



FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

HART-SCOTT-RODINO ANNUAL REPORT

FISCAL YEAR 2011

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

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INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act or the Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (Commission) and the Antitrust Division of the Department of Justice (Antitrust Division or Division) to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in alerting the Commission and the Division to transactions that became the subjects of the numerous enforcement actions brought in fiscal year 2011¹ 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 2011, 1,450 transactions were reported under the HSR Act, representing about a 24% increase from the 1,166 transactions reported in fiscal year 2010 and about a 22% increase from the 1,187 transactions reported in fiscal year 2002, the first full fiscal year under the revised reporting thresholds.² (See Figure 1 below.)



¹ The fiscal year covers the period of October 1, 2010 through September 30, 2011.

² The statutory changes to the HSR Act that took effect on February 1, 2001 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 2011, the threshold was adjusted to \$66 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. Before the statutory increase in the size-of-transaction threshold, the number of transactions reported had reached 4,926 in FY 2000.

During the year, the Commission challenged 17 transactions, leading to nine consent orders, three administrative complaints (along with attendant requests for preliminary injunctions in federal district courts), and five transactions that were abandoned or restructured after the parties learned of the Commission's concerns. These actions spanned several markets, including pharmaceuticals, hospitals, industrial goods, retail outlet centers, and energy. In addition to these new enforcement actions, the Commission continued to pursue litigation begun in previous fiscal years (Polypore International/Daramic LLC and Lundbeck (Ovation) Pharmaceuticals, Inc.). As mentioned above, the Commission initiated actions in federal court in three matters seeking to preserve competition among health care providers that would otherwise have been lost as a result of acquisitions. These matters involved the sale of clinical laboratory testing services to physician groups (Lab Corp/Westcliff Medical Services) and consolidations of hospitals providing general acute-care services (ProMedica/St. Luke's Hospital in the Toledo, Ohio, area and Phoebe Putney Health System/Palmyra Park Hospital in Albany, Georgia).

In addition to its busy litigation docket, the Commission also issued notable consent orders, including its challenge of the Baxter/Hikma acquisition relating to generic medications used to control and prevent seizures during or after surgery and a drug used to treat motion sickness, nausea and vomiting and to prevent some types of allergic reactions. In another matter, Grifols/Talecris, the Commission required a leading manufacturer of plasma-derived drugs to make significant divestitures as part of a settlement allowing it to acquire another firm in the same industry. These challenges, as well as the litigations noted above, are part of the Commission's broader effort to promote competition in the health care sector, which benefits U.S. consumers with products and services that are lower cost and higher quality. Other significant challenges were against proposed mergers in other key industries critical to consumers, including high technology industries, the energy sector and the retail and distribution industry. Besides the enforcement actions in those sectors, in December 2010, the Commission also reached a settlement relating to Keystone Holdings, LLC's planned acquisition of Compagnie Saint-Gobain's advanced ceramics business. The settlement preserves competition in the North American market for alumina wear tile, which protects industrial equipment from abrasive wear. Saint-Gobain is required to retain its Latrobe, Pennsylvania facility, which manufactures most of the alumina wear tile sold by Saint-Gobain in the United States.

The Antitrust Division challenged 20 merger transactions. Of the thirteen merger challenges brought in U.S. District Court, the Division successfully litigated one, resulting in a permanent injunction against the merger, one was dismissed after the parties abandoned the transaction, and eleven were resolved by consent decrees. Seven other challenges were resolved by the parties either abandoning or restructuring their proposed transaction or changing their conduct to avoid competitive problems (see *infra* at p. 10 for a description of these merger challenges). The Division's merger challenges protected consumers in markets as varied as wireless communications, digital tax preparation services, hair care products, stock listing services and travel website software.

Notably, the Division sued on August 31, 2011 to block AT&T's proposed acquisition of T-Mobile USA, which would have resulted in tens of millions of U.S. consumers facing higher prices, fewer choices and lower quality products for their mobile wireless services. On December 19, 2011, the parties announced that they were abandoning the merger, a resounding victory for consumers in the wireless marketplace. In addition, the Division sued and litigated successfully to enjoin H&R Block Inc.'s acquisition of TaxACT, a rival digital do-it-yourself tax preparation software provider. The case went to trial on September 6, 2011, and on October 31,

2011, the court issued a decision permanently enjoining the merger. In another notable challenge, after the Division informed the parties it was prepared to file suit challenging their proposed transaction, NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. abandoned their joint bid to acquire NYSE Euronext. NYSE and NASDAQ operate the major U.S. stock exchanges, and are the only competitors in several businesses vital to the success of U.S. equity markets, including provision of stock listing services, opening and closing stock auction services, off-exchange stock trade reporting services, and real-time proprietary equity data products. The Division concluded that the transaction, had it been allowed to proceed, would have substantially eliminated competition for those services, which are crucial to the investing public and to new and established companies needing access to U.S. stock markets.

In fiscal year 2011, the Commission's Premerger Notification Office (PNO) continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form (the filing form). The HSR website, <http://www.ftc.gov/bc/hsr/>, continued to provide improved access to information necessary to the notification process. The website includes basic resources such as introductory guides that provide an overview of the premerger notification program and merger review process. It is the primary source of information for HSR practitioners seeking information on the HSR form and instructions, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, contact information for PNO staff, and frequently asked questions regarding the HSR filing requirements. Web users can also find up-to-date information, including speeches, press releases, summaries and highlights, and Federal Register notices about any amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff is available to help HSR practitioners comply with HSR notification requirements.

BACKGROUND OF THE HSR ACT

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

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

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

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

A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

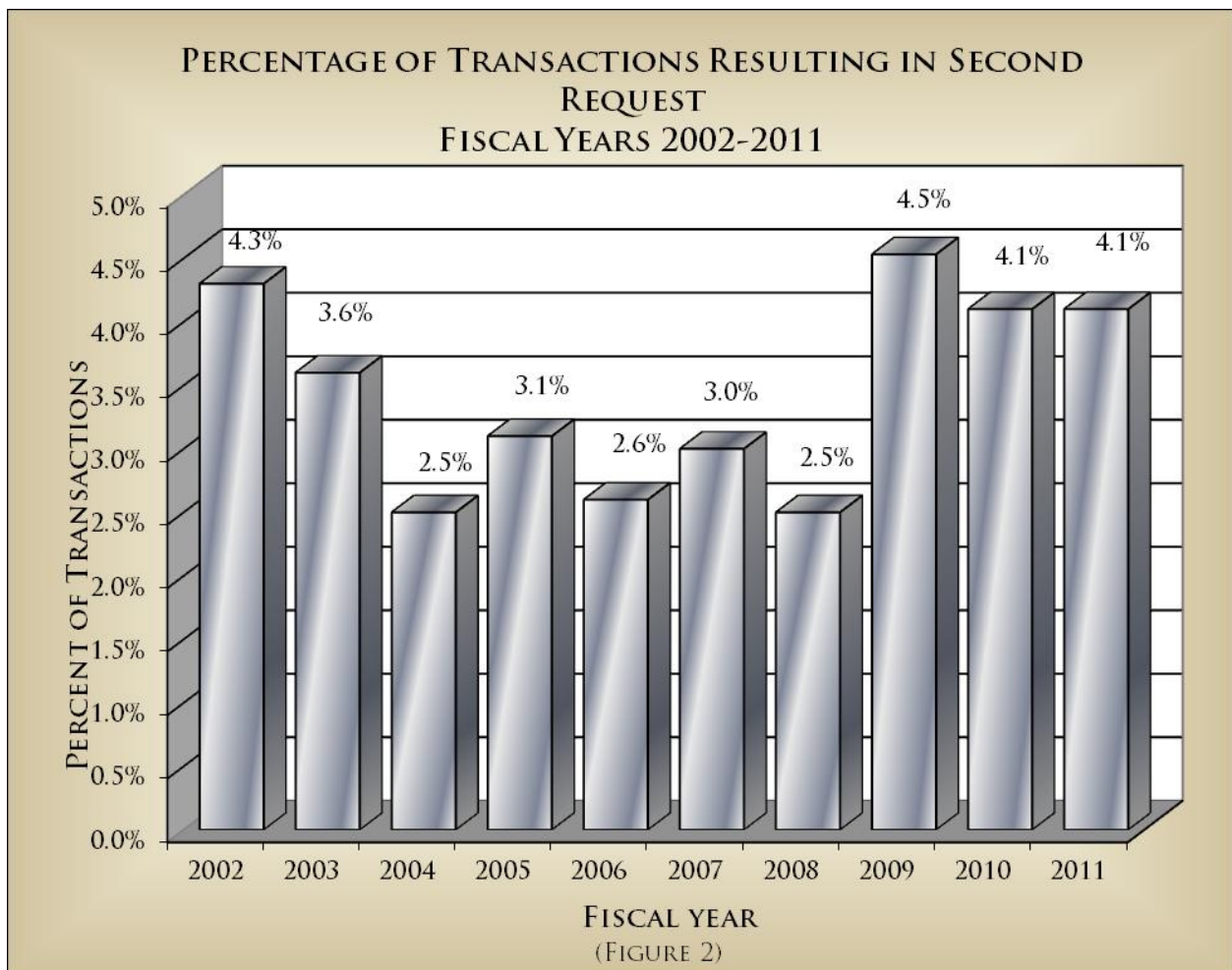
The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for the ten-year period covering fiscal years 2002-2011, the number of transactions reported, the number of filings received, the number of merger investigations in which 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 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 2002 through 2011.

³ 43 Fed. Reg. 33450 (July 31, 1978).

⁴ 43 Fed. Reg. 34443 (Aug. 4, 1978); 43 Fed. Reg. 36053 (Aug. 15, 1978); 44 Fed. Reg. (Nov. 21, 1979); 45 Fed. Reg. 14205 (Mar. 5, 1980); 48 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (Nov. 12, 1985); 51 Fed. Reg. 10368 (Mar. 26, 1986); 52 Fed. Reg. 7066 (Mar. 6, 1987); 52 Fed. Reg. 20058 (May 29, 1987); 54 Fed. Reg. 214251 (May 18, 1989); 55 Fed. Reg. 31371 (Aug. 2, 1990); 60 Fed. Reg. 40704 (Aug. 9, 1995); 61 Fed. Reg. 13666 (Mar. 28, 1996); 63 Fed. Reg. 34592 (June 25, 1998); 66 Fed. Reg. 8680 (Feb. 1, 2001); 66 Fed. Reg. 8723 (Feb. 1, 2001); 66 Fed. Reg. 16241 (Mar. 23, 2001); 66 Fed. Reg. 23561 (May 9, 2001); 66 Fed. Reg. 35541 (July 6, 2001); 67 Fed. Reg. 11898 (Mar. 18, 2002); 67 Fed. Reg. 11904 (Mar. 18, 2002); 68 Fed. Reg. 2425 (Jan. 17, 2003); 70 Fed. Reg. 4988 (Jan. 31, 2005); 70 Fed. Reg. 11501 (Mar. 8, 2005); 70 Fed. Reg. 11526 (Mar. 8, 2005); 70 Fed. Reg. 47733 (Aug. 15, 2005); 70 Fed. Reg. 73369 (Dec. 12, 2005); 70 Fed. Reg. 77312 (Dec. 30, 2005); 71 Fed. Reg. 2943 (Jan. 18, 2006); 71 Fed. Reg. 35995 (June 23, 2006); 72 Fed. Reg. 2692 (Jan. 22, 2007); 75 Fed. Reg. 57110 (Sept. 17, 2010); 76 Fed. Reg. 42471 (July 19, 2011).

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 set out in these appendices show that the number of transactions reported in fiscal year 2011 increased 24% from the number of transactions reported in fiscal year 2010. In fiscal year 2011, 1,450 transactions were reported, while 1,166 were reported in fiscal year 2010.⁶ The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2011 increased 26% from the number of merger investigations in which second requests were issued in fiscal year 2010. Second requests were issued in 58 merger investigations in fiscal year 2011 (24 issued by the FTC and 34 issued by the Division), while second requests were issued in 46 merger investigations in fiscal year 2010 (20 issued by the FTC and 26 issued by the Division). The percentage of transactions resulting in second requests was 4.1% in fiscal year 2011, unchanged from fiscal year 2010. (See Figure 2 below.)



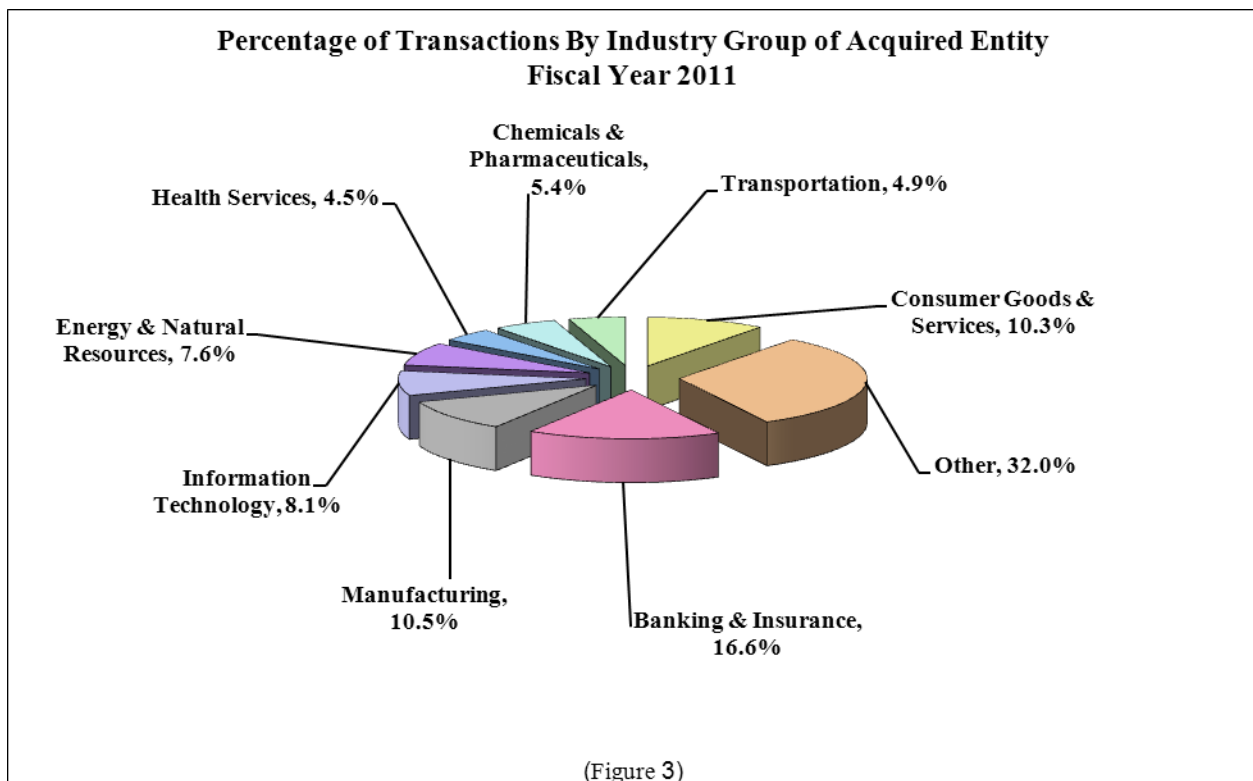
The statistics in Appendix A also show that early termination of the waiting period was requested in the majority of transactions. In fiscal year 2011, early termination was requested in 82% (1,157) of the transactions reported; in FY 2010, early termination was requested in 84%

⁶ This Report, like previous Reports, also includes annual data on “adjusted transactions in which a second request could have been issued” (“adjusted transactions”). See Appendix A and n. 2 of Appendix A (explaining calculation of that data). There were 1,414 adjusted transactions in FY 2011, and the data presented in the Tables and the percentages discussed in the text of this Report (e.g., percentage of transactions resulting in second requests) are based on this figure.

(953) of the transactions reported. The percentage of requests granted out of the total requested increased from 74% in fiscal year 2010 to 77% in fiscal year 2011.

The tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2011. The tables provide, for various categories of transactions, 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 2011, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 18.2% of the total number of the transactions reported. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report.

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 2011 based on the acquired entity's operations.⁷



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 \$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

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

transactions declined to just over \$1.3 trillion in fiscal year 2008, and to \$533 billion in fiscal year 2009, increased to \$780 billion in fiscal year 2010, and \$979 billion in fiscal year 2011.⁸

DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. *Revisions to Premerger Notification Form*

Following a public comment period, the Commission and the Antitrust Division in July of 2011 promulgated the most extensive changes to the HSR Form since its creation in 1978. <http://www.ftc.gov/opa/2011/07/hsrform.shtm>. The revised HSR Form, which takes into account the concerns voiced during the comment period, provides the agencies with some additional information useful in making an initial evaluation of whether a transaction may raise competitive issues warranting investigation (e.g., by requiring acquiring persons such as private equity funds or master limited partnerships to identify NAICS Code overlaps between “associates” that are under common investment management with it, and the target), while at the same time eliminating the need to provide certain information that the agencies found not as useful as originally anticipated (e.g., NAICS Code revenue information for the “base year” rather than for only the most recent year). The Form changes are part of ongoing efforts by the Commission and the Antitrust Division to review the HSR Rules to ensure that they are up-to-date and to eliminate unnecessary or potentially overly burdensome reporting requirements for businesses. The changes make the HSR Form easier to complete, reduce the burden for most filers, and make the HSR Form more useful for both agencies.

2. *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 2011. The agencies monitor compliance through a variety of methods, including a review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, interested members of the public, and in some cases the parties themselves, often provide the agencies with information about transactions and possible violations of the Act’s requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act’s notification and waiting period requirements is liable for a civil penalty of up to \$16,000 – increased in 2009 from \$11,000 – for each day the violation continues.⁹ The antitrust agencies examine the circumstances of each violation to determine whether penalties should be sought.¹⁰

⁸ The information on the value of reported transactions for fiscal year 2011 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.shtm>).

⁹ 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 (Apr. 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 (Oct. 21, 1996), corrected at 61 Fed. Reg. 55840 (Oct. 29, 1996)) and to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857 (Jan. 9, 2009)).

¹⁰ When the parties inadvertently fail to file, the enforcement agencies generally do not seek penalties if the

During fiscal year 2011, 16 corrective filings for violations were received, and the agencies did not bring any new civil penalty enforcement actions.

In fiscal year 2011, in [*U.S. v. Nautilus Hyosung Holdings, Inc.*](#), (D.D.C. filed 8/15/2011), the Division filed a criminal information charging a wholly-owned subsidiary of Korea-based Nautilus Hyosung Inc. (NHI) with two counts of obstruction of justice. The information charged defendant with submitting false documents to the Division and FTC as part of its 2008 HSR filing for a proposed acquisition of a competing manufacturer of automated teller machines (ATMs) and later in response to a DOJ request to submit copies of pre-existing business and strategic plans. The falsified documents misrepresented and minimized the competitive impact of the proposed acquisition on the market for ATMs in the United States.¹¹ Following these false submissions, Nautilus Hyosung Holdings and NHI voluntarily disclosed that numerous documents had been altered, cooperated in the Division's criminal investigation of the obstructive conduct, and committed to continue their cooperation in the ongoing investigation. Defendant pleaded guilty, and an agreed-upon \$200,000 criminal fine was approved by the court on October 20, 2011. Subsequently, on May 3, 2012 an executive of Hyosung Corporation, an affiliate of NHI, agreed to plead guilty to obstruction of justice charges and agreed to serve time in a U.S. prison. According to a two-count felony charge, Kyoungwon Pyo altered and directed subordinates to alter numerous existing corporate documents before they were submitted to the Division and FTC in conjunction with mandatory premerger filings, and falsified additional documents in response to a document request from the Division. According to the plea agreement, which is subject to court approval, Pyo has agreed to serve five months in prison.

3. *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 25, 2011, 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 threshold, which increased from \$63.4 million to \$66 million, became effective February 24, 2011.

4. *International Cooperation*

The Commission and the Antitrust Division routinely cooperate with their non-U.S. counterparts in merger investigations to promote transparency and predictability as well as convergence, where appropriate, towards the best practices of merger review. These efforts

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.

¹¹ The proposed transaction was abandoned before the Division decided whether to challenge it.

¹² 76 Fed. Reg. 3468 (Jan. 25, 2011).

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

enable multiple jurisdictions to manage the similarities and differences in their approach to merger review with the goal of more efficient and effective merger enforcement worldwide to the benefit of consumers and businesses. Additionally, these efforts reduce the risk of inconsistent outcomes and remedies among agencies. In many instances, international cooperation is aided by the parties' waivers of certain confidentiality rights so the agencies can have more meaningful discussions regarding their analyses of the merger and, if enforcement action is warranted, seek compatible remedies. During Fiscal Year 2011, the U.S. antitrust enforcement agencies cooperated on merger reviews with many competition agencies around the world, including those of Australia, Brazil, Canada, China, Colombia, the European Union, France, Germany, Japan, Korea, Mexico, Spain, South Africa, Turkey, and the United Kingdom. In some instances, cooperation with non-U.S. competition authorities was particularly extensive.

In fiscal year 2011, the Commission had almost 50 substantive contacts and cooperated on 20 merger matters of which 12 were completed within the fiscal-year period. Commission staff cooperation with non-U.S. counterparts included extensive coordination on a number of non-public matters in which the Commission ultimately closed its investigation without taking enforcement action or that resulted in abandonment of the transaction by the parties, some after second requests were issued. Even in matters in which different jurisdictional effects or procedural requirements result in differentiated outcomes, Commission staff often cooperate extensively with international counterparts, as, for example, in Intel/McAfee, where Commission staff closely cooperated with the EC's DG COMP in reaching its decision to allow the transaction to proceed.

In fiscal year 2011, the Antitrust Division consulted with international counterparts on approximately 17 merger investigations, of which 7 were completed in fiscal year 2011. Among the Antitrust Division's most notable instances of international cooperation were its CPTN/Novell and Unilever/Alberto-Culver matters. With waivers from the parties, the Division worked closely with the German Federal Cartel Office on an investigation into the acquisition of certain patent applications from Novell by CPTN (see *infra* n. 15 of DOJ Merger Challenges Section), marking the first significant merger enforcement cooperation the Division had with Germany in twenty years. And, leading up to the Division's complaint and consent decree involving Unilever and Alberto-Culver Co. (see *infra* at p. 12), also with party waivers, the Division participated in discussions with counterparts in Mexico, the United Kingdom and South Africa about product markets and competitive issues that varied among the different jurisdictions affected by the merger, facilitating the crafting of remedies appropriate to the respective jurisdictions. The Division also cooperated closely with the EC in its investigation of the Deutsche Borse/NYSE Euronext merger, with frequent contact between the investigative staffs and the leaderships of the two agencies, aided by waivers from the merging parties. Although the two agencies reached different conclusions due to differences in the markets in the respective jurisdictions, this matter illustrates that it is important for agencies to work closely together even when market conditions differ so that each agency can understand, and anticipate, the outcome of the other's investigation.

In October 2011, the Antitrust Division, the Commission, and the European Commission (EC) issued revised Best Practices in Merger Investigations. These best practices provide an updated advisory framework for interagency cooperation when one of the U.S. agencies and the EC's Directorate-General for Competition are reviewing the same merger. The best practices were the fruit of a series of discussions among the three agencies reviewing experience since the best practices' original adoption in 2002. The revised best practices seek to promote fully-

informed decision-making by facilitating the exchange of information between the agencies; minimize the risk of divergent outcomes; enhance the efficiency of investigations; reduce burdens on merging parties and third parties; and increase the overall transparency of the merger review process.

MERGER ENFORCEMENT ACTIVITY¹⁴

1. *The Department of Justice*

During fiscal year 2011, the Antitrust Division challenged twenty merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In thirteen of these challenges, the Antitrust Division filed a complaint in U.S. district court. One of these thirteen challenges was litigated during fiscal year 2011, and the district court ruled in favor of the government, on October 31, 2011, granting a permanent injunction against the merger. One other court challenge was dismissed on December 20, 2011, after the proposed transaction was abandoned. The other eleven court challenges were settled by consent decree. In the other seven challenges during fiscal year 2011, when apprised of the Antitrust Division's concerns regarding their proposed transactions, the parties in two instances abandoned the proposed transaction, in four instances restructured the proposed transaction and in one instance changed their conduct to avoid competitive problems.¹⁵

In [*United States v. GrafTech International Ltd. and Seadrift Coke L.P.*](#),¹⁶ the Division challenged the proposed acquisition of Seadrift Coke by GrafTech International, the largest manufacturer of graphite electrodes sold in the United States. Graphite electrodes are used by steel manufacturers to conduct electricity into electric arc furnaces, which melt steel for a variety of applications. Seadrift was one of two domestic manufacturers of petroleum needle coke, an important input into the production of graphite electrodes. GrafTech had a long-term supply agreement to obtain petroleum needle coke with ConocoPhillips Company, a Seadrift competitor, and the complaint alleged that the acquisition of Seadrift combined with the supply agreement would substantially reduce competition in the petroleum needle coke market. The Division filed a proposed consent decree simultaneously with the complaint. Under the decree, GrafTech was required to remove from the Conoco supply agreement its most-favored-nation (MFN) rights (which required that Conoco's price to GrafTech not exceed its price to other customers) and audit rights under which GrafTech could verify Conoco's costs, customer-

¹⁴ The cases listed in this section were not necessarily reportable under the premerger notification program. Because of provisions regarding the confidentiality of the information obtained pursuant to the Act, it would be inappropriate to identify which cases were initiated under the program except in specific instances where such information has already been disclosed.

¹⁵ In five instances, the Division issued a press release: April 1, 2011 – proposed acquisition of Whitney Holding Corporation by Hancock Holding Company (banking services) (see *infra* at p. 15); April 20, 2011 – proposed acquisition of Novell Inc. patents and patent applications by CPTN Holdings LLC (open source software); April 29, 2011 – proposed acquisition of API Healthcare Corporation by Kronos Inc. (healthcare-specific workforce management technology); May 16, 2011 – proposed acquisition of NYSE Euronext by NASDAQ OMX Group Inc. and Intercontinental Exchange, Inc. (stock exchanges); and May 18, 2011- proposed merger of Berkshire Hills Bancorp Inc with Legacy Bancorp Inc. (banking services) (see *infra* at 15). In the other two instances, the Division informed the parties of its concerns, but did not issue a press release: proposed acquisition of Inovis International, Inc. by GXS Worldwide, Inc. (data catalog assets); and proposed acquisition of Global Crossing Limited by Level 3 Communications (internet backbone services).

¹⁶ *United States v. GrafTech International Ltd. and Seadrift Coke L.P.*, No. 1:10-CV-02039 (D.D.C. filed November 29, 2010).

specific pricing and volume, and other commercially sensitive information to ensure compliance with the MFN guarantee. The decree also required firewalls to protect confidential competitor data from being shared by Conoco and Seadrift. During the 10-year term of the decree, GrafTech must also provide the Division with copies of all supply agreements with Conoco and copies of business documents relating to Seadrift's production, capacity, and sales of petroleum needle coke. The court entered the decree on March 24, 2011.

In *United States v. L.B. Foster Company and Portec Rail Products, Inc.*,¹⁷ the Division challenged L.B. Foster Company's proposed acquisition of Portec Rail Products. The complaint alleged that the transaction, as originally proposed, likely would have substantially lessened competition in two product markets -- bonded insulated rail joints ("bonded joints") and polyurethane-coated insulated rail joints ("poly joints"). Insulated rail joints are used to break the electric current flowing through two abutting pieces of rail, which enables the operation of automatic signals at rail crossings and switches further up the line. Bonded joints, because of their strength, are necessary for the main track lines on the largest of U.S. railroads, called Class I railroads, which handle most of the heavy freight rail traffic in the United States. Poly joints are generally used in areas where the weight and traffic is less than on the Class I railroads' main track lines. Foster and Portec were virtually the only manufacturers of bonded joints in the United States, supplying approximately 95 percent of the market. In addition, Foster and Portec were two of only three suppliers of poly joints in the United States, supplying approximately 54 percent of the market. The Division filed a proposed consent decree simultaneously with the Complaint. The decree, which was entered by the court on May 2, 2011, required Foster to divest Portec's Huntington, West Virginia, plant, which manufactured all of Portec's bonded and poly joints, to Koppers Inc.

In *United States et. al. v. Comcast Corp., General Electric Co. and NBC Universal, Inc.*,¹⁸ the Division and the States of California, Florida, Missouri, Texas and Washington challenged the formation of a joint venture between Comcast Corp., and General Electric Co., involving GE's subsidiary, NBC Universal Inc. The complaint alleged that the transaction, as originally proposed, was likely to eliminate or substantially lessen competition in the development, provision and sale of video programming distribution services in numerous local markets throughout the United States. The complaint further alleged that prices for video programming distribution services likely would increase and innovation and quality decrease, compared to levels that would prevail absent the joint venture. The Division filed a proposed consent decree simultaneously with the complaint. Under the decree, which was entered by the court on September 1, 2011, the defendants must license programming to online competitors to Comcast's cable TV services; may not retaliate against companies who may raise concerns with the Division or Federal Communications Commission (FCC) regarding compliance with the decree; and must adhere to Open Internet requirements prohibiting Comcast from unreasonably discriminating in the distribution of an online video distributor's (OVD's) lawful network traffic to a Comcast broadband customer. In particular, the joint venture must make available to OVDs the same package of broadcast and cable channels that it sells to traditional video programming distributors and offer an OVD broadcast, cable and film content that is similar to, or better than, the content the distributor receives from any of the joint venture's programming peers. The transaction was also subject to review by the FCC, and the Division and FCC consulted

¹⁷ *United States v. L.B. Foster Company and Portec Rail Products, Inc.*, No. 1:10-CV-02115 (D.D.C. filed December 14, 2010).

¹⁸ *United States et. al. v. Comcast Corp., General Electric Co. and NBC Universal, Inc.*, No. 1:11-CV-00106 (D.D.C. filed January 18, 2011).

extensively to coordinate their reviews and create remedies that were consistent and comprehensive.

In *United States v. Google Inc. and ITA Software, Inc.*,¹⁹ the Division challenged Google's proposed acquisition of ITA Software, the provider of the leading independent airfare pricing and shopping system. The complaint alleged that the transaction, as originally proposed, would likely lessen competition substantially in the market for comparative flight search services in the United States. The Division filed a proposed consent decree simultaneously with the complaint. Under the decree, Google is required to: (i) continue to license ITA's QPX software, which searches for flight schedules and airfares, to airfare websites on commercially reasonable terms, and to fund research and development of that product at least at similar levels to what ITA had invested in recent years; and (ii) offer ITA's next generation InstaSearch product to travel websites, which will provide near instantaneous results to certain types of flexible airfare searches. Additionally, to prevent abuse of commercially sensitive information, Google will be required to implement firewall restrictions within the company that avoid unauthorized use of competitively sensitive information and data gathered from ITA's customers. Google is also prohibited from entering into agreements with airlines that would inappropriately restrict the airlines' right to share seat and booking class information with Google's competitors. The decree also provides for a formal reporting mechanism for complaints about Google's conduct and for mandatory arbitration under certain circumstances. The court entered the consent decree on October 5, 2011.

In *United States et al. v. Stericycle, Inc., SAMW Acquisition Corporation and Healthcare Waste Solutions, Inc.*,²⁰ the Division and the State of New York challenged Stericycle's proposed acquisition of Healthcare Waste Solutions (HWS). The complaint alleged that the acquisition, as originally proposed, would have substantially lessened competition in the provision of infectious waste treatment services to hospitals and other health care facilities in the New York City metropolitan area. The proposed acquisition would have reduced from three to two the number of competitors with local transfer stations -- facilities at which infectious waste collected by daily route trucks is transferred onto tractor trailers for efficient shipment of the waste to distant treatment facilities -- leaving Stericycle and HWS with about 90% of the New York City metropolitan area's infectious waste treatment market. The Division filed a proposed consent decree simultaneously with the complaint, requiring divestiture of HWS's transfer station located in the Bronx, New York. The court entered the decree on June 24, 2011.

In *United States v. Unilever N.V., Unilever PLC, Conopco, Inc. and Alberto-Culver Co.*,²¹ the Division challenged Unilever's proposed acquisition of Alberto-Culver Company. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in three product markets -- value shampoo, value conditioner, and hairspray sold in retail stores. Value shampoos and conditioners are the lowest priced shampoos and conditioners sold in retail stores, typically selling for less than two dollars per bottle. The acquisition would have reduced the number of significant sellers of value shampoo and conditioner from three to two, leaving Unilever with approximately 90 percent of those markets. For hairspray, Unilever would have had approximately 46 percent of a highly concentrated market. The Division filed a

¹⁹ *United States v. Google Inc. and ITA Software, Inc.*, No. 1:11-CV-00688 (D.D.C. filed April 8, 2011).

²⁰ *United States et al. v. Stericycle, Inc., SAMW Acquisition Corporation and Healthcare Waste Solutions, Inc.*, No. 1:11-CV-00689 (D.D.C. filed April 8, 2011).

²¹ *United States v. Unilever N.V., Unilever PLC, Conopco, Inc. and Alberto-Culver Co.*, No. 1:11-CV-00858-ABJ (D.D.C. filed May 6, 2011).

proposed consent decree simultaneously with the complaint, requiring divestiture of Alberto-Culver's Alberto VO5 brand and Unilever's Rave Brand along with associated assets. The Alberto VO5 brand consists of value shampoo and conditioner, hairspray, mousse, and other hair styling products, and the Rave brand consists of hairspray and mousse products. The court entered the decree on July 19, 2011.

In *United States v. George's Foods, LLC, George's Family Farms, LLC and George's, Inc.*,²² the Division challenged George's Inc.'s acquisition of Tyson Foods' Harrisonburg, Virginia chicken processing complex. The complaint alleged that the acquisition likely would have the anticompetitive effect of reducing the prices paid to Shenandoah Valley area farmers who raise chickens for processors such as George's and Tyson. As a result of the acquisition, which did not require notification under the HSR Act because its value fell below the Act's reporting threshold, the number of processors in that region decreased from three to two. On June 23, 2011, the Division filed a proposed consent decree requiring George's to make capital improvements to the Harrisonburg plant. The improvements include the installation of a special freezer and deboning equipment, which will allow George's to produce a variety of highly valued products at its Harrisonburg and Edinburg facilities in the Shenandoah Valley. These improvements will give George's the incentive and ability to increase local poultry production, thereby increasing the demand for grower services and averting the acquisition's likely adverse competitive effects. The court entered the decree on November 4, 2011.

In *United States v. VeriFone Systems, Inc., Hypercom Corporation and Ingenico S.A.*,²³ the Division on May 12, 2011, challenged VeriFone Systems' proposed acquisition of Hypercom. The complaint alleged that the proposed acquisition would substantially lessen competition in the sale of point-of-sale (POS) terminals in the United States, resulting in higher prices and reduced innovation, quality, product variety and service. In an effort to resolve antitrust issues with the proposed merger, Hypercom had announced on April 4, 2011, that it had entered into an agreement to sell its U.S. business to Ingenico S.A., the largest provider of POS terminals worldwide and the only other significant competitor to VeriFone and Hypercom in the United States. The complaint alleged, however, that the sale to Ingenico would not resolve the antitrust concerns raised by the VeriFone/Hypercom transaction because the assets were to be sold to another significant competitor in the market in a manner that would not create a new, independent, long-term competitor. Shortly after the Division filed suit, on May 20, 2011, VeriFone and Hypercom abandoned the proposed divestiture to Ingenico and entered into settlement negotiations with the Division to find an alternative buyer. On August 4, 2011, the Division filed a proposed consent decree, requiring divestiture of Hypercom's U.S. POS terminals business to an entity sponsored by Gores Group LLC, a private equity fund. The divestiture is to include physical assets, personnel, intellectual property rights, transitional support and all other assets necessary for Gores to become a viable competitor. The court entered the decree on November 21, 2011.

In *United States v. H&R Block, Inc., 2SS Holdings, Inc. and TA IX L.P.*,²⁴ the Division successfully sued to block H&R Block, Inc.'s proposed acquisition of TaxACT. The complaint

²² *United States v. George's Foods, LLC, George's Family Farms, LLC and George's, Inc.*, No. 5:11-CV00043 (W.D. VA filed May 10, 2011).

²³ *United States v. VeriFone Systems, Inc., Hypercom Corporation and Ingenico S.A.*, No. 1:11-CV-00887 (D.D.C. filed May 12, 2011).

²⁴ *United States v. H&R Block, Inc., 2SS Holdings, Inc. and TAIX L.P.*, No. 1:11-CV-00948 (D.D.C. filed May 25, 2011).

alleged that the proposed acquisition would likely substantially lessen competition in the market for digital do-it-yourself tax preparation products, resulting in higher prices and reduced innovation and quality for products utilized yearly by millions of American taxpayers to prepare and file federal and state income taxes. Three companies account for 90 percent of all sales of these products, and the merger would have combined the second and third largest providers. The complaint alleged that the proposed acquisition would eliminate aggressive head-to-head competition between H&R Block and TaxACT and increase the likelihood that the two remaining significant providers would substantially reduce competition through successful coordination. Trial began on September 6, 2011, and ended on October 3, 2011. On October 31, 2011, the district court granted the Department's request for a permanent injunction against the merger. The court's Memorandum Opinion can be found at <http://www.justice.gov/atr/cases/f277200/277287.pdf>.

In *United States v. Regal Beloit Corporation and A.O. Smith Corporation*,²⁵ the Division challenged the proposed acquisition by Regal Beloit Corporation (RBC) of the electric motor business of A.O. Smith Corporation (AOS). The complaint alleged that the acquisition, as originally proposed, would substantially lessen competition in the markets for electric motors for pool and spa pumps in the United States. Further, the complaint alleged that the acquisition would have eliminated actual potential competition from AOS in the market for draft inducers used for high-efficiency furnaces in the United States, a market in which RBC had a near monopoly. Under the proposed consent decree filed simultaneously with the complaint, RBC was required to divest its U.S. business for electric motors for pool pumps and spa pumps to SNTech and to divest AOS' development work and related assets for draft inducers for high-efficiency furnaces to Revcor Inc., in order to proceed with the acquisition. The court entered the decree on November 1, 2011.

In *United States v. General Electric Company, CVT Holding SAS, Financiere CVT SAS and Converteam Group SAS*,²⁶ the Division challenged General Electric's proposed acquisition of Converteam Group SAS. The complaint alleged that the transaction, as originally proposed, would substantially lessen competition in the development, manufacture and sale of low-speed synchronous electric motors (LSSMs) used in the North American oil and gas industry, resulting in higher prices, less favorable terms of sale and decreased quality of service. LSSMs drive the low-speed reciprocating compressors that oil refineries use for hydrogen compression to support various refinery operations. GE and Converteam were two of only three competitors that sold LSSMs in North America since 2007, and the third company often did not submit bids on North American LSSM projects. Under the proposed consent decree filed simultaneously with the complaint, GE is required to divest Converteam's Electric Machinery Holding Company, which includes its Minneapolis, Minnesota manufacturing facility that produces all of its LSSMs, as well as all of the tangible and intangible assets associated with the business. The court entered the decree on November 23, 2011.

In *United States et al. v. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG*,²⁷ the Division sued to block AT&T's proposed acquisition of T-Mobile USA, a wholly owned

²⁵ *United States v. Regal Beloit Corporation and A.O. Smith Corporation*, No. 1:11-CV-01487 (D.D.C. filed August 17, 2011).

²⁶ *United States v. General Electric Company, CVT Holding SAS, Financiere CVT SAS and Converteam Group SAS*, No. 1:11-CV-01549 (D.D.C. filed August 29, 2011).

²⁷ *United States et al. v. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG*, No. 1:11-CV-01560 (D.D.C. filed August 31, 2011).

subsidiary of Deutsche Telekom. The complaint alleged that the proposed \$39 billion transaction would substantially lessen competition for mobile wireless telecommunications services nationwide resulting in higher prices, poorer quality services, fewer choices and fewer innovative products for consumers. The transaction would have combined two of the four nationwide providers of these services, eliminating from the market T-Mobile, which has historically been a value provider, offering particularly aggressive pricing. AT&T and T-Mobile compete head-to-head nationwide, including in 97 of the nation's largest 100 cellular marketing areas, and compete nationwide to attract business and government customers. Seven states (New York, Washington, California, Illinois, Massachusetts, Ohio and Pennsylvania) and Puerto Rico subsequently joined the Division's lawsuit. On December 19, 2011, AT&T announced it was abandoning the proposed acquisition. On December 20, 2011, the Division and plaintiff states filed a motion to dismiss.

In *United States v. Cumulus Media Inc. and Citadel Broadcasting Corporation*,²⁸ the Division challenged Cumulus Media Inc.'s proposed acquisition of Citadel Broadcasting Corporation. The complaint alleged that the transaction, as originally proposed, would likely substantially lessen competition in the sale of radio advertising in the Flint, Michigan and Harrisburg-Lebanon-Carlisle, Pennsylvania markets. The Division filed a proposed consent decree simultaneously with the complaint. The decree, which was entered on November 29, 2011, required Cumulus to divest two radio stations in Harrisburg-Lebanon-Carlisle and one station in Flint.

Additionally, during fiscal year 2011, the Division settled via consent decree a merger challenge brought in 2010. *In United States et al. v. Dean Foods Company*, Case No. 10-CV-0059 (E.D. WI filed January 22, 2010)²⁹, the Division filed a proposed consent decree on March 29, 2011. Under the decree, which was entered by the court on July 29, 2011, Dean Foods was required to divest a significant milk processing plant in Waukesha, Wisconsin and related assets it acquired from the Foremost Farms USA Cooperative, including the Golden Guernsey brand name. In addition, Dean is required to notify the Division before it acquires any milk processing plant for \$3 million or more.

Further, in fiscal year 2011, the Division investigated two bank merger transactions for which divestiture was required prior to the consummation. On April 1, 2011, the Division entered into a letter of agreement with Hancock Holding Company and Whitney Holding Corporation, requiring the merging parties to divest eight Whitney branch offices in Louisiana and Mississippi. The divestiture included Whitney's entire branch network in the Biloxi and Gulfport area in Mississippi and a branch in Washington Parish, Louisiana. 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 an adverse effect on competition in local markets for retail banking or small business banking services.³⁰ Similarly, the Division entered into a letter of agreement on May 18, 2011, with Berkshire Hills Bancorp Inc. and Legacy Bancorp Inc., requiring a divestiture of four Legacy branch offices in Berkshire County, Massachusetts. The merger of Berkshire and Legacy was subject to the final approval of the Office of the Thrift Supervision, and the Division advised the bank agency that it would not

²⁸ *United States v. Cumulus Media Inc. and Citadel Broadcasting Corporation*, No. 1:11-CV-01619 (D.D.C. filed September 8, 2011).

²⁹ See the HSR Annual Report, Fiscal Year 2010 for a description of this case.

³⁰ http://www.justice.gov/atr/public/press_releases/2011/269239.htm.

challenge the transaction provided that the parties comply with the divestiture agreement.³¹ In both transactions, the parties were required to divest loans and deposits associated with the branch offices to be divested.

2. *The Federal Trade Commission*

During fiscal year 2011, the Commission pursued 17 merger enforcement challenges³², resulting in nine consent agreements, five transactions abandoned or restructured as a result of antitrust concerns raised during the course of the investigation, and three cases in which the Commission issued administrative complaints and contemporaneously filed motions for preliminary injunctions in federal court. In two of the litigated cases, the Commission challenged consummated mergers and sought federal court orders enjoining the defendants from further consolidating their operations with those of their recently-acquired competitors. In the third, the Commission sought an injunction to halt the defendant from consummating the intended transaction.

The three litigated matters include:

In [*ProMedica / St. Luke's Hospital*](#),³³ continuing its efforts to protect healthcare consumers, the Federal Trade Commission challenged ProMedica Health System, Inc.'s consummated acquisition of rival St. Luke's Hospital in Lucas County, Ohio (the Toledo area). The Commission's administrative complaint alleged that the deal would reduce competition and allow ProMedica to raise prices for general acute-care and inpatient obstetrical services, significantly harming patients and local employers and employees. The U.S. District Court for the Northern District of Ohio, Western Division granted the preliminary injunction on March 29, 2011. With an Initial Decision issued on December, 5, 2011, Chief Administrative Law Judge D. Michael Chappell ruled that the challenged transaction harmed competition in violation of U.S. antitrust law and would allow ProMedica to raise the prices of general acute care inpatient hospital services in Lucas County, Ohio. Judge Chappell ordered ProMedica to divest St. Luke's Hospital to a Commission-approved buyer within 180 days after the order becomes final. ProMedica appealed the ALJ's decision to the full Commission, oral argument was heard on February 6, 2012, and the Commission issued an opinion and order largely upholding the ALJ's decision on March 22, 2012.

In [*Phoebe Putney / Palmyra*](#),³⁴ the Commission challenged Phoebe Putney Health System, Inc.'s (Phoebe's) proposed acquisition of rival Palmyra Park Hospital, Inc. (Palmyra) from HCA, in Albany, Georgia. The Commission's administrative complaint alleged that the deal would reduce competition significantly and allow the combined Phoebe/Palmyra to raise prices for general acute-care hospital services charged to commercial health plans, substantially harming patients and local employers and employees. The Commission also alleged that Phoebe

³¹ http://www.justice.gov/atr/public/press_releases/2011/271411.htm.

³² To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2011.

³³ FTC v. ProMedica Health System, Inc., Dkt. No. 9346 (administrative complaint issued Jan. 6, 2011).

³⁴ FTC v. Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., HCA Inc., Palmyra Park Hospital, Inc., and Hospital Authority of Albany-Dougherty County, Dkt. No. 9348 (administrative complaint issued Apr. 20, 2011).

has structured the deal in a way that uses the Hospital Authority of Albany-Dougherty County in an attempt to shield the anticompetitive acquisition from federal antitrust scrutiny under the “state action” doctrine. The Commission’s staff, together with the Attorney General of the State of Georgia, also filed a separate complaint in federal district court in Albany, Georgia, seeking a preliminary injunction to halt any transaction until the conclusion of the Commission’s administrative proceeding and any subsequent appeals. After initially granting a Temporary Restraining Order on April 20, 2011, on June 13, 2011, the federal district court granted the defendants’ motion to dismiss the Commission’s petition for a preliminary injunction. Following an appeal by the Commission, on December 9, 2011, the Eleventh Circuit issued its opinion affirming the district court’s decision. On March 23, 2012 the Office of the Solicitor General filed a petition for certiorari with the U.S. Supreme Court.

In [Lab Corp / Westcliff Medical Laboratories](#),³⁵ the Commission challenged Laboratory Corporation of America’s \$57.5 million acquisition of rival clinical laboratory testing company Westcliff Medical Laboratories, Inc., alleging that the transaction would harm competition in Southern California. The agency issued an administrative complaint charging that Lab Corp’s acquisition of Westcliff, which was completed on June 16, 2010, violated the antitrust laws and would lead to higher prices and lower quality in the Southern California market for the sale of clinical laboratory testing services to physician groups because it would leave only two significant competitors in Southern California. After the District Court for the Central District of California denied the FTC’s request for a preliminary injunction, the Commission withdrew the matter from administrative adjudication and issued an order dismissing its complaint and closing its investigation of the matter.

In fiscal year 2011, the Commission accepted consent agreements and issued proposed orders for public comment in nine merger cases. Six of the consent orders became final in fiscal year 2011; three either became final in fiscal year 2012 or are still pending.

In [Hikma Pharmaceuticals / Baxter International](#),³⁶ the Commission required Hikma Pharmaceuticals PLC (Hikma) to divest two generic injectable pharmaceuticals – phenytoin and promethazine – as part of a settlement allowing Hikma to acquire certain assets from Baxter Healthcare Corporation, Inc. (Baxter). Hikma proposed to acquire Baxter’s entire generic injectable pharmaceutical business for \$111.5 million, including Baxter’s Cherry Hill, New Jersey, manufacturing facility and a warehouse and distribution center in Memphis, Tennessee. Phenytoin is an anti-convulsant drug used to control and prevent seizures during or after surgery while Promethazine is used to prevent some types of allergies or allergic reactions, to prevent or control motion sickness, nausea, vomiting, and dizziness, and to help patients go to sleep and control their pain or anxiety before or after surgery. The Commission's complaint alleges that the U.S. markets for both products are already highly concentrated, with only Hikma, Baxter, and Hospira, Inc. currently competing to provide phenytoin and promethazine. Accordingly, without the Commission’s ordered divestitures, the proposed acquisition would have reduced the number of suppliers in each market from three to two.

³⁵ FTC v. Laboratory Corporation of America and Laboratory Corporation of America Holdings, Dkt. No. 9345 (administrative complaint issued Dec. 1, 2010).

³⁶ In the matter of Hikma Pharmaceuticals/Baxter International, Docket No. C4320 (proposed order issued Apr. 27, 2011).

In [Irving / Exxon Mobil](#),³⁷ the Commission required Irving Oil Terminals Inc. and Irving Oil Limited (collectively, Irving) to relinquish the rights to terminal and pipeline assets in Maine that Irving had acquired from ExxonMobil. According to the FTC's complaint, the original transaction would have substantially increased concentration in certain geographic markets in Maine where Irving and ExxonMobil are two of only three firms that can independently offer or provide gasoline terminaling services in the Bangor/Penobscot Bay area, and two of only four in the South Portland area. Similarly, they are two of only four firms that can independently offer distillates terminaling services in the Bangor/Penobscot Bay area, and two of six in the South Portland area. The Commission, which worked closely with the Maine Attorney General's Office on this matter, ordered the divestitures to maintain competition in gasoline and distillates terminaling services in the South Portland and Bangor/Penobscot Bay areas and to resolve the Commission's charges that the acquisition was anticompetitive and could result in higher gasoline and diesel prices for consumers.

In [Keystone / Compagnie de Saint-Gobain](#),³⁸ the Commission preserved competition in the North American market for alumina wear tile by imposing conditions on Keystone Holdings, LLC and Compagnie de Saint-Gobain in a settlement involving Keystone's planned acquisition of Saint-Gobain's Advanced Ceramics Business. According to the Commission's complaint, the deal as originally structured would have reduced competition in the relevant markets by eliminating direct competition between CoorsTek – the Keystone subsidiary that manufactures its tiles – and Saint-Gobain. Under the Order, Keystone and Saint-Gobain modified their transaction to allow Saint-Gobain to retain its Latrobe, Pennsylvania facility, which manufactures most of the alumina wear tile Saint-Gobain sells in the United States. Keystone has agreed to notify the Commission before acquiring, and Saint-Gobain before selling, certain alumina wear tile assets in the future.

In [Universal Health Services / Psychiatric Solutions](#),³⁹ the Commission required Universal Health Services, Inc., one of the nation's largest hospital management companies, to sell 15 psychiatric facilities as a condition of its \$3.1 billion acquisition of Psychiatric Solutions, Inc. As originally proposed, the acquisition would have reduced competition in the provision of acute inpatient psychiatric services in three local markets: Delaware, Puerto Rico, and metropolitan Las Vegas, Nevada. Acute inpatient psychiatric services are intensive hospital services provided to patients who pose a danger to themselves or others, or are unable to perform basic life functions, due to an acute psychiatric episode. Facilities owned by Universal Health and Psychiatric Solutions were the leading providers of these critical services in each of the three divestiture markets. The required divestitures assure that competition in these markets is not reduced because of the acquisitions.

In [Simon Property Group / Prime Outlets](#),⁴⁰ under the terms of the Commission's settlement, Simon Property Group, Inc. had to divest property and modify tenant leases to preserve outlet center competition in parts of southwest Ohio, Chicago, Illinois, and Orlando, Florida, in the wake of Simon's purchase of Prime Outlets Acquisition Company, LLC. In

³⁷ In the matter of Irving/Exxon Mobil, Docket No. C-4328 (proposed order issued Jul. 15, 2011).

³⁸ In the matter of Keystone/Compagnie de Saint-Gobain, Docket No. C-4314 (consent issued Dec. 29, 2010)

³⁹ In the matter of Universal Health Services/Psychiatric Solutions, Docket No. C-4309 (proposed order issued Nov. 15, 2011).

⁴⁰ In the matter of Simon Property Group/Prime Outlets, Docket No. C-4307 (proposed order issued Nov. 10, 2011).

addition, Simon agreed to remove radius restrictions for tenants with stores in its outlet malls serving the Chicago and Orlando markets. According to the complaint, Simon's acquisition of Prime would have illegally reduced outlet center competition by eliminating direct and substantial competition between Simon and Prime in the three markets, by giving Simon a monopoly in outlet centers serving the Southwest Ohio market, and by allowing Simon to prevent or limit new outlet center entry and competition in the Chicago and Orlando local markets. The settlement order resolves the Commission's concerns about the acquisition's likely anticompetitive effects.

In [*Grifols/Talecris*](#),⁴¹ the Commission required Grifols, S.A., a manufacturer of plasma-derived drugs, to make significant divestitures as part of a settlement allowing Grifols to acquire a competing and leading plasma-derived drug manufacturer, Talecris Biotherapeutics Holdings Corp. As alleged in the FTC's complaint, the proposed acquisition would have lessened competition in the U.S. markets for three blood plasma-derived products: immune globulin, which is used to treat, among other things, immune deficiencies and neurological disorders; albumin, which is used to expand blood volume, prime heart valves during cardiac surgery, treat burn victims, and replace proteins in patients suffering from liver failure; and plasma-derived Factor VIII, which is used to treat bleeding disorders, primarily Hemophilia A and von Willebrand disease. The consent order resolves the Commission's concerns that the acquisition as originally structured would have harmed competition and led to reduced supply and higher prices.

In [*Cardinal Health, Inc. / Biotech Pharmacy, Inc.*](#),⁴² the Commission required Cardinal Health, Inc. to reconstitute and sell nuclear pharmacies in Las Vegas, Nevada; Albuquerque, New Mexico; and El Paso, Texas that it had previously acquired from Biotech. The consent order resolved the agency's charges that Cardinal's July 2009 purchase of the nuclear pharmacies, which distribute radiopharmaceuticals to hospitals and cardiology clinics for the diagnosis and treatment of various diseases, reduced competition for low-energy radiopharmaceuticals in the three cities. The order is designed to remedy the alleged anticompetitive effects of Cardinal's acquisition by requiring Cardinal to reconstitute the three nuclear pharmacies it had operated in these markets prior to the acquisition, and sell each one to an FTC-approved buyer.

In [*Perrigo / Paddock Laboratories*](#),⁴³ the Commission required generic drug manufacturers Perrigo Company and Paddock Laboratories, Inc. to sell six generic drugs under a proposed settlement resolving charges that Perrigo's proposed \$540 million acquisition of Paddock, its competitor in these markets, would be anticompetitive. The FTC's complaint alleges that the transaction would have reduced the number of manufacturers for four products used to treat conditions such as skin disorders, allergic reactions, and nausea. The Commission's complaint also charged that the deal would have eliminated future competition for two other products, a generic topical steroid and a generic anti-inflammatory drug. The proposed settlement also contains provisions to ensure future competition in the market for a generic testosterone gel product.

⁴¹ In the matter of Grifols/Talecris, Docket No. C-4322 (proposed order issued June 1, 2011).

⁴² In the matter of Cardinal Health, Inc./BioTech Pharmacy, Inc., Docket No. C-4339 (proposed order issued July 21, 2011).

⁴³ In the matter of Perrigo/Paddock Laboratories, Docket No. C-4322 (proposed order issued July 26, 2011).

In [DaVita / DSI Renal](#),⁴⁴ the Commission required dialysis services company DaVita, Inc. to sell 29 outpatient dialysis clinics around the United States, under a proposed settlement that resolved Commission charges that DaVita's proposed \$689 million acquisition of rival CDSI I Holding Company, Inc., also known as DSI, would be anticompetitive. DaVita is based in Denver, Colorado and is the second largest provider of outpatient dialysis services in the United States. It operates 1,612 outpatient dialysis clinics in 42 states and the District of Columbia. DSI, headquartered in Nashville, Tennessee, is a privately held company and the fifth largest provider of outpatient dialysis services in the United States, with 106 dialysis centers in 23 states. The proposed settlement preserves competition in 22 geographic markets where the FTC alleges that consumers would have been harmed by DaVita's acquisition of DSI.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

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

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

⁴⁴ In the matter of DaVita/DSI Renal, Docket No. C-4334 (proposed order issued Sept. 2, 2011).

LIST OF APPENDICES

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- Appendix B - Number of Transactions reported and Filings Received by Month for Fiscal Years 2002 - 2011

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal year 2011, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interests

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 2002 – 2011

**APPENDIX A
SUMMARY OF TRANSACTION BY YEAR**

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Transactions Reported	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166	1,450
Filings Received ¹	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1411	2,318	2,882
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	1,142	968	1,377	1,610	1,746	2,108	1,656	684	1,128	1,414
Investigations in Which Second Requests Were Issued	49	35	35	50	45	63	41	31	46	58
FTC ³	27	15	20	25	28	31	21	15	20	24
Percent ⁴	2.4%	1.5%	1.5%	1.6%	1.6%	1.5%	1.3%	2.2%	1.8%	1.7%
DOJ ³	22	20	15	25	17	32	20	16	26	34
Percent ⁴	1.9%	2.1%	1.1%	1.6%	1.0%	1.5%	1.2%	2.3%	2.3%	2.4%
Transactions Involving a Request For Early Termination ⁵	1,042	700	1,241	1,385	1,468	1,840	1,385	575	953	1,157
Granted ⁵	793	606	943	997	1,098	1,402	1,021	396	704	888
Not Granted ⁵	249	94	298	388	370	438	364	179	249	269

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; (3) transactions which were found to be non-reportable; and (4) transactions withdrawn before the waiting period began. 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 2002 - 2011

APPENDIX B
TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR
FISCAL YEARS 2002 - 2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
October	89	77	93	139	130	201	158	91	66	128
November	105	104	127	160	148	189	191	85	135	217
December	95	78	143	126	137	151	172	37	84	91
January	111	93	85	138	142	143	158	42	62	97
February	87	71	109	99	124	157	119	32	61	81
March	109	74	137	121	150	194	131	42	116	97
April	99	92	127	121	125	156	128	60	92	96
May	111	83	125	171	158	250	150	58	108	142
June	88	80	117	153	172	202	146	51	108	117
July	121	86	123	118	141	219	128	62	94	120
August	97	85	134	170	186	200	126	77	120	164
September	75	91	108	159	155	139	119	79	120	100
TOTAL	1,187	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166	1,450

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 2002 - 2011

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
October	190	148	185	277	261	401	319	185	146	252
November	211	206	254	324	311	376	380	165	242	422
December	183	150	280	238	260	294	343	79	177	193
January	224	179	161	259	279	288	316	77	126	188
February	174	146	207	201	257	317	246	63	116	157
March	230	144	277	239	309	381	242	81	232	195
April	203	182	245	242	270	312	272	119	182	190
May	212	168	258	337	300	481	294	114	216	284
June	170	158	241	297	346	403	293	99	213	231
July	230	170	234	236	255	441	259	121	187	240
August	191	164	270	328	367	396	251	149	238	329
September	151	186	213	309	295	288	240	159	243	201
TOTAL	2,369	2,001	2,825	3,287	3,510	4,378	3,455	1,411	2,318	2,882

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 2011

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

TABLE I
FISCAL YEAR 2011¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M⁵	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	232	16.4%	24	6	10.3%	2.6%	12.9%	2	0	0.9%	0.0%	0.9%
100M - 150M	261	18.5%	23	9	8.8%	3.4%	12.3%	1	1	0.4%	0.4%	0.8%
150M - 200M	134	9.5%	11	7	8.2%	5.2%	13.4%	1	3	0.7%	2.2%	3.0%
200M - 300M	201	14.2%	22	9	10.9%	4.5%	15.4%	2	3	1.0%	1.5%	2.5%
300M - 500M	193	13.6%	23	11	11.9%	5.7%	17.6%	7	4	3.6%	2.1%	5.7%
500M - 1000M	233	16.5%	28	20	12.0%	8.6%	20.6%	4	6	1.7%	2.6%	4.3%
Over 1000M	159	11.2%	32	32	20.1%	20.1%	40.3%	7	17	4.4%	10.7%	15.1%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

TABLE II
FISCAL YEAR 2011¹
ACQUISITIONS BY SIZE OF TRANSACTION²(CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENTAGE OF TOTAL NUMBER OF SECOND REQUESTS		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50⁵	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100	233	16.5%	24	6	9.3%	2.3%	11.7%	2	0	3.4%	0.0%	3.4%
LESS THAN 150	494	34.9%	47	15	18.3%	5.8%	24.1%	3	1	5.2%	1.7%	6.9%
LESS THAN 200	628	44.4%	58	22	22.6%	8.6%	31.1%	4	4	6.9%	6.9%	13.8%
LESS THAN 300	829	58.6%	80	31	31.1%	12.1%	43.2%	6	7	10.3%	12.1%	22.4%
LESS THAN 500	1,022	72.3%	103	42	40.1%	16.3%	56.4%	13	11	22.4%	19.0%	41.4%
LESS THAN 1000	1,252	88.5%	131	62	51.0%	24.1%	75.1%	17	17	29.3%	29.3%	58.6%
<i>ALL TRANSACTIONS</i>	1,414		163	94	63.4%	36.6%	100.0%	24	34	41.4%	58.6%	100.0%

**TABLE III
FISCAL YEAR 2011¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$MILLIONS)	CLEARANCES GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF:								
				TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
Below 50M ⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
50M - 100M	24	6	30	10.3%	2.6%	12.9%	14.7%	6.4%	9.3%	2.3%	11.7%	
100M - 150M	23	9	32	8.8%	3.4%	12.3%	14.1%	9.6%	8.9%	3.5%	12.5%	
150M - 200M	11	7	18	8.2%	5.2%	13.4%	6.7%	7.4%	4.3%	2.7%	7.0%	
200M - 300M	22	9	31	10.9%	4.5%	15.4%	13.5%	9.6%	8.6%	3.5%	12.1%	
300M - 500M	23	11	34	11.9%	5.7%	17.6%	14.1%	11.7%	8.9%	4.3%	13.2%	
500M - 1000M	28	20	48	12.0%	8.6%	20.6%	17.2%	21.3%	10.9%	7.8%	18.7%	
Over 1000M	32	32	64	20.1%	20.1%	40.3%	19.6%	34.0%	12.5%	12.5%	24.9%	
ALL TRANSACTIONS	163	94	257	11.5%	6.6%	18.2%	100.0%	100.0%	63.4%	36.6%	100.0%	

**TABLE IV
FISCAL YEAR 2011¹
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	2	0	2	0.1%	0.0%	0.1%	0.9%	0.0%	0.9%	3.4%	0.0%	3.4%
100M - 150M	1	1	2	0.1%	0.1%	0.1%	0.4%	0.4%	0.8%	1.7%	1.7%	3.4%
150M - 200M	1	3	4	0.1%	0.2%	0.3%	0.7%	2.2%	3.0%	1.7%	5.2%	6.9%
200M - 300M	2	3	5	0.1%	0.2%	0.4%	1.0%	1.5%	2.5%	3.4%	5.2%	8.6%
300M - 500M	7	4	11	0.5%	0.3%	0.8%	3.6%	2.1%	5.7%	12.1%	6.9%	19.0%
500M - 1000M	4	6	10	0.3%	0.4%	0.7%	1.7%	2.6%	4.3%	6.9%	10.3%	17.2%
Over 1000M	7	17	24	0.5%	1.2%	1.7%	4.4%	10.7%	15.1%	12.1%	29.3%	41.4%
ALL TRANSACTIONS	24	34	58	1.7%	2.4%	4.1%	1.7%	2.4%	4.1%	41.4%	58.6%	100.0%

TABLE V
FISCAL YEAR 2011¹
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)	47	3.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
\$100M (as adjusted)	72	5.1%	2	2	2.8%	2.8%	5.6%	0	0	0.0%	0.0%	0.0%
\$500M (as adjusted)	27	1.9%	2	1	7.4%	3.7%	11.1%	0	1	0.0%	3.7%	3.7%
25%	4	0.3%	0	1	0.0%	25.0%	25.0%	0	1	0.0%	25.0%	25.0%
50%	828	58.6%	111	64	13.4%	7.7%	21.1%	13	23	1.6%	2.8%	4.3%
ASSETS ONLY	436	30.8%	48	26	11.0%	6.0%	17.0%	11	9	2.5%	2.1%	4.6%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

TABLE VI
FISCAL YEAR 2011¹
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	96	6.8%	0	4	0.0%	4.2%	4.2%	0	1	0.0%	1.0%	1.0%
50M - 100M	23	1.6%	1	0	4.3%	0.0%	4.3%	0	0	0.0%	0.0%	0.0%
100M - 150M	24	1.7%	0	1	0.0%	4.2%	4.2%	0	0	0.0%	0.0%	0.0%
150M - 200M	34	2.4%	2	0	5.9%	0.0%	5.9%	0	0	0.0%	0.0%	0.0%
200M - 300M	46	3.3%	5	1	10.9%	2.2%	13.0%	0	1	0.0%	2.2%	2.2%
300M - 500M	79	5.6%	5	4	6.3%	5.1%	11.4%	0	0	0.0%	0.0%	0.0%
500M - 1000M	158	11.2%	11	6	7.0%	3.8%	10.8%	2	0	1.3%	0.0%	1.3%
Over 1000M	954	67.5%	139	78	14.6%	8.2%	22.7%	22	32	2.3%	3.4%	5.7%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

**TABLE VII
FISCAL YEAR 2011¹
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	98	6.9%	1	1	1.0%	1.0%	2.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	35	2.5%	2	0	5.7%	0.0%	5.7%	0	0	0.0%	0.0%	0.0%
100M - 150M	33	2.3%	0	1	0.0%	3.0%	3.0%	0	0	0.0%	0.0%	0.0%
150M - 200M	31	2.2%	1	0	3.2%	0.0%	3.2%	0	0	0.0%	0.0%	0.0%
200M - 300M	68	4.8%	5	2	7.4%	2.9%	10.3%	1	1	1.5%	1.5%	2.9%
300M - 500M	90	6.4%	5	6	5.6%	6.7%	12.2%	0	0	0.0%	0.0%	0.0%
500M - 1000M	150	10.6%	17	3	11.3%	2.0%	13.3%	2	1	1.3%	0.7%	2.0%
Over 1000M	836	59.1%	132	77	15.8%	9.2%	25.0%	21	31	2.5%	3.7%	6.2%
Sales Not Available⁷	73	5.2%	0	4	0.0%	5.5%	5.5%	0	1	0.0%	1.4%	1.4%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

TABLE VIII
FISCAL YEAR 2011¹
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	241	17.0%	29	8	12.0%	3.3%	15.4%	3	2	1.2%	0.8%	2.1%
50M - 100M	216	15.3%	26	7	12.0%	3.2%	15.3%	3	2	1.4%	0.9%	2.3%
100M - 150M	114	8.1%	13	6	11.4%	5.3%	16.7%	2	2	1.8%	1.8%	3.5%
150M - 200M	88	6.2%	8	6	9.1%	6.8%	15.9%	1	2	1.1%	2.3%	3.4%
200M - 300M	100	7.1%	12	4	12.0%	4.0%	16.0%	0	1	0.0%	1.0%	1.0%
300M - 500M	114	8.1%	17	10	14.9%	8.8%	23.7%	2	2	1.8%	1.8%	3.5%
500M - 1000M	110	7.8%	15	12	13.6%	10.9%	24.5%	5	4	4.5%	3.6%	8.2%
Over 1000M	251	17.8%	26	30	10.4%	12.0%	22.3%	7	17	2.8%	6.8%	9.6%
Assets Not Available⁸	180	12.7%	17	11	9.4%	6.1%	15.6%	1	2	0.6%	1.1%	1.7%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

TABLE IX
FISCAL YEAR 2011¹
TRANSACTION BY SALES OF ACQUIRED ENTITIES⁹

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	279	19.7%	20	23	7.2%	8.2%	15.4%	4	7	1.4%	2.5%	3.9%
50M - 100M	229	16.2%	33	5	14.4%	2.2%	16.6%	3	2	1.3%	0.9%	2.2%
100M - 150M	122	8.6%	15	4	12.3%	3.3%	15.6%	2	1	1.6%	0.8%	2.5%
150M - 200M	125	8.8%	20	3	16.0%	2.4%	18.4%	3	0	2.4%	0.0%	2.4%
200M - 300M	132	9.3%	11	13	8.3%	9.8%	18.2%	1	3	0.8%	2.3%	3.0%
300M - 500M	127	9.0%	18	5	14.2%	3.9%	18.1%	3	1	2.4%	0.8%	3.1%
500M - 1000M	117	8.3%	14	13	12.0%	11.1%	23.1%	2	2	1.7%	1.7%	3.4%
Over 1000M	248	17.5%	27	23	10.9%	9.3%	20.2%	6	16	2.4%	6.5%	8.9%
Sales not Available¹⁰	35	2.5%	5	5	14.3%	14.3%	28.6%	0	2	0.0%	5.7%	5.7%
ALL TRANSACTIONS	1,414	100.0%	163	94	11.5%	6.6%	18.2%	24	34	1.7%	2.4%	4.1%

**TABLE X
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 ¹³	Not Available	92	6.5%	-0.3%	1	4	5	0	1	1
111	Crop Production	4	0.3%	0.3%	0	0	0	0	0	0
112	Animal Production	2	0.1%	0.1%	0	0	0	0	0	0
113	Forestry and and Logging	1	0.1%	0.1%	0	0	0	0	0	0
211	Oil and Gas Extraction	20	1.4%	-0.4%	2	0	2	0	0	0
212	Mining (except Oil and Gas)	9	0.6%	0.2%	2	0	2	0	0	0
213	Support Activities for Mining	17	1.2%	0.7%	0	2	2	0	0	0
221	Utilities	35	2.5%	-1.0%	2	3	5	0	2	2
236	Construction of Buildings	7	0.5%	0.5%	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	8	0.6%	-0.7%	0	1	1	0	0	0
238	Specialty Trade Contractors	3	0.2%	-0.1%	1	0	1	0	0	0
311	Food and Kindred Products	34	2.4%	-0.7%	7	5	12	0	2	2
312	Beverage and Tobacco Product Manufacturing	2	0.1%	-0.1%	0	0	0	0	0	0
321	Wood Product Manufacturing	4	0.3%	0.1%	1	0	1	0	0	0
322	Paper Manufacturing	9	0.6%	-0.2%	0	2	2	0	1	1
323	Printing and Related Support Activities	5	0.4%	0.1%	0	0	0	0	0	0
324	Petroleum and Coal Products Manufacturing	9	0.6%	0.0%	0	0	0	0	0	0
325	Chemical Manufacturing	77	5.4%	-0.5%	26	1	27	5	1	6
326	Plastics and Rubber Manufacturing	20	1.4%	0.4%	2	2	4	0	0	0
327	Nonmetallic Mineral Product Manufacturing	5	0.4%	0.0%	1	0	1	0	0	0
331	Primary Metal Manufacturing	18	1.3%	0.7%	5	0	5	2	0	2

**TABLE X
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
332	Fabricated Metal Product Manufacturing	23	1.6%	0.1%	1	0	1	0	0	0
333	Machinery Manufacturing	29	2.1%	0.6%	3	7	10	1	3	4
334	Computer and Electronic Product Manufacturing	45	3.2%	-1.0%	10	3	13	0	0	0
335	Electrical Equipment, Appliance, and Component Manufacturing	13	0.9%	0.2%	1	3	4	0	1	1
336	Transportation Equipment Manufacturing	42	3.0%	-0.1%	3	6	9	0	0	0
339	Miscellaneous Manufacturing	20	1.4%	-0.2%	3	0	3	0	0	0
422	Wholesale Trade, Nondurable Goods	1	0.1%	0.0%	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	115	8.1%	2.5%	12	7	19	2	5	7
424	Merchant Wholesales, Nondurable Goods	78	5.5%	-0.2%	21	2	23	2	0	2
425	Wholesale Electric Markets and Agent and Brokers	2	0.1%	0.1%	1	0	1	0	0	0
441	Motor Vehicle and Parts Dealers	5	0.4%	0.2%	0	0	0	0	0	0
442	Furniture and Home Furnishing Stores	2	0.1%	0.1%	0	0	0	0	0	0
443	Miscellaneous Repair Services	1	0.1%	0.1%	0	0	0	0	0	0
445	Food and Beverage Stores	8	0.6%	0.0%	0	0	0	0	0	0
446	Health and Personal Care Stores	7	0.5%	-0.1%	4	0	4	1	0	1
447	Gasoline Stations	7	0.5%	0.2%	2	0	2	0	0	0
448	Clothing and Clothing Accessories Stores	5	0.4%	-0.1%	0	0	0	0	0	0
452	General Merchandise Stores	2	0.1%	0.1%	0	0	0	0	0	0
453	Miscellaneous Store Retailers	1	0.1%	-0.3%	0	0	0	0	0	0
454	Nonstore Retailers	11	0.8%	-0.5%	1	0	1	1	0	1
481	Air Transportation	4	0.3%	-0.1%	0	3	3	0	3	3

TABLE X
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
482	Railroad Transportation	1	0.1%	0.1%	0	0	0	0	0	0
483	Water Transportation	3	0.2%	0.1%	0	1	1	0	1	1
484	Truck Transportation	1	0.1%	0.0%	0	0	0	0	0	0
486	Pipeline Transportation	8	0.6%	0.0%	1	0	1	0	0	0
487	Scenic and Sightseeing Transportation	1	0.1%	0.1%	0	0	0	0	0	0
488	Support Activities for Transportation	10	0.7%	0.5%	0	0	0	0	0	0
492	Couriers	2	0.1%	0.1%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	45	3.2%	-0.3%	4	10	14	1	0	1
512	Motion Pictures and Sound Recording Industries	4	0.3%	0.0%	0	0	0	0	0	0
514	Information Services and Data Processing Services	1	0.1%	0.0%	0	1	1	0	1	1
515	Broadcasting (except Internet)	10	0.7%	-0.2%	1	1	2	0	0	0
516	Internet Publishing and Broadcasting	2	0.1%	-0.2%	0	0	0	0	0	0
517	Telecommunications	38	2.7%	-0.1%	0	5	5	0	2	2
518	Internet Service Providers, Web Search Portals, and Data Processing Services	21	1.5%	0.1%	0	3	3	0	1	1
519	Other Information Services	8	0.6%	0.5%	1	1	2	1	0	1
522	Credit Intermediation and Related Activities	29	2.1%	-0.6%	1	1	2	0	0	0
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	107	7.6%	-0.2%	3	4	7	0	4	4
524	Insurance Carriers and Related Activities	57	4.0%	0.5%	4	3	7	1	0	1
525	Funds, Trusts, and Other Financial Vehicles	23	1.6%	-0.6%	0	1	1	0	0	0
531	Real Estate	5	0.4%	0.3%	1	0	1	0	0	0
532	Rental and Leasing Services	8	0.6%	-0.2%	1	0	1	1	0	1

TABLE X
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	6	0.4%	0.1%	0	1	1	0	1	1
541	Professional, Scientific, and Technical Services	86	6.1%	0.4%	5	7	12	1	4	5
551	Management Companies and Enterprises	3	0.2%	-0.3%	0	0	0	0	0	0
561	Administrative and Support Services	27	1.9%	-0.5%	3	1	4	1	0	1
562	Waste Management and Remediation Services	3	0.2%	0.1%	0	1	1	0	1	1
611	Educational Services	5	0.4%	0.1%	0	0	0	0	0	0
621	Ambulatory Health Care Services	30	2.1%	1.0%	12	0	12	4	0	4
622	Hospitals	29	2.1%	-0.4%	13	1	14	0	0	0
623	Nursing Care Facilities	2	0.1%	0.0%	1	0	1	0	0	0
624	Social Assistance	2	0.1%	-0.1%	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	1	0.1%	-0.4%	0	0	0	0	0	0
713	Amusement, Gambling, and Recreation Industries	3	0.2%	-0.1%	0	0	0	0	0	0
722	Food Services and Drinking Places	18	1.3%	0.7%	0	0	0	0	0	0
811	Repairs and Maintenance	5	0.4%	0.1%	0	1	1	0	0	0
812	Personal and Laundry Services	3	0.2%	-0.1%	0	0	0	0	0	0
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	3	0.2%	0.0%	0	0	0	0	0	0
924	Administration of Environmental Quality Programs	2	0.1%	-0.2%	0	0	0	0	0	0
		1,414	100.0%		163	94	257	24	34	58

**TABLE XI
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 ¹³	Not Available	29	2.1%	-3.2%	5	3	8	0	1	1	0
111	Crop Production	2	0.1%	0.1%	0	0	0	0	0	0	0
112	Animal Production	3	0.2%	0.2%	0	0	0	0	0	0	0
113	Forestry and and Logging	3	0.2%	0.2%	0	0	0	0	0	0	0
211	Oil and Gas Extraction	24	1.7%	-0.9%	1	0	1	0	0	0	11
212	Mining (except Oil and Gas)	8	0.6%	-0.1%	2	0	2	0	0	0	1
213	Support Activities for Mining	29	2.1%	1.3%	0	2	2	0	0	0	3
221	Utilities	48	3.4%	-0.6%	3	3	6	0	2	2	26
236	Construction of Buildings	2	0.1%	0.1%	0	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	8	0.6%	-0.9%	0	1	1	0	0	0	10
238	Specialty Trade Contractors	7	0.5%	-0.2%	1	0	1	0	0	0	1
311	Food and Kindred Products	31	2.2%	-1.9%	3	6	9	0	2	2	21
312	Beverage and Tobacco Product Manufacturing	7	0.5%	0.1%	2	0	2	0	0	0	1
313	Textile Mills	3	0.2%	0.2%	0	0	0	0	0	0	0
321	Wood Product Manufacturing	6	0.4%	0.2%	2	0	2	0	0	0	2
322	Paper Manufacturing	11	0.8%	0.2%	1	2	3	0	1	1	2
323	Printing and Related Support Activities	3	0.2%	-0.1%	0	0	0	0	0	0	2
324	Petroleum and Coal Products Manufacturing	9	0.6%	0.3%	0	0	0	0	0	0	0
325	Chemical Manufacturing	75	5.3%	1.0%	22	0	22	5	1	6	11
326	Plastics and Rubber Manufacturing	24	1.7%	0.2%	3	1	4	0	0	0	6
327	Nonmetallic Mineral Product Manufacturing	8	0.6%	0.3%	1	1	2	0	0	0	1

TABLE XI
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 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	
331	Primary Metal Manufacturing	13	0.9%	0.1%	1	2	3	2	0	2	2
332	Fabricated Metal Product Manufacturing	24	1.7%	0.3%	4	1	5	0	0	0	6
333	Machinery Manufacturing	40	2.8%	1.6%	1	5	6	1	3	4	5
334	Computer and Electronic Product Manufacturing	49	3.5%	-0.6%	7	4	11	0	0	0	16
335	Electrical Equipment, Appliance, and Component Manufacturing	14	1.0%	0.1%	0	2	2	0	1	1	3
336	Transportation Equipment Manufacturing	37	2.6%	0.8%	4	2	6	0	0	0	9
337	Furniture and Related Product Manufacturing	2	0.1%	-0.1%	1	0	1	0	0	0	0
339	Miscellaneous Manufacturing	29	2.1%	-0.2%	9	0	9	0	0	0	7
422	Wholesale Trade, Nondurable Goods	2	0.1%	0.1%	0	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	97	6.9%	0.5%	12	4	16	2	5	7	20
424	Merchant Wholesales, Nondurable Goods	72	5.1%	-0.1%	14	1	15	2	0	2	12
425	Wholesale Electric Markets and Agent and Brokers	5	0.4%	0.2%	1	0	1	0	0	0	0
441	Motor Vehicle and Parts Dealers	6	0.4%	0.0%	0	0	0	0	0	0	0
442	Furniture and Home Furnishing Stores	3	0.2%	0.2%	0	0	0	0	0	0	0
443	Miscellaneous Repair Services	1	0.1%	0.0%	0	0	0	0	0	0	0
445	Food and Beverage Stores	1	0.1%	-0.5%	0	0	0	0	0	0	2
446	Health and Personal Care Stores	5	0.4%	0.1%	2	0	2	1	0	1	1
447	Gasoline Stations	8	0.6%	0.2%	3	0	3	0	0	0	2
448	Clothing and Clothing Accessories Stores	6	0.4%	0.2%	0	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	4	0.3%	0.1%	0	0	0	0	0	0	0
452	General Merchandise Stores	11	0.8%	0.6%	0	0	0	0	0	0	0

TABLE XI
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 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	
453	Miscellaneous Store Retailers	3	0.2%	-0.1%	0	0	0	0	0	0	2
454	Nonstore Retailers	15	1.1%	0.0%	2	0	2	1	0	1	3
481	Air Transportation	3	0.2%	-0.3%	0	3	3	0	3	3	4
482	Railroad Transportation	1	0.1%	0.0%	0	0	0	0	0	0	0
483	Water Transportation	4	0.3%	0.2%	0	0	0	0	1	1	0
486	Pipeline Transportation	10	0.7%	-0.3%	0	0	0	0	0	0	1
488	Support Activities for Transportation	9	0.6%	0.4%	1	0	1	0	0	0	0
492	Couriers	2	0.1%	0.0%	0	0	0	0	0	0	0
493	Warehousing and Storage	5	0.4%	0.3%	1	0	1	0	0	0	0
511	Publishing Industries (except Internet)	59	4.2%	-0.3%	4	11	15	1	0	1	19
512	Motion Pictures and Sound Recording Industries	6	0.4%	-0.2%	0	0	0	0	0	0	2
514	Information Services and Data Processing Services	1	0.1%	0.0%	0	0	0	0	1	1	0
515	Broadcasting (except Internet)	12	0.8%	0.5%	0	2	2	0	0	0	3
516	Internet Publishing and Broadcasting	10	0.7%	0.2%	0	0	0	0	0	0	1
517	Telecommunications	27	1.9%	-0.3%	0	6	6	0	2	2	17
518	Internet Service Providers, Web Search Portals, and Data Processing Services	34	2.4%	-0.3%	0	2	2	0	1	1	4
519	Other Information Services	5	0.4%	0.4%	0	0	0	1	0	1	0
522	Credit Intermediation and Related Activities	23	1.6%	-0.7%	0	1	1	0	0	0	10
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	41	2.9%	-0.1%	0	4	4	0	4	4	13
524	Insurance Carriers and Related Activities	50	3.5%	-0.1%	3	2	5	1	0	1	22
525	Funds, Trusts, and Other Financial Vehicles	1	0.1%	-0.2%	0	0	0	0	0	0	1

TABLE XI
FISCAL YEAR 2011¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2010 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	
531	Real Estate	5	0.4%	0.2%	2	0	2	0	0	0	0
532	Rental and Leasing Services	7	0.5%	0.0%	0	0	0	1	0	1	2
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	24	1.7%	1.3%	5	12	17	0	1	1	2
541	Professional, Scientific, and Technical Services	127	9.0%	1.5%	9	8	17	1	4	5	20
561	Administrative and Support Services	31	2.2%	-0.6%	3	0	3	1	0	1	9
562	Waste Management and Remediation Services	5	0.4%	-0.2%	0	1	1	0	1	1	1
611	Educational Services	5	0.4%	-0.9%	0	0	0	0	0	0	2
621	Ambulatory Health Care Services	44	3.1%	1.1%	15	0	15	4	0	4	6
622	Hospitals	28	2.0%	-0.9%	12	1	13	0	0	0	21
623	Nursing Care Facilities	2	0.1%	0.0%	0	0	0	0	0	0	0
624	Social Assistance	3	0.2%	0.1%	1	0	1	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	6	0.4%	-0.1%	0	0	0	0	0	0	2
713	Amusement, Gambling, and Recreation Industries	2	0.1%	-0.6%	0	0	0	0	0	0	1
721	Accommodation	10	0.7%	0.3%	0	0	0	0	0	0	1
722	Food Services and Drinking Places	15	1.1%	0.2%	0	0	0	0	0	0	1
811	Repairs and Maintenance	8	0.6%	0.1%	0	1	1	0	0	0	0
812	Personal and Laundry Services	2	0.1%	-0.1%	0	0	0	0	0	0	1
		1,414	100.0%		163	94	257	24	34	58	354

¹ Fiscal year 2011 figures include transactions reported between October 1, 2010 and September 30, 2011.

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 2 (d)(iii), 2 (d)(vii), and 2(d)(ix) of the Notification and Report Form.

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

⁴ During fiscal year 2011, 1450 transactions were reported under the HSR Premerger Notification program. The smaller number, 1414, 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 2011 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 2010 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.