAGE OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	92	6.7%	4	5	4.3%	5.4%	9.7%	0	0	0.0%	0.0%	0.0%
50M - 100M	46	3.3%	4	3	8.7%	6.5%	15.2%	0	0	0.0%	0.0%	0.0%
100M - 150M	71	5.2%	3	3	4.2%	4.2%	8.4%	0	1	0.0%	1.4%	1.4%
150M - 200M	38	2.8%	2	1	5.3%	2.6%	7.9%	0	1	0.0%	2.6%	2.6%
200M - 300M	62	4.5%	2	2	3.2%	3.2%	6.4%	0	0	0.0%	0.0%	0.0%
300M - 500M	123	8.9%	8	5	6.5%	4.1%	10.6%	3	1	2.4%	0.8%	3.2%
500M - 1000M	157	11.4%	15	11	9.6%	7.0%	16.6%	1	0	0.6%	0.0%	0.6%
OVER 1000M	712	51.7%	102	64	14.3%	9.0%	23.3%	16	12	2.2%	1.7%	3.9%
<i>Sales Not Available⁶</i>	76	5.5%	2	0	2.6%	0.0%	2.6%	0	0	0.0%	0.0%	0.0%
ALL TRANSACTIONS	1,377	100.0%	142	94	10.3%	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

TABLE VIII
FISCAL YEAR 2004¹
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF ASSET RANGE GROUP			NUMBER		PERCENTAGE OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	207	15.0%	16	10	7.7%	4.8%	12.5%	0	1	0.0%	0.5%	0.5%
50M - 100M	254	18.4%	20	10	7.9%	3.9%	11.8%	0	1	0.0%	0.4%	0.4%
100M - 150M	121	8.8%	15	8	12.4%	6.6%	19.0%	1	2	0.8%	1.7%	2.5%
150M - 200M	70	5.1%	8	3	11.4%	4.3%	15.7%	1	0	1.4%	0.0%	1.4%
200M - 300M	98	7.1%	13	4	13.3%	4.1%	17.4%	1	1	1.0%	1.0%	2.0%
300M - 500M	83	6.0%	14	8	16.9%	9.6%	26.5%	3	0	3.6%	0.0%	3.6%
500M - 1000M	74	5.4%	12	4	16.2%	5.4%	21.6%	1	0	1.4%	0.0%	1.4%
OVER 1000M	109	7.9%	11	15	10.1%	13.8%	23.9%	5	2	4.6%	1.8%	6.4%
<i>Assets Not Available⁷</i>	361	26.2%	33	32	9.1%	8.9%	18.0%	8	8	2.2%	2.2%	4.4%
ALL TRANSACTIONS	1,377	100.0%	142	94	10.3%	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

TABLE IX
FISCAL YEAR 2004¹
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES⁸

SALES RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF SALES RANGE GROUP			NUMBER		PERCENTAGE OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	199	14.5%	19	10	9.5%	5.0%	14.5%	1	1	0.5%	0.5%	1.0%
50M - 100M	163	11.8%	18	11	11.0	6.7%	17.7%	1	2	0.6%	1.2%	1.8%
100M - 150M	94	6.8%	7	4	7.4%	4.3%	11.7%	0	1	0.0%	1.1%	1.1%
150M - 200M	57	4.1%	3	2	5.3%	3.5%	8.8%	0	0	0.0%	0.0%	0.0%
200M - 300M	74	5.4%	4	7	5.4%	9.5%	14.9%	0	1	0.0%	1.4%	1.4%
300M - 500M	109	7.9%	14	5	12.8	4.6%	17.4%	3	2	2.8%	1.8%	4.6%
500M - 1000M	120	8.7%	11	8	9.2%	6.7%	15.9%	1	1	0.8%	0.8%	1.6%
OVER 1000M	519	37.7%	63	47	12.1	9.1%	21.2%	14	7	2.7%	1.3%	4.0%
<i>Sales Not Available⁹</i>	42	3.1%	3	0	7.1%	0.0%	7.1%	0	0	0.0%	0.0%	0.0%
ALL TRANSACTIONS	1,377	100.0%	142	94	10.3	6.8%	17.1%	20	15	1.5%	1.1%	2.6%

**TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

3-DIGIT NAICS CODE ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
111	AGRICULTURAL PRODUCTION - CROPS	3	0.2%	0.2%	1	1	2	0	0	0
112	AGRICULTURAL PRODUCTION - LIVESTOCK AND ANIMAL SPECIALTIES	0	0.0%	NC	0	0	0	0	0	0
113	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	3	0.2%	NC	0	0	0	0	0	0
114	FISHING, HUNTING AND TRAPPING	0	0.0%	NC	0	0	0	0	0	0
211	OIL AND GAS EXTRACTION	18	1.3%	1.0%	1	0	1	1	0	1
212	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	4	0.3%	NC	1	1	2	0	1	1
213	DRILLING OIL AND GAS WELLS	6	0.4%	0.1%	0	0	0	0	0	0
221	ELECTRIC, GAS AND SANITARY SERVICES	45	3.3%	0.6%	2	2	4	0	0	0
233	BUILDING CONSTRUCTION – GENERAL CONTRACTORS AND OPERATIVE BUILDERS	0	0.0%	-0.4%	0	0	0	0	0	0
234	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - CONTRACTORS	8	0.6%	0.4%	0	1	1	0		0
235	CONSTRUCTION - SPECIAL GRADE CONTRACTORS	5	0.4%	NC	0	1	1	0	0	0
311	FOOD AND KINDRED PRODUCTS	33	2.4%	-0.6%	3	1	4	0	1	3
312	BOTTLED AND CANNED SOFT DRINKS AND CARBONATED DRINKS; AND CIGARETTE MANUFACTURING	7	0.5%	-0.3%	1	0	1	1	0	1
313	TEXTILE MILL PRODUCTS	2	0.1%	0.1%	0	0	0	0	0	0

TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS

3-DIGIT NAICS CODE 10	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
315	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	1	0.1%	-0.2%	0	0	0	0	0	0
316	LEATHER AND LEATHER PRODUCTS	0	0.0%	NC	0	0	0	0	0	0
321	SAWMILLS	8	0.6%	0.3%	0	0	0	0	0	0
322	PAPER AND ALLIED PRODUCTS	13	0.9%	0.2%	0	1	1	0	0	0
323	COMMERCIAL LITHOGRAPHIC PRINTING	11	0.8%	0.2%	3	0	3	0	0	0
324	PETROLEUM REFINING AND RELATED INDUSTRIES	7	0.5%	-0.2%	0	4	4	0	0	0
325	CHEMICALS AND ALLIED PRODUCTS	77	5.6%	2.6%	27	1	28	3	0	3
326	RUBBER AND MISC. PLASTICS PRODUCTS	18	1.3%	-0.2%	5	0	5	1	0	1
327	STONE, CLAY, GLASS AND CONCRETE PRODUCTS	4	0.3%	-0.4%	0	0	0	0	0	0
331	IRON AND STEEL MILLS	15	1.1%	-0.3%	0	2	2	0	0	0
332	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	28	2.0%	-0.1%	2	3	5	1	0	1
333	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	25	1.8%	-0.7%	3	4	7	0	1	1
334	MEASURING, ANALYZING AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL AND OPTICAL GOODS; WATCHES AND CLOCKS	74	5.4%	-0.2%	9	8	17	0	1	1

**TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

3-DIGIT NAICS CODE <small>10</small>	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
335	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT	20	1.5%	0.6%	2	5	7	1	0	1
336	TRANSPORTATION EQUIPMENT	35	2.5%	0.1%	5	4	9	0	0	0
337	HOME FURNITURE, FURNISHINGS AND EQUIPMENT STORES	8	0.6%	0.1%	0	0	0	0	0	0
339	MISCELLANEOUS MANUFACTURING INDUSTRIES	26	1.9%	NC	15	1	16	1	0	1
421	WHOLESALE TRADE - DURABLE GOODS	58	4.2%	0.6%	4	2	6	0	0	0
422	WHOLESALE TRADE - NONDURABLE GOODS	52	3.8%	0.2%	6	5	11	0	0	0
423	AUTOMOBILE AND OTHER MOTOR VEHICLE MERCHANT WHOLESALERS	2	0.1%	0.2%	0	1	1	0	0	0
424	PRINTING AND WRITING PAPER MERCHANT WHOLESALERS	1	0.1%	NC	0	0	0	0	0	0
425	BUSINESS TO BUSINESS ELECTRONIC MARKETS	1	0.1%	NC	0	0	0	0	0	0
441	AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	13	0.9%	0.4%	0	0	0	0	0	0
442	FURNITURE STORES	1	0.1%	NC	0	0	0	0	0	0
443	MISCELLANEOUS REPAIR SERVICES	1	0.1%	0.1%	0	0	0	0	0	0
444	BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	6	0.4%	0.4%	1	0	1	0	0	0
445	SUPERMARKETS AND OTHER GROCERY (EXCEPT CONVENIENCE) STORES	7	0.5%	0.2%	2	0	2	0	0	0

**TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

3-DIGIT NAICS CODE <small>10</small>	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
446	MISCELLANEOUS RETAIL	7	0.5%	0.3%	6	0	6	3	0	3
447	FOOD STORES	6	0.4%	NC	1	0	1	0	0	0
448	APPAREL AND ACCESSORY STORES	7	0.5%	0.3%	1	0	1	0	0	0
451	SPORTING GOODS STORES	2	0.1%	0.1%	1	0	1	0	0	0
452	GENERAL MERCHANDISE STORES	1	0.1%	-0.1%	1	0	1	0	0	0
453	STATIONERY AND OFFICE SUPPLIES	0	0.0%	-0.1%	0	0	0	0	0	0
454	HEATING OIL DEALERS AND LIQUEFIED PETROLEUM GAS	18	1.3%	0.5%	1	0	1	0	0	0
481	TRANSPORTATION BY AIR	1	0.1%	0.1%	0	1	1	0	1	1
482	RAILROAD TRANSPORTATION	1	0.1%	0.1%	0	1	0	1	0	1
483	WATER TRANSPORTATION	5	0.4%	0.2%	1	0	1	0	0	0
484	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	8	0.6%	0.3%	0	2	2	0	0	0
485	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION	0	0.0%	NC	0	0	0	0	0	0
486	PIPELINES, EXCEPT NATURAL GAS	12	0.9%	0.2%	6	0	6	2	0	2
488	AIR TRAFFIC CONTROL	3	0.2%	NC	0	1	1	0	0	0
492	COURIERS	6	0.4%	0.2%	0	0	0	0	0	0
511	PRINTING, PUBLISHING AND ALLIED INDUSTRIES	73	5.3%	NC	0	6	6	0	1	1
512	MOTION PICTURES	14	1.0%	0.5%	3	1	4	2	1	3
513	COMMUNICATIONS	74	5.4%	0.8%	3	6	9	0	4	4
514	ON-LINE SERVICES	24	1.7%	-0.4%	0	1	1	0	0	0
519	NEWS SYNDICATES	1	0.1%	NC	0	0	0	0	0	0
521	DEPOSITORY INSTITUTIONS	0	0.0%	NC	0	0	0	0	0	0

**TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

3-DIGIT NAICS CODE ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
522	NONDEPOSITORY CREDIT INSTITUTIONS	52	3.8%	1.2%	0	1	1	0	0	0
523	SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES AND SERVICES	107	7.8%	1.3%	2	2	4	0	0	0
524	INSURANCE CARRIERS	59	4.3%	1.2%	4	5	9	0	0	0
525	INSURANCE AGENTS, BROKERS AND SERVICE	12	0.9%	0.5%	0	3	3	0	0	0
531	LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS	6	0.4%	-0.7%	0	0	0	0	0	0
532	AUTOMOTIVE REPAIR, SERVICES AND PARKING	6	0.4%	-0.2%	2	0	2	0	0	0
533	LESSORS OF NONFINANCIAL INTANGIBLE ASSETS (EXCEPT COPYRIGHTED WORKS)	5	0.4%	NC	1	0	0	0	0	0
541	SERVICES -- BUSINESS, LEGAL, ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT AND RELATED SERVICES	86	6.2%	0.8%	2	9	11	0	3	3
551	HOLDING AND OTHER INVESTMENT OFFICES	2	0.1%	NC	0	0	0	0	0	0
561	TRANSPORTATION SERVICES	28	2.0%	0.9%	2	2	4	0	0	0
562	SOLID WASTE COLLECTION	4	0.3%	NC	0	3	3	0	1	1
611	EDUCATIONAL SERVICES	4	0.3%	-0.4%	0	0	0	0	0	0
614		1	0.1%	NC	0	1	1	0	0	0
621	HEALTH SERVICES	16	1.2%	-0.1%	3	0	3	0	0	0
622	GENERAL MEDICAL AND SURGICAL; PSYCHIATRIC AND SUBSTANCE ABUSE HOSPITALS	15	1.1%	1.0%	5	0	5	0	0	0

**TABLE X
FISCAL YEAR 2004¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

3-DIGIT NAICS CODE <small>10</small>	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
624	SOCIAL SERVICES	2	0.1%	-0.2%	1	0	1	0	0	0
711	REAL ESTATE	2	0.1%	-0.2%	0	1	1	2	0	2
713	AMUSEMENT AND RECREATION SERVICES	11	0.8%	0.3%	2	0	2	1	0	1
721	HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	5	0.4%	0.3%	1	0	1	0	0	0
722	EATING AND DRINKING PLACES	12	0.9%	-0.1%	0	0	0	0	0	0
772		1	0.1%	NC	0	0	0	0	0	0
811	GENERAL AUTOMOTIVE REPAIR	3	0.2%	0.1%	0	0	0	0	0	0
812	PERSONAL SERVICES	2	0.1%	-0.3%	0	0	0	0	0	0
813	MEMBERSHIP ORGANIZATIONS	0	0.0%	NC	0	0	0	0	0	0
923	ADMINISTRATION OF HUMAN RESOURCE PROGRAMS	0	0.0%	NC	0	0	0	0	0	0
924	ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	0	0.0%	NC	0	0	0	0	0	0
999	NONCLASSIFIABLE ESTABLISHMENTS	1	0.1%	0.1%	0	0	0	0	0	0
000	NOT AVAILABLE ¹²	26	1.9%	-0.6%	0	0	0	0	0	0
	<i>ALL TRANSACTIONS</i>	1,377			142	94	236	20	15	35

Table XI
FISCAL YEAR 2004¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3- DIGIT INTRA- INDUSTRY TRANSACTIONS ¹³
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
111	AGRICULTURAL PRODUCTION - CROPS	2	0.1%	NC	0	1	1	0	0	0	1
112	AGRICULTURAL PRODUCTION - LIVESTOCK AND ANIMAL SPECIALTIES	0	0.0%	NC	0	0	0	0	0	0	0
113	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	2	0.1%	0.2%	0	0	0	0	0	0	2
114	FISHING, HUNTING AND TRAPPING	0	0.0%	NC	0	0	0	0	0	0	0
211	OIL AND GAS EXTRACTION	13	0.9%	0.3%	1	0	1	1	0	1	13
212	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	5	0.4%	-0.1%	0	1	1	0	1	1	3
213	DRILLING OIL AND GAS WELLS	5	0.4%	NC	0	0	0	0	0	0	4
221	ELECTRIC, GAS AND SANITARY SERVICES	52	3.8%	1.0%	2	3	5	0	0	0	39
233	BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS	0	0.0%	-0.1%	0	0	0	0	0	0	0

Table XI
FISCAL YEAR 2004¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹³
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
234	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - CONTRACTORS	8	0.6%	0.4%	0	1	1	0	0	0	6
235	CONSTRUCTION - SPECIAL GRADE CONTRACTORS	7	0.5%	0.4%	0	2	2	0	0	0	1
311	FOOD AND KINDRED PRODUCTS	28	2.0%	-1.5%	5	2	7	0	1	1	16
312	BOTTLED AND CANNED SOFT DRINKS AND CARBONATED DRINKS; AND CIGARETTE MANUFACTURING	7	0.5%	-0.1%	1	0	1	2	0	2	5
313	TEXTILE MILL PRODUCTS	1	0.1%	-0.1%	0	0	0	0	0	0	1
315	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	1	0.1%	-0.5%	0	0	0	0	0	0	1
316	LEATHER AND LEATHER PRODUCTS	0	0.0%	NC	0	0	0	0	0	0	0
321	SAWMILLS	8	0.6%	0.3%	0	1	1	0	0	0	3
322	PAPER AND ALLIED PRODUCTS	6	0.4%	-0.3%	0	2	2	0	0	0	5
324	PETROLEUM REFINING AND RELATED INDUSTRIES	5	0.4%	0.4%	0	2	2	0	0	0	4
325	CHEMICALS AND ALLIED PRODUCTS	84	6.1%	1.1%	23	1	24	3	0	3	53

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
326	RUBBER AND MISC. PLASTICS PRODUCTS	15	1.1%	-0.8%	6	0	6	1	0	1	11
327	STONE, CLAY, GLASS AND CONCRETE PRODUCTS	9	0.7%	NC	0	0	0	0	0	0	2
331	IRON AND STEEL MILLS	15	1.1%	-0.3%	0	0	0	0	0	0	7
332	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	27	2.0%	NC	2	2	4	1	0	1	13
333	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	4	0.3%	-1.5%	0	1	1	0	0	0	1
334	MEASURING, ANALYZING AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL AND OPTICAL GOODS; WATCHES AND CLOCKS	78	5.7%	1.2%	9	8	17	1	1	2	54
335	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS, EXCEPT COMPUTER EQUIPMENT	22	1.6%	1.0%	1	5	6	0	0	0	16
336	TRANSPORTATION EQUIPMENT	24	1.7%	-0.9%	4	2	6	0	0	0	18

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3-DIGIT NAICS CODE ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2003 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹³
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
337	HOME FURNITURE, FURNISHINGS AND EQUIPMENT STORES	4	0.3%	NC	0	0	0	0	0	0	2
339	MISCELLANEOUS MANUFACTURING INDUSTRIES	26	1.9%	-0.1%	14	1	15	1	0	1	22
421	WHOLESALE TRADE - DURABLE GOODS	57	4.1%	-0.7%	5	2	7	0	0	0	37
422	WHOLESALE TRADE - NONDURABLE GOODS	39	2.8%	-0.1%	7	3	10	1	0	1	27
423	AUTOMOBILE AND OTHER MOTOR VEHICLE MERCHANT WHOLESALERS	4	0.3%	0.2%	0	1	1	0	0	0	1
424	PRINTING AND WRITING PAPER MERCHANT WHOLESALERS	2	0.1%	NC	1	0	1	0	0	0	0
441	AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	10	0.7%	NC	0	0	0	0	0	0	10
443	MISCELLANEOUS REPAIR SERVICES	1	0.1%	-0.1%	0	0	0	0	0	0	1
444	BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS	1	0.1%	-0.2%	0	0	0	0	0	0	1
445	SUPERMARKETS AND OTHER GROCERY (EXCEPT CONVENIENCE)	4	0.3%	NC	1	0	1	0	0	0	2

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
	STORES										
446	MISCELLANEOUS RETAIL	6	0.4%	-0.2%	2	0	2	0	0	0	6
447	FOOD STORES	3	0.2%	-0.3%	1	0	1	0	0	0	1
448	APPAREL AND ACCESSORY STORES	7	0.5%	0.4%	1	0	1	0	0	0	4
451	SPORTING GOODS STORES	2	0.1%	0.1%	1	0	1	0	0	0	1
452	GENERAL MERCHANDISE STORES	3	0.2%	-0.3%	1	0	1	0	0	0	1
453	STATIONERY AND OFFICE SUPPLIES	0	0.0%	0.1%	0	0	0	0	0	0	0
454	HEATING OIL DEALERS AND LIQUEFIED PETROLEUM GAS	12	0.9%	0.1%	1	0	1	0	0	0	10
481	TRANSPORTATION BY AIR	5	0.4%	0.4%	0	1	1	0	0	0	1
482	RAILROAD TRANSPORTATION	4	0.3%	-0.2%	0	1	1	0	0	0	0
483	WATER TRANSPORTATION	5	0.4%	NC	0	1	1	0	1	1	2
484	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	3	0.2%	-0.1%	0	2	2	0	2	2	0
485	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION	1	0.1%	0.1%	0	0	0	0	0	0	0
486	PIPELINES, EXCEPT	12	0.9%	-0.1%	4	1	5	1	1	2	6

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
	NATURAL GAS										
488	AIR TRAFFIC CONTROL	7	0.5%	0.4%	0	2	2	0	0	0	3
492	COURIERS	2	0.1%	-0.1%	0	0	0	0	0	0	2
493	WAREHOUSING AND STORAGE	5	0.4%	NC	1	0	1	0	0	0	2
511	PRINTING, PUBLISHING AND ALLIED INDUSTRIES	63	4.6%	-0.7%	0	5	5	1	1	2	51
512	MOTION PICTURES	5	0.4%	-0.1%	3	2	5	1	1	2	0
513	COMMUNICATIONS	60	4.4%	-1.7%	4	10	14	0	3	3	50
514	ON-LINE SERVICES	24	1.7%	-0.9%	0	3	3	0	0	0	15
518	INTERNET SERVICE PROVIDERS, WEB SEARCH PORTALS, AND DATA PROCESSING SERVICES	0	0.0%	-0.1%	0	0	0	0	0	0	0
521	DEPOSITORY INSTITUTIONS	0	0.0%	-0.1%	0	0	0	0	0	0	0
522	NONDEPOSITORY CREDIT INSTITUTIONS	37	2.7%	0.1%	0	1	1	0	0	0	0
523	SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES AND SERVICES	41	3.0%	-0.1%	1	3	4	0	0	0	32
524	INSURANCE CARRIERS	53	3.8%	-0.5%	4	5	9	0	0	0	42
525	INSURANCE AGENTS, BROKERS AND SERVICE	1	0.1%	NC	0	0	0	0	0	0	0
531	LESSORS OF RESIDENTIAL BUILDINGS AND	6	0.4%	-0.5%	0	0	0	0	0	0	2

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
	DWELLINGS										
532	AUTOMOTIVE REPAIR, SERVICES AND PARKING	13	0.9%	NC	2	0	2	0	0	0	6
533	LESSORS OF NONFINANCIAL INTANGIBLE ASSETS (EXCEPT COPYRIGHTED WORKS)	7	0.5%	-0.3%	1	0	1	0	0	0	4
541	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT AND RELATED SERVICES	73	5.3%	-0.2%	3	8	11	0	3	3	55
551	HOLDING AND OTHER INVESTMENT OFFICES	2	0.1%	-0.2%	0	0	0	0	0	0	1
561	TRANSPORTATION SERVICES	26	1.9%	-0.2%	2	1	3	0	0	0	15
562	SOLID WASTE COLLECTION	3	0.2%	-0.4%	0	2	2	0	0	0	2
611	EDUCATIONAL SERVICES	4	0.3%	-0.4%	0	1	1	0	0	0	3
614		1	0.1%	NC	0	0	0	0	0	0	1
621	HEALTH SERVICES	14	1.0%	-0.5%	3	0	3	0	0	0	9
622	GENERAL MEDICAL AND SURGICAL; PSYCHIATRIC AND SUBSTANCE ABUSE HOSPITALS	14	1.0%	-0.5%	5	0	5	0	0	0	12
623	NURSING AND RESIDENTIAL CARE	3	0.2%	-0.3%	1	0	1	0	0	0	1

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
	<i>ALL TRANSACTIONS</i>	1,377	100.0%		142	94	236	20	15	35	744

¹ Fiscal year 2004 figures include transactions reported between October 1, 2003 and September 30, 2004.

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

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

⁴ During fiscal year 2004, 1,454 transactions were reported under the HSR Premerger Notification program. The smaller number of 1,377 reflects adjustments to eliminate the following types of transactions: (1) transactions reported under Section 7A(c)(6) and (c)(8), (transactions involving certain regulated industries and financial businesses); (2) transactions deemed non-reportable; (3) incomplete transactions (only one party in each transaction filed a compliant notification); and (4) transactions withdrawn before the waiting period began. The table does not, however, exclude competing offers or multiple party transactions (transactions involving two or more acquiring persons).

⁵ The total number of filings under \$50M submitted in Fiscal Year 2004 is corrective filings.

⁶ This category includes 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.

⁷ Assets of an acquired entity are available when the acquired entity's financial data is consolidated within its ultimate parent.

⁸ Sales of an acquired entity are taken from responses to Items 4(a) and (b) (SEC documents and annual reports) or Item 5 (dollar revenues) of the Premerger Notification and Report Form.

⁹ This category includes acquisitions of newly-formed corporations or corporate joint ventures from which no sales were generated, and acquisitions of assets which produced no sales or revenues during the prior year to filing the Notification and Report form.

¹⁰ The 3-digit codes are part of the North American Industrial Classification System (NAICS) established by the United States Government North American Industrial Classification System 1997, Executive Office of the President, Office of Management and Budget. The NAICS groups used in this table were determined from responses submitted by the parties to Item 5 of the Premerger Notification and Report Form, effective July 1, 2001.

¹¹ This number represents the deviation from the fiscal year 2003 percentage.

¹² This category includes transactions by newly-formed entities.

¹³ The intra-industry transaction column identifies the number of acquisitions in which, both, the acquiring and acquired persons derived revenues in the same industry.