



FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

HART-SCOTT-RODINO ANNUAL REPORT

FISCAL YEAR 2009

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

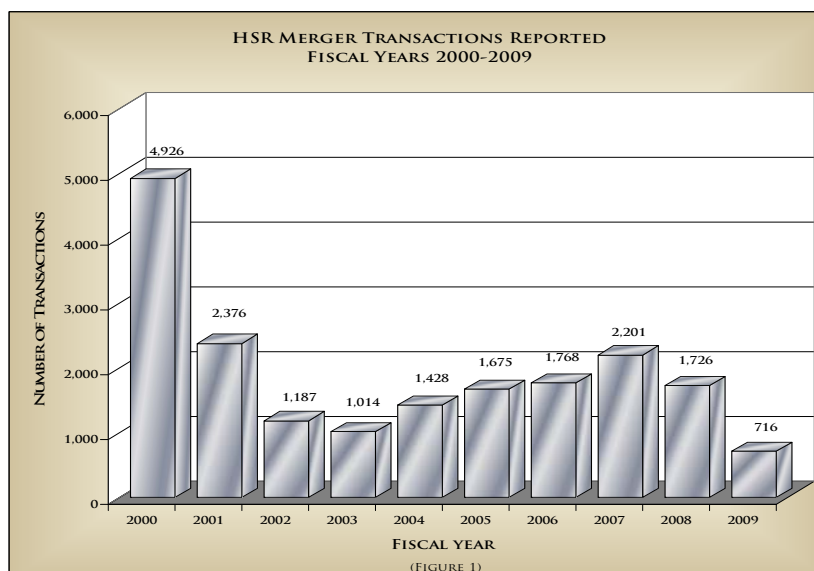
Jon Leibowitz
Chairman
Federal Trade Commission

Christine A. Varney
Assistant Attorney General
Antitrust Division

INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act or the Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (Commission) and the Antitrust Division of the Department of Justice (Antitrust Division or Division) to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 2009¹ to protect consumers – individual, business, and government – against anticompetitive mergers.

The Commission and the Antitrust Division continue their efforts to protect competition by identifying and investigating those mergers and acquisitions that raise potentially significant competitive concerns. In fiscal year 2009, 716 transactions were reported under the HSR Act, representing about a 59% decrease from the 1,726 transactions reported in fiscal year 2008 and about an 85% decrease from the 4,926 transactions reported in fiscal year 2000, the last full fiscal year under the previous reporting thresholds.² (See Figure 1 below.)



During the year, the Commission challenged 19 transactions, including obtaining a preliminary injunction blocking the proposed \$1.4 billion merger of CCC Information Services Inc. and Mitchell International Inc. The Commission was successful in all 18 completed actions. In ten, the Commission obtained a consent decree. In the remaining eight cases, the parties abandoned the deal either after the Commission authorized staff to seek a preliminary injunction (five cases) or after learning of the Commission's concerns. Currently, there is one challenge pending in federal court where the Commission is seeking a permanent injunction. One of the Commission's notable challenges was against CSL Limited's proposed \$3.1 billion acquisition

¹ The fiscal year covers the period of October 1, 2008 through September 30, 2009.

² 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 (with annual adjustments for changes in gross national product that began in 2005), and made other changes to the filing and waiting period requirements. In fiscal year 2009, the threshold was adjusted to \$65.2 million. Section 630 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 2001, Pub. L. No. 106-553, 114 Stat. 2762. See also Appendix A.

of Talecris Biotherapeutics Holdings Corporation, charging that the deal would substantially reduce competition in the U.S. markets for four plasma-derivative protein therapies used to treat patients suffering from illnesses such as primary immunodeficiency diseases, chronic inflammatory demyelinating polyneuropathy, alpha-1 antitrypsin disease, and hemolytic disease of the newborn. The Commission also challenged the consummated purchase by Ovation Pharmaceuticals, Inc. (Ovation) of the rights to the drug NeoProfen, a medicine used in the treatment of a type of congenital heart defect that effects approximately 30,000 premature babies per year in the United States. The Commission asserts that Ovation's acquisition was intended to maintain its monopoly in the market for this treatment, and thus the Commission is seeking divestiture of assets related to one of the two treatments, and also disgorgement of all unlawfully obtained profits from the sale of these two treatments. On August 31, 2010, a federal district court in Minnesota dismissed the FTC's case following a trial. The FTC has until November 1, 2010 to appeal the district court's decision.

The Antitrust Division challenged 12 merger transactions, leading to six consent decrees, one transaction abandoned after the complaint was filed, and five transactions that were abandoned or restructured after the Division informed the parties of its antitrust concerns relating to the transaction. Notably, the Division sued to block the proposed acquisition of National Beef Packing, the fourth-largest U.S. beef packer, by JBS, the third-largest U.S. beef packer, and the parties subsequently abandoned the transaction. The Division also obtained a consent decree requiring Microsemi Corporation to divest all of the assets it had acquired from Semicoa Inc, thereby remedying anticompetitive effects in the development, manufacture and sale of certain high reliability small signal transistors and ultra-fast recovery rectifier diodes used in military applications and space programs.

In fiscal year 2009, 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). In recognition of the 30th anniversary of the implementation of the HSR Act, in October of 2008, the FTC held a workshop that was designed to provide a primer, especially for new attorneys, on the premerger notification process. The HSR website, <http://www.ftc.gov/bc/hsr/>, continued to provide improved access to information necessary to the notification process. The website includes basic resources such as introductory guides that provide an overview of the premerger notification program and merger review process. It is the primary source of information for HSR practitioners seeking information on the HSR form and instructions, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, and frequently asked questions regarding the HSR filing requirements. Web users can also find up-to-date information on changes to the Act and amendments to the premerger 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 is available to assist HSR practitioners comply with HSR notification requirements.

BACKGROUND OF THE HSR ACT

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. §18a. In general, the HSR Act requires that certain proposed acquisitions of voting securities or assets 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 certain classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

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

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

The Commission, with the concurrence of the Assistant Attorney General for the Antitrust Division, promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form.³ 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.⁴

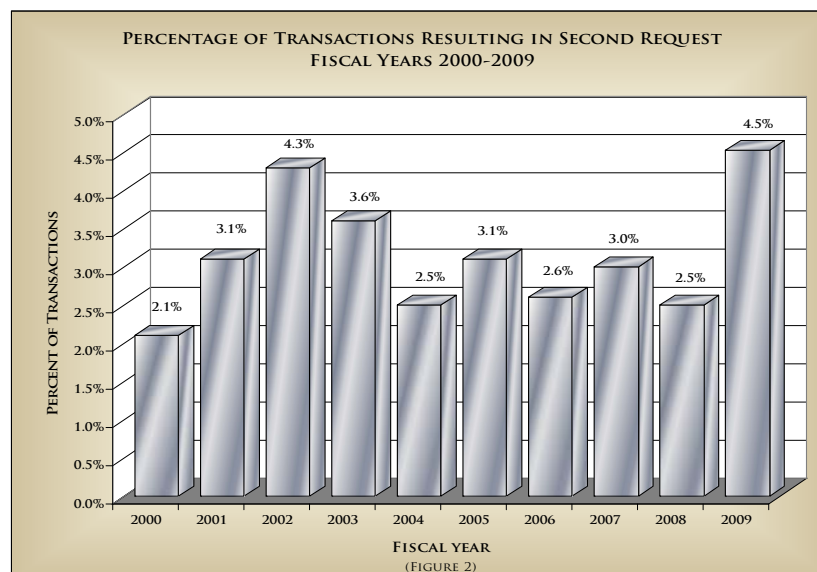
³ 43 Fed. Reg. 33450 (July 31, 1978).

⁴ 43 Fed. Reg. 34443 (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

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.⁵ Appendix A also shows, for fiscal years 2000 through 2009, 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 2000 through 2009.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2009 decreased 59% from the number of transactions reported in fiscal year 2008. In fiscal year 2009, 716 transactions were reported, while 1,726 were reported in fiscal year 2008. The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2009 decreased 24% from the number of merger investigations in which second requests were issued in fiscal year 2008. Second requests were issued in 31 merger investigations in fiscal year 2009 (15 issued by the FTC and 16 issued by the Division), while second requests were issued in 41 merger investigations in fiscal year 2008 (21 issued by the FTC and 20 issued by the Division). The percentage of transactions resulting in second requests increased, from 2.5% in fiscal year 2008 to 4.5% in fiscal year 2009. (See Figure 2 below.)



(March 18, 2002); 68 Fed. Reg. 2425 (January 17, 2003); 70 Fed. Reg. 4988 (January 31, 2005); 70 Fed. Reg. 11501 (March 8, 2005); 70 Fed. Reg. 11526 (March 8, 2005); 70 Fed. Reg. 47733 (August 15, 2005); 70 Fed. Reg. 73369 (December 12, 2005); 70 Fed. Reg. 77312 (December 30, 2005); 71 Fed. Reg. 2943 (January 18, 2006); 71 Fed. Reg. 35995 (June 23, 2006); 72 Fed. Reg. 2692 (January 22, 2007).

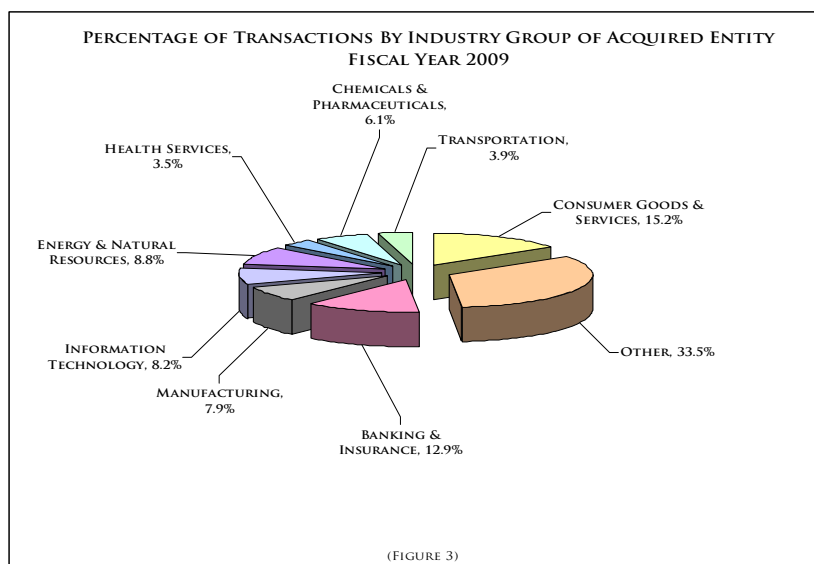
⁵ The term "transaction," as used in Appendices A and B, and Exhibit A to this report, does not refer only to separate mergers or acquisitions. A particular merger, joint venture or acquisition may be structured such that it involves more than one transaction. For example, cash tender offers, options 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.

The statistics in Appendix A also show that early termination of the waiting period was requested in the majority of transactions. In fiscal year 2009, early termination was requested in 84% (575) of the transactions reported, remaining unchanged from fiscal year 2008 when it was also requested in 84% (1,385) of the transactions reported. The percentage of requests granted out of the total requested decreased from 74% in fiscal year 2008 to 69% in fiscal year 2009.

Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2009. 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 2009, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 22.5% of the total number of adjusted HSR transactions. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report.

The total dollar value of reported transactions rose dramatically from fiscal years 1996 to 2000 from about \$677.4 billion to about \$3 trillion. After the statutory thresholds were raised, the dollar value declined to about \$1 trillion in fiscal year 2001, \$565.4 billion in fiscal year 2002, and \$406.8 billion in fiscal year 2003. This was followed by an increase in the dollar value of reported transactions over the next four years: about \$630 billion in fiscal year 2004, \$1.1 trillion in fiscal year 2005, \$1.3 trillion in fiscal year 2006, and almost \$2 trillion in 2007. The total dollar value of reported transactions declined to just over \$1.3 trillion in fiscal year 2008 and to \$533 billion in fiscal year 2009.⁶

Tables X and XI provide the number of transactions by industry group in which the acquiring person or the acquired entity derived the most revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 2009 based on the acquired entity's operations.⁷



⁶ The information on the value of reported transactions for fiscal year 2009 is drawn from the Premerger Database, while data for the previous fiscal years is taken from the corresponding fiscal year Annual HSR Reports (<http://www.ftc.gov/bc/anncompreports.shtml>).

⁷ The "Other" category consists of industry segments that include construction, educational services, performing arts, recreation, and non-classifiable establishments.

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 2009. The agencies monitor compliance through a variety of methods, including a review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, 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 \$16,000 – recently increased from \$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 2009, 24 corrective filings for violations were received.

During fiscal year 2009, the agencies brought two enforcement actions, resulting in the payment of \$2.2 million in civil penalties.

In [*United States v. ESL Partners, L.P. and ZAM Holdings L.P.*](#),¹⁰ the complaint alleged that ESL Partners and ZAM Holdings, two related investment funds, violated premerger reporting requirements by failing to file before acquiring voting securities of AutoZone Inc. in 2004. As a result of these acquisitions, each fund held AutoZone voting securities valued in excess of the \$50 million HSR reporting threshold then in effect. Under the terms of a consent decree that was filed simultaneously with the complaint and entered by the court on December 16, 2008, the parties were required to pay civil penalties totaling \$800,000, with ESL Partners paying \$525,000 and ZAM Holdings paying \$275,000 to settle the charges.

In [*United States v. John C. Malone*](#),¹¹ the complaint alleged that media executive John C. Malone failed to comply with premerger notification requirements before acquiring voting securities of Discovery Holding Company in August 2005, and continued to acquire Discovery voting securities through April 2008. The defendant made a corrective filing for acquisitions of Discovery voting securities on June 12, 2008, but before the expiration of the waiting period triggered by that filing, he made additional acquisitions of Discovery voting securities on June 14, 2008, when he exercised two options. Under the terms of a consent decree filed

⁸ Dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (April 26, 1996). The adjustments have included an increase in the maximum civil penalty from \$10,000 to \$11,000 for each day during which a person is in violation under Section 7A(g)(1) (61 Fed. Reg. 54548 (October 21, 1996), corrected at 61 Fed. Reg. 55840 (October 29, 1996)) and to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857-01 (January 9, 2009)).

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

¹⁰ *United States v. ESL Partners, L.P. and ZAM Holdings, L.P.*, No. 1:08-CV-02175 (D.D.C. filed December 15, 2008).

¹¹ *United States v. John C. Malone*, No. 1:09-CV-01147 (D.D.C. filed June 23, 2009).

simultaneously with the complaint and entered by the court on June 25, 2009, Malone agreed to pay \$1.4 million in civil penalties to settle the charges.

2. *Threshold Adjustments*

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

On January 13, 2009, the Commission published a notice¹² to reflect adjustment of reporting thresholds as required by the 2000 amendments¹³ to Section 7A of the Clayton Act, 15 U.S.C. §18a. The revised thresholds became effective February 12, 2009.

MERGER ENFORCEMENT ACTIVITY¹⁴

1. *The Department of Justice*

During fiscal year 2009, the Antitrust Division challenged 12 merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In seven of these challenges, the Antitrust Division filed a complaint in U.S. district court. Six of these cases were settled by consent decree, and in one matter, the parties abandoned the transaction after the complaint was filed. In the other five challenges during fiscal year 2009, when apprised of the Antitrust Division's concerns regarding their proposed transactions, the parties in three instances abandoned the proposed transaction and in two instances restructured the proposed transaction to avoid competitive problems.¹⁵

In [*United States v. The Manitowoc Company, Inc., Enodis plc and Enodis Corporation*](#),¹⁶ the Division challenged the proposed \$2.7 billion acquisition of Enodis plc by Manitowoc. The complaint alleged that the transaction, as originally proposed, would have substantially lessened

¹² 74 Fed. Reg. 1687 (January 13, 2009).

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

¹⁴ The 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 except in specific instances where such information has already been disclosed.

¹⁵ In one instance, the Division issued a press release: December 11, 2008 – proposed acquisition of National City Corporation by PNC Financial Services Group, Inc. (banking services). See *infra* at p. 10. In the other four instances, the Division informed the parties of its concerns, but did not issue a press release: proposed joint venture between Depository Trust & Clearing Corporation and Markit Group, Ltd. (credit derivatives data and clearing services); proposed acquisition of NRG Energy Inc. by Exelon Corp. (wholesale electricity); proposed acquisition of Multimodal Technologies, Inc. by Nuance Communications, Inc. (voice recognition engines); and proposed acquisition of 3M's Belle Mead, New Jersey aggregate quarry by Tilcon New York Inc. or Trap Rock Industries, Inc. (coarse quarry aggregate).

¹⁶ *United States v. The Manitowoc Company, Inc., Enodis plc and Enodis Corporation*, No. 1:08-CV-01704 (D.D.C. filed October 06, 2008).

competition in the development, production, distribution, and sale of commercial cube ice machines in the United States, likely resulting in increased prices and reduced quality and innovation. Commercial cube ice machines are used by restaurants, convenience stores, hotels, and other businesses that require significant volumes of cube ice. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, which was entered by the court on February 17, 2009, the parties were required to divest Enodis' entire U.S. ice machine business in order to proceed with the acquisition. This remedy was consistent with the remedy obtained by the European Commission as a result of its antitrust investigation, and the Division and the European Commission cooperated throughout the course of their investigations.

In *United States et al. v. JBS S.A. and National Beef Packing Company, LLC*,¹⁷ the Division sued to block the proposed acquisition of National Beef Packing, the fourth-largest U.S. beef packer, by JBS, the third-largest U.S. beef packer. The Attorneys General of Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas and Wyoming joined in the Division's lawsuit and, thereafter, on November 7, 2009, the States of Arizona, Connecticut, Mississippi, and New Mexico joined the lawsuit as well. The complaint alleged that the acquisition would have substantially lessened competition among packers for the purchase of fed cattle – cattle ready for slaughter – in the High Plains (centered in Colorado, western Iowa, Kansas, Nebraska, Oklahoma, and Texas) and the Southwest, and would also have substantially lessened competition among packers in the production and sale of USDA-graded boxed beef nationwide. As a result, cattle producers, ranchers and feedlots likely would have received lower prices for their cattle, and grocers, food service companies and ultimately United States consumers likely would have paid higher prices for USDA-graded beef. On February 20, 2009, the parties announced that they abandoned the transaction, and the Division subsequently moved to dismiss the lawsuit.

In *United States et al. v. Verizon Communications Inc. and Alltel Corporation*,¹⁸ the Division and the States of Alabama, California, Iowa, Kansas, Minnesota, North Dakota, and South Dakota challenged the proposed \$28 billion acquisition of Alltel Corporation by Verizon Communications. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition for mobile wireless telecommunications services in 94 Cellular Marketing Areas (CMAs), as defined by the Federal Communications Commission, likely resulting in higher prices, lower quality, and reduced network investments. Verizon and Alltel were each other's closest competitor for a significant set of customers in each of these CMAs. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, which was entered by the court on April 24, 2009, Verizon was required to divest assets in each of these 94 areas in order to proceed with the acquisition. Additionally, as part of the settlement, the Division filed proposed modifications to two existing consent decrees with Verizon that will require Verizon to divest wireless businesses in six additional CMAs. The total of 100 areas in which divestitures are required covers 22 states, including the entire states of North Dakota and South Dakota; large portions of Colorado, Georgia, Kansas, Montana, South Carolina, Utah and Wyoming; and portions of Alabama, Arizona, California, Idaho, Illinois, Iowa, Minnesota, Nebraska, Nevada, New Mexico, North Carolina, Ohio, and Virginia. The Division coordinated with the FCC throughout its investigation, and the

¹⁷ *United States et al. v. JBS S.A. and National Beef Packing Company, LLC*, No. 08CV5992 (N.D. Ill. filed October 20, 2008).

¹⁸ *United States et al. v. Verizon Communications Inc. and Alltel Corporation*, No. 1:08-CV-01878 (D.D.C. filed October 30, 2008).

acquisition was also subject to FCC review.

In [*United States v. InBev N.V./S.A., InBev USA LLC and Anheuser-Busch Companies Inc.*](#),¹⁹ the Division challenged the proposed \$52 billion acquisition of Anheuser-Busch, the largest brewer in the United States with approximately 50% of beer sales nationwide, by Belgium-based InBev. Although InBev accounted for only about 2% of beer sales nationwide, InBev's Labatt brand beers accounted for a significant portion of the Buffalo, Rochester, and Syracuse, New York metropolitan area beer markets. The complaint alleged that the transaction, as originally proposed, would have eliminated head-to-head competition between Anheuser-Busch's Budweiser and InBev's Labatt brands, significantly increased market concentration in those areas, and likely would have led to higher prices for beer there. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, InBev was required to divest its Labatt USA subsidiary along with a license to brew, market, promote, and sell Labatt brand beer for consumption in the United States. The court entered the decree on August 11, 2009.

In [*United States et al. v. Republic Services, Inc. and Allied Waste Industries, Inc.*](#),²⁰ the Division, joined by the States of California, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, and Texas, challenged the proposed \$4.5 billion acquisition of Allied Waste by Republic Services. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in commercial waste collection and/or disposal services in 15 metropolitan areas, resulting in higher prices and poorer service for consumers. In each of these areas, Republic and Allied were two of only a few significant firms providing commercial waste hauling or municipal solid waste disposal services. The Division filed a proposed consent decree simultaneously with the complaint, requiring divestiture of commercial waste collection and disposal assets in the 15 affected metropolitan areas. The required divestitures include 87 commercial waste collection routes, nine landfills, 10 transfer stations, and ancillary assets. The court entered the decree on July 15, 2010.

In [*United States v. Microsemi Corporation*](#),²¹ on December 18, 2008, the Division challenged the July 14, 2008 acquisition of most of the assets of Semicoa Inc. by Microsemi Corporation. The complaint alleged that the acquisition significantly lessened competition in the development, manufacture and sale of certain high reliability small signal transistors and ultra-fast recovery rectifier diodes used in military applications and space programs, in violation of Section 7 of the Clayton Act and Section 2 of the Sherman Act. As a result of the transaction, prices for these products increased and were likely to continue to increase, delivery times became less reliable, and terms of service were likely to become less favorable. On August 20, 2009, the Division filed a proposed consent decree that would settle the lawsuit by requiring Microsemi to divest all of the assets that it acquired from Semicoa. The court entered the decree on January 29, 2010.

In [*United States v. Sapa Holding AB and Indalex Holdings Finance, Inc.*](#),²² the Division

¹⁹ *United States v. InBev N.V./S.A., InBev USA LLC and Anheuser-Busch Companies Inc.*, No. 1:08-CV-01965 (D.D.C. filed November 14, 2008).

²⁰ *United States et al. v. Republic Services, Inc. and Allied Waste Industries, Inc.*, No. 1:08-CV-02076 (D.D.C. filed December 03, 2008).

²¹ *United States v. Microsemi Corporation*, No. 8:09-CV-00275 (E.D. VA filed December 18, 2008) (case transferred to C.D. Cal.).

²² *United States v. Sapa Holding AB and Indalex Holdings Finance, Inc.* No. 1:09-CV-01424 (D.D.C. filed July 30, 2009).

challenged the proposed acquisition of Indalex by Sapa. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition for the manufacture and sale of aluminum sheathing (coiled extruded aluminum tubing) used in the manufacture of high frequency coaxial cables that are purchased by cable television companies to transmit broadband signals to their subscribers. Sapa and Indalex were the only two manufacturers of aluminum sheathing in the United States. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, which was entered by the court on January 12, 2010, the parties were required to divest either Sapa's Catawba, North Carolina aluminum sheathing manufacturing plant or Indalex's aluminum sheathing facility at its Burlington, North Carolina plant.

During fiscal year 2009, the Division also investigated a bank merger transaction for which divestiture was required. A letter of agreement between the parties and the Division required PNC to divest 61 National City Bank branches in western Pennsylvania along with their associated loans and deposits and certain middle market banking relationships. The Division advised the Board of Governors of the Federal Reserve System, whose final approval of the merger was required, that with these divestitures, the merger would not have a significantly adverse effect on competition in local markets for retail banking, small business banking and middle market banking services.²³

Additionally during fiscal year 2009, the Division initiated one civil contempt proceeding in an instance where a party failed to fulfill obligations imposed by judicial decrees in a previous Division merger challenge. On January 14, 2009, the Division filed a petition in the U.S. District Court for the District of Columbia, asking it to find AT&T in civil contempt for violating the consent decree and a related order entered by the court in *United States v. AT&T and Dobson Communications Corporation*.²⁴ Under these judicial decrees, AT&T was required to divest mobile wireless telecommunications business in three rural service areas and to take all steps necessary to ensure that the divested businesses were operated independently of AT&T and that AT&T did not influence how they were managed. AT&T was also required to take all reasonable efforts to preserve the confidentiality of information material to the operation of the divested businesses and not give unauthorized personnel access to such information. According to the Division's civil contempt petition, AT&T failed to separate confidential customer account information of the businesses to be divested from its own customer records and to take other actions needed to prevent unauthorized disclosure. Consequently, AT&T personnel obtained unauthorized access to these businesses' competitively sensitive customer information and in some instances used it to solicit and lure away their customers. The petition also alleged that AT&T, without authorization by the management trustee appointed to oversee the businesses being divested, waived early termination fees for several customers of those businesses to facilitate switching their wireless service to AT&T. The Division filed a proposed settlement simultaneously with the petition, requiring AT&T to pay \$2,050,000 as part of a civil settlement to resolve AT&T's alleged violation of the court orders. The payment to the United States includes reimbursement to the government for the cost of its investigation into AT&T's alleged violations. The court approved the settlement in January 14, 2009. The Division coordinated with the FCC throughout its investigation.

²³ Letter of December 11, 2008, to the Board of Governors of the Federal Reserve System regarding the acquisition by PNC Financial Services Group, Inc., Pittsburgh, PA of National City Corporation, Cleveland, OH (http://www.justice.gov/atr/public/press_releases/2008/240315.htm).

²⁴ See the HSR Annual Report, Fiscal Year 2008 for a description of this case.

2. *The Federal Trade Commission*

The Commission challenged 19 transactions that it had reason to believe may have lessened competition if allowed to proceed as proposed during fiscal year 2009,²⁵ leading to nine Part 2 consent orders, six administrative complaints, one filed permanent injunction action, and three transactions where the parties either abandoned the proposed deal or where the transactions were restructured after FTC staff informed the parties of its antitrust concerns relating to the transaction. In one of the cases in which the Commission issued an administrative complaint the parties settled the charges by agreeing to a divestiture. In the remaining five matters in which an administrative complaint was issued, the Commission also authorized staff to seek injunctive relief in federal court. In two of these cases the parties abandoned the proposed transactions before staff filed the request, in two cases the parties abandoned the merger after the FTC filed, but before a ruling was issued, and in the last case the parties abandoned the transaction after the FTC secured a preliminary injunction in federal court. In this matter, after a nine-day evidentiary hearing, the District Court for the District of Columbia found that the Commission had raised serious and substantial questions that the proposed merger would substantially lessen competition and issued a preliminary injunction blocking the proposed \$1.4 billion merger of CCC Information Services Inc. and Mitchell International Inc. In addition to these actions, the Commission filed a challenge in federal court to challenge Ovation Pharmaceuticals' consummated acquisition of the drug NeoProfen.

In [*Red Sky Holdings LP/Newpark Resources, Inc.*](#),²⁶ the Commission issued an administrative complaint seeking to block CCS Corporation's proposed \$85 million acquisition of Newpark Environmental Services. According to the Commission's complaint, the proposed transaction was anticompetitive because it would have consolidated two of the leading providers of waste disposal services for the offshore oil and natural gas exploration and production industry in the Gulf Coast Region, leading to higher prices and decreased service levels. In response to the complaint, CCS, a subsidiary of Red Sky, threatened to close down its operations in the Gulf Coast should the acquisition not receive the necessary regulatory approvals. The Commission dismissed the warnings as an effort to avoid a challenge to the transaction, and continued to seek a preliminary injunction, and temporary restraining order in Federal Court. As a result, the parties informed the Commission of their intent to abandon the transaction in November of 2008. The Commission subsequently dismissed its administrative complaint in December 2008.

In the matter of [*CCC Information Services Inc./Mitchell International Inc.*](#),²⁷ the Commission issued an administrative complaint charging that the \$1.4 billion merger between CCC Information Services and Mitchell International would be anticompetitive in the market for "estimatics", a database system used by auto insurers and repair shops to generate repair estimates for consumers. According to the complaint, the transaction would have also harmed competition in the market for total loss valuation (TLV) systems, used to calculate the value of a "totaled" vehicle. After the merger, the combined entity would have well over half of the market share for these systems, allowing for unilateral price increases, and facilitating coordination among the remaining smaller competitors in the market. The Commission concurrently

²⁵ To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2009.

²⁶ *FTC v. Red Sky Holdings LP and Newpark Resources, Inc.*, Civ. Act. No. 4:08CV3147 (E.D. Tx. Oct. 23, 2008).

²⁷ *FTC v. CCC Holdings Inc., and Aurora Equity Partners, III L.P.*, Dkt. No. 9334 (administrative complaint issued Nov. 25, 2008).

authorized staff to file a complaint in federal district court. On March 9, 2009, the U.S. District Court for the District of Columbia ordered a preliminary injunction preventing the parties from consummating the transaction pending a full administrative trial on the merits. On March 13, 2009, after the respondents announced that they had decided not to proceed with the proposed merger, the Commission dismissed the administrative complaint.

In the matter of *CRH plc / Robert Schlegel*,²⁸ the Commission issued an administrative complaint to challenge Oldcastle Architectural's (a subsidiary of CRH) proposed \$540 million acquisition of Pavestone Companies in the U.S. market for drycast concrete hardscape products sold to retailers such as The Home Depot, Lowe's, and Wal-Mart. According to the complaint, the acquisition would have reduced competition by combining the only two companies capable of the national manufacture and sale of these heavy products, which include concrete pavers, segmented retaining wall blocks, and concrete patio products. The Commission alleged entry into this market would be unlikely due to the difficulty in distribution of such products. The acquisition as proposed would have resulted in Oldcastle gaining a 90% market share for the manufacture and sale of these drycast products to home centers in the United States. In addition to the administrative complaint, the Commission authorized staff to file a complaint in U.S. District Court for the District of Columbia seeking a temporary restraining order and preliminary injunction to prevent consummation of the proposed transaction pending an administrative trial on the merits. On January 29, 2009, because the respondents announced that they had decided not to proceed with the proposed merger, the Commission dismissed the administrative complaint.

In the matter of *Talecris Biotherapeutics / CSL Ltd.*,²⁹ the Commission issued an administrative complaint to block CSL Limited's proposed \$3.1 billion acquisition of Talecris Biotherapeutics Holdings Corporation, charging that the deal would have substantially reduced competition in the U.S. markets for four plasma-derivative protein therapies used to treat patients suffering from illnesses such as primary immunodeficiency diseases, chronic inflammatory demyelinating polyneuropathy, alpha-1 antitrypsin disease, and hemolytic disease of the newborn. The Commission also authorized the staff to seek a preliminary injunction in federal district court in Washington, D.C., to stop the transaction pending completion of the administrative trial. Following the Commission's filing of a lawsuit to block the transaction, CSL Limited announced, on June 8, 2009, that it would not proceed with its proposed acquisition.

In the matter of *Thoratec Corporation / HeartWare International, Inc.*,³⁰ the Commission authorized a lawsuit to block Thoratec Corporation's proposed \$282 million acquisition of rival medical device maker HeartWare International, Inc., charging that the transaction would have substantially reduced competition in the U.S. market for left ventricular devices (LVADs), a life-sustaining treatment for patients with advanced heart failure. The FTC's administrative complaint alleges that Thoratec seeks to maintain its monopoly by acquiring HeartWare, thus eliminating the only significant threat to Thoratec's continued dominance of the LVAD market. In August of 2009, because the parties announced that they had decided not to proceed with the proposed acquisition, the Commission dismissed the administrative complaint.

²⁸ FTC v. CRH plc, Oldcastle, Inc., Oldcastle Architectural, Inc., Robert Schlegel, and Pavestone Company, L.P., Dkt. No. 9335 (administrative complaint issued Jan. 14, 2009).

²⁹ FTC v. CSL Ltd. and Cerberus-Plasma Holdings, LLC, Dkt. No. 9337 (administrative complaint issued May 27, 2009).

³⁰ FTC v. Thoratec Corporation, Inc. and HeartWare International, Inc., Dkt. No. 9339 (administrative complaint issued Jan. 14, 2009).

In the matter of [*Ovation Pharmaceuticals, Inc.*](#),³¹ the Commission filed a complaint in federal district court challenging Ovation Pharmaceuticals, Inc.'s January 2006 acquisition of the drug NeoProfen, which eliminated its only competitor for the treatment of a serious and potentially deadly congenital heart defect affecting more than 30,000 babies born prematurely each year in the United States. According to the Commission's complaint, shortly after the acquisition, which fell below the premerger notification threshold and thus avoided premerger antitrust review, Ovation raised the price on its Indocin treatment from \$36 per vial to \$500 per vial, exercising its monopoly power, and forcing desperate consumers to pay artificially inflated prices to treat this potentially fatal condition. The Commission is seeking divestiture of assets related to one of the two treatments, and also disgorgement of all unlawfully obtained profits from the sale of these two treatments. On August 31, 2010, a federal district court in Minnesota dismissed the FTC's case following a trial; the FTC has 60 days to file a notice of appeal.

In the matter of [*Carilion Clinic*](#),³² the Commission issued an administrative complaint challenging Carilion Clinic's 2008 acquisition of two competing outpatient clinics in the Roanoke, Virginia, area. The complaint alleges that Carilion's acquisition of these outpatient centers eliminated competition in violation of federal antitrust laws, and would lead to higher health care costs and reduced incentives to maintain and improve service and quality of care for patients in the Roanoke area. The complaint stated that the divestiture of these centers and related assets was necessary to restore the competition eliminated by the acquisition. On October 7, 2009 Carilion agreed to sell the two independent outpatient medical clinics it acquired previously to settle charges that the acquisitions were anticompetitive and violated federal law.

In fiscal year 2009, the Commission accepted consent agreements and issued proposed orders for public comment in nine merger cases. Eight of the Consent Orders became final in fiscal year 2009; one became final in fiscal year 2010.

In [*Huntsman Corporation / Hexion Specialty Chemicals Inc.*](#),³³ the Commission challenged Hexion LLC's proposed acquisition of Huntsman Corp., issuing a consent order which requires the divestiture of Hexion's specialty epoxy business, and prevents the sharing of sensitive and non-public information which could lead to coordination of prices. Huntsman and Hexion are producers of high-performance and specialty chemicals used in the aerospace and alternative energy industries. Subsequently, Hexion LLC and Huntsman Corporation petitioned the Commission to reopen and set aside two orders related to their proposed merger because they terminated their planned merger and withdrew their premerger notification filings. Following a public comment period, the Commission has granted, in part, a petition by Hexion LLC and Huntsman Corporation requesting that two FTC Orders related to their proposed merger be reopened and set aside. The agency determined that the firms have satisfactorily shown that changed conditions require that the matter be reopened. In particular, the firms have abandoned the acquisition that the Orders were intended to remedy. In its decision, the Commission set aside the Asset Maintenance Order in its entirety, as well as the Decision and Order regarding Huntsman.

³¹ *FTC v. Ovation Pharmaceuticals, Inc. (Renamed FTC v. Lundbeck Inc.)*, CIV. No. 08-cv-6379 (D.D. Minn. December 16, 2008).

³² *FTC v. Carilion Clinic*, Dkt No. 9338 (administrative complaint issued Jul. 23, 2009).

³³ *In the matter of Huntsman Corporation / Hexion Specialty Chemicals Inc*, Docket No. C-4235 (proposed order issued Oct. 2, 2008).

In [*Teva Pharmaceutical / Barr Pharmaceuticals*](#),³⁴ the Commission challenged the proposed \$8.9 billion acquisition of Barr Pharmaceuticals by Teva Pharmaceutical Industries alleging that the acquisition would have lessened competition in the markets for 17 commonly used generic medications including drugs used in the treatment of cancer, bacterial infections, diabetes, acid reflux, and depression as well as several varieties of oral contraceptives. According to the Commission's complaint, the acquisition would have likely led to higher prices for consumers through the removal of one of only four competitors in each of these markets. The Commission's consent agreement requires both Teva and Barr to sell assets in 29 U.S. markets to either Watson Pharmaceuticals or Qualitest Pharmaceuticals.

In [*Inverness Medical Innovations, Inc./ACON*](#),³⁵ the Commission issued an order that restored competition in the U.S. market for consumer pregnancy tests, by effectively reversing a consummated transaction in which Inverness Medical Innovations, a 70% market share holder, purchased the assets related to the development of a water-soluble dye based pregnancy test from ACON Laboratories in order to protect its monopoly power in the market. According to the Commission's complaint, Inverness restrained competition in two ways. First, Inverness issued covenants not to compete to ACON, took profits from ACON's joint venture with Church & Dwight, and purchased intellectual property rights which would restrict ACON from developing competing products. Second, Inverness limited product innovation by purchasing, but not using, the water-soluble dye test technology purchased from ACON, one of the only companies utilizing that technology. The Commission's consent order ended any restrictions Inverness had over the joint venture between ACON and Church & Dwight, and required that Inverness divest its assets relating to the water-soluble dye technology, and its related pregnancy test product.

In [*King Pharmaceuticals, Inc./Alpharma Inc.*](#),³⁶ the Commission approved a consent order to restore competition in the market for oral long-acting opioids (LAOs). The FTC intervened in King Pharmaceutical's proposed \$1.6 billion acquisition of rival drug-maker Alpharma Inc. because the transaction would have joined the two leading producers of morphine sulfate oral LAO's in the United States, a market which was already highly concentrated and which had annual sales of \$4 billion in 2007. In order to maintain competition in the market, the Commission's consent order requires King to divest its branded oral LAO drug Kadian to Actavis, a company which already manufactured the drug for King, and which could then produce a generic equivalent of the drug sooner than would have been permitted under King's patent, which would not have expired until 2010.

In [*Dow Chemical/Rohm & Haas*](#),³⁷ the Commission challenged Dow Chemical's \$18.8 billion proposed acquisition of Rohm & Haas Company alleging that it would have lessened competition in the markets for various acrylics and other industrial chemicals used to make coated paper products, paints, and adhesives. According to the Commission's complaint, the product markets in question include acrylic monomers, used in goods ranging from hygiene products to paints and industrial coatings, hollow sphere particles used in paper products, and acrylic latex polymers used in traffic paints. Given the high concentration in each of the product

³⁴ In the matter of Teva Pharmaceutical / Barr Pharmaceuticals, Docket No. C-4242 (proposed order issued Oct. 23, 2008).

³⁵ In the matter of Inverness Medical Innovations, Inc./ACON, Docket No. C-4244 (proposed order issued Dec. 23, 2008).

³⁶ In the matter of King Pharmaceuticals, Inc./Alpharma Inc., Docket No. C-4246 (proposed order issued Dec. 29, 2008).

³⁷ In the matter of Dow Chemical/Rohm & Haas, Docket No. C-4243 (proposed order issued Jan. 23, 2009).

markets, the Commission alleged the proposed acquisition would have been a merger to monopoly. To remedy its anticompetitive concerns, the Commission is requiring Dow to divest its assets in the aforementioned product markets to an FTC-approved buyer.

In *Getinge AB/Datascope Corp.*,³⁸ the Commission challenged Getinge AB's proposed \$865 million acquisition of rival Datascope Corporation as anticompetitive in the market for endoscopic vessel harvesting devices (EVHs). EVHs are used during coronary artery bypass graft surgery where a vein is removed from a patient's leg or arm to replace a damaged or blocked coronary artery. According to the Commission's complaint, the acquisition as proposed would substantially lessen competition in the relevant market, giving Getinge nearly a 90% market share and the ability to unilaterally increase prices while reducing the likelihood of innovation. The Commission issued a consent order remedying its concerns requiring that Datascope divest its EVH assets to Sorin Group USA, an FTC approved buyer, within 10 days of consummating the transaction.

In *Lubrizol/Lockhart Chemical*,³⁹ the Commission challenged Lubrizol Corporation's consummated 2007 acquisition of the oxidate assets of The Lockhart Company which had the effect of substantially lessening competition in the already highly concentrated U.S. market for chemical rust inhibitors. These inhibitors are commonly used to prevent rusting during the manufacture of metal products such as automobiles and other heavy equipment. According to the Commission's complaint the acquisition removed Lubrizol's last substantial competitor in the relevant market. In addition, the Commission challenged a non-compete agreement included in the terms of the acquisition which prevented Lockhart from competing in the relevant market for 5 years because it restrained the ability of new firms to enter the market as competitors. The Commission issued a consent order remedying its anticompetitive concerns requiring the divestiture of the oxidate assets in question to Additives International and the elimination of the non-compete agreement.

In *BASF/Ciba Specialty Chemicals*,⁴⁰ the Commission charged that BASF's proposed \$5.1 billion acquisition of rival chemical manufacturer Ciba Holding Inc. would be anticompetitive and would violate federal law by reducing competition in the worldwide markets for two high performance pigments. Under the terms of a consent order allowing the transaction to proceed, the FTC requires BASF to sell all assets, including the intellectual property related to the two pigments, bismuth vanadate and indanthrone blue, to a Commission-approved buyer within six months.

In *K&S AG/Dow Chemical*,⁴¹ the Commission approved a consent order to maintain competition in the market for bulk de-icing road salt in Maine and Connecticut that otherwise would have been lost as a result of K+S Aktiengesellschaft's (K+S) \$1.68 billion proposed acquisition of Morton International, Inc. To protect state and local governments from higher prices, the order requires K+S's U.S. subsidiary, International Salt Company LLC (ISCO), to sell its bulk de-icing salt assets in Maine to Eastern Salt Company, Inc., and to sell a similar set of assets in Connecticut to Granite State Minerals, Inc.

³⁸ In the matter of Getinge AB/Datascope Corp, Docket No. C-4251 (proposed order issued Jan. 29, 2009).

³⁹ In the matter of Lubrizol/Lockhart Chemical, Docket No. C-4245 (proposed order issued Feb. 26, 2009).

⁴⁰ In the matter of BASF/Ciba Specialty Chemicals, Docket No. C-4253 (proposed order issued Apr. 4, 2009).

⁴¹ In the matter of K&S AG/Dow Chemical, Docket No. C-4273 (proposed order issued Sep. 25, 2009).

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, 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 to 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 2000 - 2009
- Appendix B - Number of Transactions reported and Filings Received by Month for Fiscal Years 2000 - 2009

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal year 2009, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interests

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 2000 – 2009

APPENDIX A
SUMMARY OF TRANSACTION BY YEAR

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Transactions Reported	4,926	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716
Filings Received ¹	9,941	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1411
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	4,749	2,237	1,142	968	1,377	1,610	1,746	2,108	1,656	684
Investigations in Which Second Requests Were Issued	98	70	49	35	35	50	45	63	41	31
FTC ³	43	27	27	15	20	25	28	31	21	15
Percent ⁴	0.9%	1.2%	2.4%	1.5%	1.5%	1.6%	1.6%	1.5%	1.3%	2.2%
DOJ ³	55	43	22	20	15	25	17	32	20	16
Percent ⁴	1.2%	1.9%	1.9%	2.1%	1.1%	1.6%	1.0%	1.5%	1.2%	2.3%
Transactions Involving a Request For Early Termination ⁵	4,324	2,063	1,042	700	1,241	1,385	1,468	1,840	1,385	575
Granted ⁵	3,515	1,603	793	606	943	997	1,098	1,402	1,021	396
Not Granted ⁵	809	460	249	94	298	388	370	438	364	179

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

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

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

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

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

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

APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 2000 - 2009

APPENDIX B
TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR
FISCAL YEARS 2000 - 2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
October	376	360	89	77	93	139	130	201	158	91
November	428	451	105	104	127	160	148	189	191	85
December	468	345	95	78	143	126	137	151	172	37
January	335	245	111	93	85	138	142	143	158	42
February	440	66	87	71	109	99	124	157	119	32
March	455	120	109	74	137	121	150	194	131	42
April	343	94	99	92	127	121	125	156	128	60
May	398	153	111	83	125	171	158	250	150	58
June	494	190	88	80	117	153	172	202	146	51
July	351	94	121	86	123	118	141	219	128	62
August	446	163	97	85	134	170	186	200	126	77
September	392	95	75	91	108	159	155	139	119	79
TOTAL	4,926	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716

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

APPENDIX B
TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR
FISCAL YEARS 2000 - 2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
October	777	751	190	148	185	277	261	401	319	185
November	839	920	211	206	254	324	311	376	380	165
December	922	686	183	150	280	238	260	294	343	79
January	677	499	224	179	161	259	279	288	316	77
February	867	144	174	146	207	201	257	317	246	63
March	959	243	230	144	277	239	309	381	242	81
April	695	188	203	182	245	242	270	312	272	119
May	859	296	212	168	258	337	300	481	294	114
June	1,004	378	170	158	241	297	346	403	293	99
July	718	182	230	170	234	236	255	441	259	121
August	886	332	191	164	270	328	367	396	251	149
September	738	181	151	186	213	309	295	288	240	159
TOTAL	9,941	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1,411

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

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

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2009

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

TABLE I
FISCAL YEAR 2009¹
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	0.6%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	141	20.6%	13	5	9.2%	3.5%	12.8%	0	0	0.0%	0.0%	0.0%
100M - 150M	148	21.6%	14	7	9.5%	4.7%	14.2%	0	3	0.0%	2.0%	2.0%
150M - 200M	61	8.9%	8	6	13.1%	9.8%	23.0%	1	1	1.6%	1.6%	3.3%
200M - 300M	94	13.7%	10	9	10.6%	9.6%	20.2%	1	2	1.1%	2.1%	3.2%
300M - 500M	70	10.2%	11	7	15.7%	10.0%	25.7%	1	1	1.4%	1.4%	2.9%
500M - 1000M	100	14.6%	17	15	17.0%	15.0%	32.0%	2	6	2.0%	6.0%	8.0%
Over 1000M	66	9.6%	25	7	37.9%	10.6%	48.5%	10	3	15.2%	4.5%	19.7%
<i>ALL TRANSACTIONS</i>	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

TABLE II
FISCAL YEAR 2009¹
ACQUISITIONS BY SIZE OF TRANSACTION² (CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENT		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50 ⁵	4	0.6%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100	145	21.2%	13	5	8.4%	3.2%	11.7%	0	0	0.0%	0.0%	0.0%
LESS THAN 150	293	42.8%	27	12	17.5%	7.8%	25.3%	0	3	0.0%	9.7%	9.7%
LESS THAN 200	354	51.8%	35	18	22.7%	11.7%	34.4%	1	4	3.2%	12.9%	16.1%
LESS THAN 300	448	65.5%	45	27	29.2%	17.5%	46.8%	2	6	6.5%	19.4%	25.8%
LESS THAN 500	518	75.7%	56	34	36.4%	22.1%	58.4%	3	7	9.7%	22.6%	32.3%
LESS THAN 1000	616	90.1%	73	48	47.4%	31.2%	78.6%	5	13	16.1%	41.9%	58.1%
<i>ALL TRANSACTIONS</i>	684		98	56	63.6%	36.4%	100.0%	15	16	48.4%	51.6%	100.0%

**TABLE III
FISCAL YEAR 2009¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$MILLIONS)	CLEARANCES 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	
Below 50M⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50M - 100M	13	5	18	9.2%	3.5%	12.8%	13.3%	8.9%	8.4%	3.2%	11.7%	
100M - 150M	14	7	21	9.5%	4.7%	14.2%	14.3%	12.5%	9.1%	4.5%	13.6%	
150M - 200M	8	6	14	13.1%	9.8%	23.0%	8.2%	10.7%	5.2%	3.9%	9.1%	
200M - 300M	10	9	19	10.6%	9.6%	20.2%	10.2%	16.1%	6.5%	5.8%	12.3%	
300M - 500M	11	7	18	15.7%	10.0%	25.7%	11.2%	12.5%	7.1%	4.5%	11.7%	
500M - 1000M	17	15	32	17.0%	15.0%	32.0%	17.3%	26.8%	11.0%	9.7%	20.8%	
Over 1000M	25	7	32	37.9%	10.6%	48.5%	25.5%	12.5%	16.2%	4.5%	20.8%	
<i>ALL TRANSACTIONS</i>	98	56	154	14.3%	8.2%	22.5%	100.0%	100.0%	63.6%	36.4%	100.0%	

**TABLE IV
FISCAL YEAR 2009¹
TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
Below 50M⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50M - 100M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
100M - 150M	0	3	3	0.0%	0.4%	0.4%	0.0%	2.0%	2.0%	0.0%	9.7%	9.7%
150M - 200M	1	1	2	0.1%	0.1%	0.3%	1.6%	3.3%	4.9%	3.2%	3.2%	6.5%
200M - 300M	1	2	3	0.1%	0.3%	0.4%	1.1%	3.2%	4.3%	3.2%	6.5%	9.7%
300M - 500M	1	1	2	0.1%	0.1%	0.3%	1.4%	2.9%	4.3%	3.2%	3.2%	6.5%
500M - 1000M	2	6	8	0.3%	0.9%	1.2%	2.0%	8.0%	10.0%	6.5%	19.4%	25.8%
Over 1000M	10	3	13	1.5%	0.4%	1.9%	15.2%	19.7%	34.8%	32.3%	9.7%	41.9%
<i>ALL TRANSACTIONS</i>	15	16	31	2.2%	2.3%	4.5%	2.2%	2.3%	4.5%	48.4%	51.6%	100.0%

TABLE V
FISCAL YEAR 2009¹
ACQUISITIONS BY REPORTING THRESHOLD

THRESHOLD ⁶	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF THRESHOLD GROUP			NUMBER		PERCENT OF THRESHOLD GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
\$50M (as adjusted)	45	6.6%	3	2	6.7%	4.4%	11.1%	0	0	0.0%	0.0%	0.0%
\$100M (as adjusted)	63	9.2%	3	4	4.8%	6.3%	11.1%	0	1	0.0%	1.6%	1.6%
\$500M (as adjusted)	8	1.2%	1	2	12.5%	25.0%	37.5%	0	0	0.0%	0.0%	0.0%
25%	4	0.6%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	324	47.4%	58	37	17.9%	11.4%	29.3%	14	10	4.3%	3.1%	7.4%
ASSETS ONLY	240	35.1%	33	11	13.8%	4.6%	18.3%	1	5	0.4%	2.1%	2.5%
ALL TRANSACTIONS	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

TABLE VI
FISCAL YEAR 2009¹
TRANSACTION BY ASSETS OF ACQUIRING PERSON

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	42	6.1%	1	1	2.4%	2.4%	4.8%	0	0	0.0%	0.0%	0.0%
50M - 100M	15	2.2%	1	0	6.7%	0.0%	6.7%	0	0	0.0%	0.0%	0.0%
100M - 150M	17	2.5%	1	0	5.9%	0.0%	5.9%	0	0	0.0%	0.0%	0.0%
150M - 200M	13	1.9%	1	0	7.7%	0.0%	7.7%	0	0	0.0%	0.0%	0.0%
200M - 300M	17	2.5%	4	0	23.5%	0.0%	23.5%	0	0	0.0%	0.0%	0.0%
300M - 500M	39	5.7%	3	3	7.7%	7.7%	15.4%	0	0	0.0%	0.0%	0.0%
500M - 1000M	66	9.6%	4	1	6.1%	1.5%	7.6%	2	0	3.0%	0.0%	3.0%
Over 1000M	475	69.4%	83	51	17.5%	10.7%	28.2%	13	16	2.7%	3.4%	6.1%
<i>ALL TRANSACTIONS</i>	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

**TABLE VII
FISCAL YEAR 2009¹
TRANSACTION BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	57	8.3%	1	2	1.8%	3.5%	5.3%	0	0	0.0%	0.0%	0.0%
50M - 100M	21	3.1%	1	0	4.8%	0.0%	4.8%	0	0	0.0%	0.0%	0.0%
100M - 150M	22	3.2%	3	0	13.6%	0.0%	13.6%	0	0	0.0%	0.0%	0.0%
150M - 200M	22	3.2%	0	0	0.0%	0.0%	0.0%	0	1	0.0%	4.5%	4.5%
200M - 300M	27	3.9%	2	0	7.4%	0.0%	7.4%	0	0	0.0%	0.0%	0.0%
300M - 500M	32	4.7%	4	1	12.5%	3.1%	15.6%	1	0	3.1%	0.0%	3.1%
500M - 1000M	51	7.5%	6	5	11.8%	9.8%	21.6%	1	1	2.0%	2.0%	3.9%
Over 1000M	424	62.0%	80	48	18.9%	11.3%	30.2%	13	14	3.1%	3.3%	6.4%
Sales Not Available⁷	28	4.1%	1	0	3.6%	0.0%	3.6%	0	0	0.0%	0.0%	0.0%
ALL TRANSACTIONS	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

**TABLE VIII
FISCAL YEAR 2009¹
TRANSACTION BY ASSETS OF ACQUIRED ENTITIES⁸**

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	78	11.4%	8	8	10.3%	10.3%	20.5%	1	1	1.3%	1.3%	2.6%
50M - 100M	96	14.0%	13	6	13.5%	6.3%	19.8%	0	2	0.0%	2.1%	2.1%
100M - 150M	65	9.5%	13	4	20.0%	6.2%	26.2%	1	2	1.5%	3.1%	4.6%
150M - 200M	31	4.5%	2	1	6.5%	3.2%	9.7%	0	0	0.0%	0.0%	0.0%
200M - 300M	47	6.9%	8	4	17.0%	8.5%	25.5%	0	1	0.0%	2.1%	2.1%
300M - 500M	62	9.1%	9	3	14.5%	4.8%	19.4%	0	1	0.0%	1.6%	1.6%
500M - 1000M	60	8.8%	10	5	16.7%	8.3%	25.0%	3	2	5.0%	3.3%	8.3%
Over 1000M	148	21.6%	24	17	16.2%	11.5%	27.7%	7	6	4.7%	4.1%	8.8%
Assets Not Available⁸	97	14.2%	11	8	11.3%	8.2%	19.6%	3	1	3.1%	1.0%	4.1%
ALL TRANSACTIONS	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

**TABLE IX
FISCAL YEAR 2009¹
TRANSACTION BY SALES OF ACQUIRED ENTITIES ⁹**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	112	16.4%	11	11	9.8%	9.8%	19.6%	1	3	0.9%	2.7%	3.6%
50M - 100M	85	12.4%	10	6	11.8%	7.1%	18.8%	1	0	1.2%	0.0%	1.2%
100M - 150M	56	8.2%	5	2	8.9%	3.6%	12.5%	0	0	0.0%	0.0%	0.0%
150M - 200M	50	7.3%	7	3	14.0%	6.0%	20.0%	0	1	0.0%	2.0%	2.0%
200M - 300M	61	8.9%	9	5	14.8%	8.2%	23.0%	1	0	1.6%	0.0%	1.6%
300M - 500M	60	8.8%	10	4	16.7%	6.7%	23.3%	1	0	1.7%	0.0%	1.7%
500M - 1000M	58	8.5%	10	6	17.2%	10.3%	27.6%	1	2	1.7%	3.4%	5.2%
Over 1000M	153	22.4%	28	17	18.3%	11.1%	29.4%	10	8	6.5%	5.2%	11.8%
Sales not Available ¹⁰	49	7.2%	8	2	16.3%	4.1%	20.4%	0	2	0.0%	4.1%	4.1%
ALL TRANSACTIONS	684	100.0%	98	56	14.3%	8.2%	22.5%	15	16	2.2%	2.3%	4.5%

TABLE X
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 ¹³	Not Available	37	5.4%	-2.6%	2	0	2	0	0	0
112	Animal Production	2	0.3%	0.2%	0	1	1	0	0	0
113	Forestry and and Logging	1	0.1%	0.1%	0	0	0	0	0	0
211	Oil and Gas Extraction	5	0.7%	-0.7%	0	0	0	0	0	0
212	Mining (except Oil and Gas)	3	0.4%	-0.3%	2	0	2	1	0	1
213	Support Activities for Mining	2	0.3%	-0.7%	0	1	1	0	0	0
221	Utilities	19	2.8%	0.2%	1	1	2	0	1	1
236	Construction of Buildings	3	0.4%	0.1%	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	3	0.4%	-0.2%	0	0	0	0	0	0
238	Specialty Trade Contractors	1	0.1%	-0.5%	0	0	0	0	0	0
311	Food and Kindred Products	9	1.3%	-0.2%	3	1	4	0	1	1
312	Beverage and Tobacco Product Manufacturing	4	0.6%	0.2%	1	0	1	0	0	0
322	Paper Manufacturing	2	0.3%	-0.5%	0	0	0	0	0	0
324	Petroleum and Coal Products Manufacturing	5	0.7%	0.3%	2	0	2	0	0	0
325	Chemical Manufacturing	60	8.8%	3.5%	19	1	20	5	0	5
326	Plastics and Rubber Manufaturing	8	1.2%	0.2%	0	2	2	0	1	1
327	Nonmetallic Mineral Product Manufacturing	1	0.1%	-0.8%	0	0	0	0	0	0
331	Primary Metal Manufacturing	7	1.0%	-0.7%	1	3	4	0	1	1
332	Fabricated Metal Product Manufacturing	9	1.3%	-0.3%	1	1	2	0	0	0
333	Machinery Manufacturing	9	1.3%	-1.4%	1	2	3	0	1	1
334	Computer and Electronic Product Manufacturing	27	3.9%	0.8%	8	2	10	3	0	3

TABLE X
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
335	Electrical Equipment, Appliance, and Component Manufacturing	5	0.7%	-0.3%	0	1	1	0	0	0
336	Transportation Equipment Manufacturing	23	3.4%	1.6%	3	3	6	0	0	0
337	Furniture and Related Product Manufacturing	2	0.3%	0.0%	1	0	1	1	0	1
339	Miscellaneous Manufacturing	6	0.9%	-0.1%	1	0	1	2	0	2
422	Wholesale Trade, Nondurable Goods	1	0.1%	0.1%	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	39	5.7%	-0.8%	8	1	9	0	0	0
424	Merchant Wholesales, Nondurable Goods	35	5.1%	1.0%	12	2	14	2	0	2
441	Motor Vehicle and Parts Dealers	2	0.3%	0.1%	0	0	0	0	0	0
444	Electronics and Appliance Stores	1	0.1%	-0.1%	1	0	1	0	0	0
445	Food and Beverage Stores	1	0.1%	-0.2%	0	0	0	0	0	0
446	Health and Personal Care Stores	1	0.1%	-0.2%	1	0	1	0	0	0
447	Gasoline Stations	6	0.9%	0.8%	2	0	2	1	0	1
448	Clothing and Clothing Accessories Stores	2	0.3%	0.1%	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	1	0.1%	0.1%	1	0	1	0	0	0
454	Nonstore Retailers	4	0.6%	0.2%	1	2	3	0	0	0
481	Air Transportation	6	0.9%	0.5%	1	1	2	0	1	1
484	Truck Transportation	1	0.1%	0.0%	1	0	1	0	0	0
486	Pipeline Transportation	2	0.3%	0.0%	0	0	0	0	0	0
493	Warehousing and Storage	1	0.1%	-0.2%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	24	3.5%	-0.1%	0	6	6	0	4	4
512	Motion Pictures and Sound Recording Industries	3	0.4%	0.0%	0	0	0	0	0	0

TABLE X
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
515	Broadcasting (except Internet)	5	0.7%	0.2%	0	0	0	0	0	0
517	Telecommunications	20	2.9%	0.4%	0	4	4	0	2	2
518	Internet Service Providers, Web Search Portals, and Data Processing Services	4	0.6%	0.0%	0	1	1	0	0	0
519	Other Information Services	3	0.4%	0.3%	0	2	2	0	0	0
521	Monetary Authorities - Central Bank	1	0.1%	0.1%	0	0	0	0	0	0
522	Credit Intermediation and Related Activities	25	3.7%	1.2%	0	2	2	0	1	1
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	77	11.3%	0.0%	1	2	3	0	1	1
524	Insurance Carriers and Related Activities	37	5.4%	1.5%	3	3	6	0	0	0
525	Funds, Trusts, and Other Financial Vehicles	20	2.9%	0.9%	0	3	3	0	0	0
531	Real Estate	4	0.6%	-0.1%	0	0	0	0	0	0
532	Rental and Leasing Services	3	0.4%	-0.3%	1	0	1	0	0	0
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	3	0.4%	0.1%	0	0	0	0	0	0
541	Professional, Scientific, and Technical Services	38	5.6%	0.3%	4	3	7	0	0	0
561	Administrative and Support Services	8	1.2%	-0.8%	1	2	3	0	1	1
562	Waste Management and Remediation Services	2	0.3%	-0.4%	0	2	2	0	1	1
611	Educational Services	3	0.4%	0.2%	0	0	0	0	0	0
621	Ambulatory Health Care Services	3	0.4%	-0.1%	1	1	2	0	0	0
622	Hospitals	17	2.5%	1.3%	10	0	10	0	0	0
624	Social Assistance	2	0.3%	-0.3%	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	3	0.4%	0.1%	0	0	0	0	0	0
713	Amusement, Gambling, and Recreation Industries	1	0.1%	-0.3%	0	0	0	0	0	0

TABLE X
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
721	Accommodation	3	0.4%	0.3%	0	0	0	0	0	0
722	Food Services and Drinking Places	5	0.7%	0.0%	0	0	0	0	0	0
811	Repair and Maintenance	1	0.1%	0.0%	1	0	1	0	0	0
812	Personal and Laundry Services	2	0.3%	0.1%	2	0	2	0	0	0
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	2	0.3%	0.3%	0	0	0	0	0	0
923	Administration of Human Resource Programs	1	0.1%	0.1%	0	0	0	0	0	0
924	Administration of Environmental Quality Programs	2	0.3%	0.2%	0	0	0	0	0	0
999	Nonclassifiable Establishments	6	0.9%	-2.0%	0	0	0	0	0	0
		684	100.0%		98	56	154	15	16	31

TABLE XI
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 ¹³	Not Available	35	5.1%	3.2%	5	1	6	0	0	0	0
113	Forestry and and Logging	1	0.1%	-0.1%	0	0	0	0	0	0	1
211	Oil and Gas Extraction	6	0.9%	-1.4%	0	0	0	0	0	0	1
212	Mining (except Oil and Gas)	8	1.2%	0.3%	2	0	2	1	0	1	3
213	Support Activities for Mining	6	0.9%	-0.5%	0	1	1	0	0	0	1
221	Utilities	29	4.2%	-1.1%	0	2	2	0	1	1	14
236	Construction of Buildings	2	0.3%	0.1%	0	0	0	0	0	0	1
237	Heavy and Civil Engineering Construction	6	0.9%	0.4%	0	0	0	0	0	0	3
238	Specialty Trade Contractors	3	0.4%	-0.2%	0	0	0	0	0	0	0
311	Food and Kindred Products	15	2.2%	0.6%	2	1	3	0	1	1	6
312	Beverage and Tobacco Product Manufacturing	6	0.9%	0.5%	2	0	2	0	0	0	4
313	Textile Mills	1	0.1%	-0.2%	0	0	0	0	0	0	0
315	Apparel Manufacturing	1	0.1%	0.0%	0	0	0	0	0	0	0
321	Wood Product Manufacturing	1	0.1%	-0.1%	0	0	0	0	0	0	0
322	Paper Manufacturing	1	0.1%	-1.2%	0	1	1	0	0	0	0
323	Printing and Related Support Activities	1	0.1%	-0.7%	0	0	0	0	0	0	0
324	Petroleum and Coal Products Manufacturing	3	0.4%	-0.1%	2	0	2	0	0	0	2
325	Chemical Manufacturing	42	6.1%	-0.1%	16	0	16	5	0	5	17
326	Plastics and Rubber Manfuacturing	12	1.8%	-0.7%	1	2	3	0	1	1	2
327	Nonmetallic Mineral Product Manufacturing	2	0.3%	-0.5%	0	0	0	0	0	0	1
331	Primary Metal Manufacturing	2	0.3%	-1.3%	0	1	1	0	1	1	0

TABLE XI
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
332	Fabricated Metal Product Manufacturing	7	1.0%	-0.9%	2	1	3	0	0	0	2
333	Machinery Manufacturing	14	2.0%	-0.2%	1	2	3	0	1	1	6
334	Computer and Electronic Product Manufacturing	21	3.1%	-0.5%	4	3	7	3	0	3	8
335	Electrical Equipment, Appliance, and Component Manufacturing	3	0.4%	-0.4%	0	1	1	0	0	0	2
336	Transportation Equipment Manufacturing	19	2.8%	0.4%	4	0	4	0	0	0	6
337	Furniture and Related Product Manufacturing	2	0.3%	0.0%	1	0	1	1	0	1	2
339	Miscellaneous Manufacturing	8	1.2%	-0.7%	5	0	5	2	0	2	2
421	Wholesale Trade	2	0.3%	0.3%	1	0	1	0	0	0	0
422	Wholesale Trade, Nondurable Goods	1	0.1%	0.1%	0	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	37	5.4%	-1.0%	9	2	11	0	0	0	17
424	Merchant Wholesales, Nondurable Goods	38	5.6%	1.7%	8	2	10	2	0	2	11
441	Motor Vehicle and Parts Dealers	2	0.3%	-0.6%	0	0	0	0	0	0	0
445	Food and Beverage Stores	8	1.2%	0.8%	3	0	3	0	0	0	1
447	Gasoline Stations	3	0.4%	-0.1%	2	0	2	1	0	1	2
448	Clothing and Clothing Accessories Stores	6	0.9%	0.0%	0	0	0	0	0	0	2
451	Sporting Goods, Hobby, Book, and Music Stores	5	0.7%	0.4%	1	0	1	0	0	0	1
454	Nonstore Retailers	5	0.7%	-0.1%	2	0	2	0	0	0	1
481	Air Transportation	3	0.4%	0.0%	0	0	0	0	1	1	3
483	Water Transportation	2	0.3%	-0.2%	0	0	0	0	0	0	0
484	Truck Transportation	1	0.1%	-0.4%	0	0	0	0	0	0	0
486	Pipeline Transportation	4	0.6%	0.2%	0	0	0	0	0	0	2

TABLE XI
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
493	Warehousing and Storage	1	0.1%	-0.1%	0	0	0	0	0	0	0
511	Publishing Industries (except Internet)	28	4.1%	-1.3%	1	2	3	0	4	4	13
512	Motion Pictures and Sound Recording Industries	5	0.7%	-0.2%	0	0	0	0	0	0	1
515	Broadcasting (except Internet)	9	1.3%	0.3%	0	1	1	0	0	0	2
516	Internet Publishing and Broadcasting	2	0.3%	-0.2%	0	0	0	0	0	0	0
517	Telecommunications	23	3.4%	0.3%	0	6	6	0	2	2	9
518	Internet Service Providers, Web Search Portals, and Data Processing Services	8	1.2%	-1.2%	0	4	4	0	0	0	1
519	Other Information Services	2	0.3%	0.3%	0	1	1	0	0	0	1
522	Credit Intermediation and Related Activities	27	3.9%	0.9%	0	3	3	0	1	1	12
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	26	3.8%	1.1%	0	2	2	0	1	1	10
524	Insurance Carriers and Related Activities	33	4.8%	1.6%	3	4	7	0	0	0	19
525	Funds, Trusts, and Other Financial Vehicles	2	0.3%	0.1%	0	1	1	0	0	0	0
532	Rental and Leasing Services	11	1.6%	0.4%	2	0	2	0	0	0	2
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	3	0.4%	-0.6%	0	0	0	0	0	0	0
541	Professional, Scientific, and Technical Services	50	7.3%	1.4%	1	8	9	0	0	0	14
561	Administrative and Support Services	12	1.8%	0.4%	0	1	1	0	1	1	2
562	Waste Management and Remediation Services	5	0.7%	0.2%	0	2	2	0	1	1	2
611	Educational Services	3	0.4%	0.0%	0	0	0	0	0	0	0
621	Ambulatory Health Care Services	7	1.0%	-0.4%	3	1	4	0	0	0	2
622	Hospitals	17	2.5%	2.1%	9	0	9	0	0	0	15
711	Performing Arts, Spector Sports, and Related Industries	3	0.4%	-0.1%	0	0	0	0	0	0	0

TABLE XI
FISCAL YEAR 2009¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
713	Amusement, Gambling, and Recreation Industries	3	0.4%	0.2%	0	0	0	0	0	0	1
721	Accommodation	2	0.3%	-0.2%	0	0	0	0	0	0	1
722	Food Services and Drinking Places	10	1.5%	0.8%	0	0	0	0	0	0	0
811	Repair and Maintenance	1	0.1%	-0.3%	1	0	1	0	0	0	1
812	Personal and Laundry Services	3	0.4%	0.3%	2	0	2	0	0	0	2
999	Nonclassifiable Establishments	14	2.0%	2.0%	3	0	3	0	0	0	0
		684	100.0%		98	56	154	15	16	31	234

¹ Fiscal year 2009 figures include transactions reported between October 1, 2008 and September 30, 2009.

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

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

⁴ During fiscal year 2009, 716 transactions were reported under the HSR Premerger Notification program. The smaller number, 684, reflects the adjustments to eliminate the following types of transactions: (1) transactions reported under Section 7A(c)(6) and (c)(8) (transactions involving certain regulated industries and financial businesses); (2) transactions deemed non-reportable; (3) incomplete transactions (only one party in each transaction filed a compliant notification); and (4) transactions withdrawn before the waiting period began. The table does not, however, exclude competing offers or multiple HSR transactions resulting from a single business transaction (where there are multiple acquiring persons or acquired persons).

⁵ The total number of filings under \$50M submitted in Fiscal Year 2009 is corrective filings.

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

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

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

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

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

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

¹² This represents the deviation from the fiscal year 2008 percentage.

¹³ This category includes transactions by newly-formed entities.

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