



FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

HART-SCOTT-RODINO ANNUAL REPORT

FISCAL YEAR 2008

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

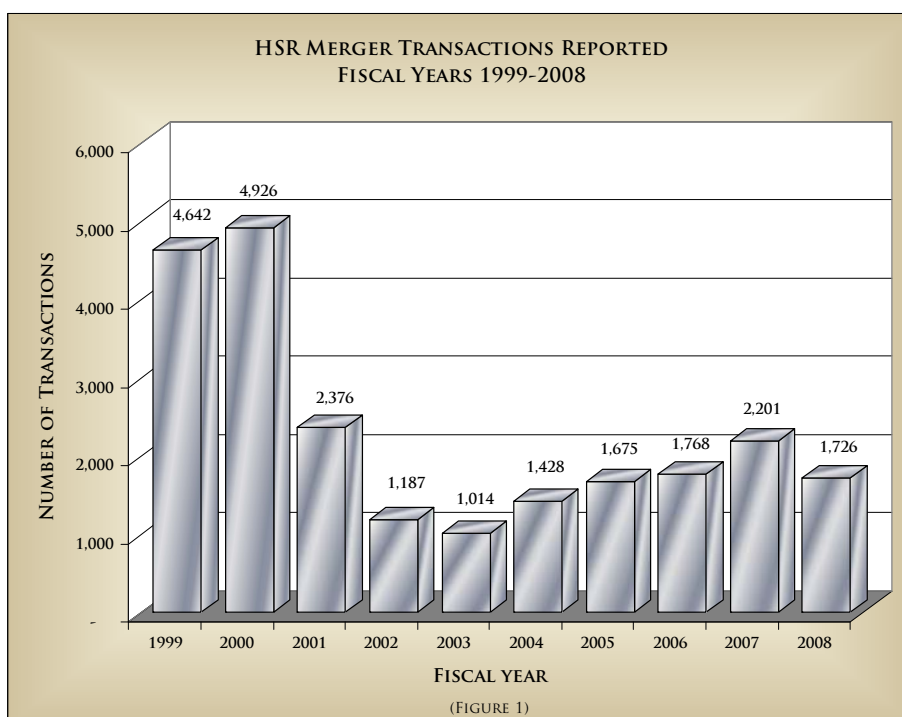
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INTRODUCTION

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 detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 2008¹ 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 2008, 1,726 transactions were reported under the HSR Act, representing about a 22% decrease from the 2,201 transactions reported in fiscal year 2007 and about a 65% decrease from the 4,926 transactions reported in fiscal year 2000, the last full fiscal year under the previous reporting thresholds.² (See Figure 1 below.)



During the year, the Commission challenged 21 transactions, leading to 13 consent orders, two administrative complaints, of which one was also litigated in federal court, and six abandoned or restructured transactions. One of the Commission's notable challenges was against the consummated merger of Polypore International and Microporous Products in which

¹ The fiscal year covers the period of October 1, 2007 through September 30, 2008.

² The decrease in the number of reportable transactions since fiscal year 2000 is, to a considerable extent, a result of the significant statutory changes to the HSR Act that took effect on February 1, 2001. The legislation raised the size-of-transaction threshold from \$15 million to \$50 million (with annual adjustments for changes in gross national product that began in 2005), and made other changes to the filing and waiting period requirements. In fiscal year 2008, the threshold was adjusted to \$63.1 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.

the Commission asserted that the February 2008 acquisition reduced competition and raised prices in the markets for multiple types of battery separator film used in the power supplies of various vehicles and in battery backup generators. The Commission also challenged and effectively blocked the proposed merger of Inova Health System Foundation and Prince William Health System, which would have substantially harmed competition in the Northern Virginia market for general acute care inpatient hospital services.

The Antitrust Division challenged 16 merger transactions, leading to 15 consent decrees and one transaction that was restructured after the Division informed the parties of its antitrust concerns relating to the transaction. Notably, the Division obtained a consent decree requiring UnitedHealth Group to divest most of its assets relating to its Medicare Advantage business in the Las Vegas area in order to proceed with its acquisition of Sierra Health Services, thereby protecting senior citizens from anticompetitive effects likely to have resulted from the merger in the Las Vegas Medicare Advantage health insurance market. The Division also obtained a consent decree requiring that two mills that produced coated recycled boxboard be divested in order to remedy the anticipated anticompetitive effects of the proposed merger of Altivity Packaging and Graphic Packaging International in the market for a type of paperboard used to make folding cartons, including cereal boxes.

In fiscal year 2008, the Commission's Premerger Notification Office (PNO) continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form (the filing form). The HSR website, www.ftc.gov/bc/hsr/, continued to provide improved access to information necessary to the notification process. The website includes basic resources such as introductory guides that provide an overview of the premerger notification program and merger review process. It is the primary source of information for HSR practitioners seeking information on the HSR form and instructions, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, and frequently asked questions regarding the HSR filing requirements. Web users can also find up-to-date information on changes to the Act and amendments to the premerger rules, including speeches, press releases, summaries and highlights, and Federal Register notices about the amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff is available to assist HSR practitioners comply with HSR notification requirements.

BACKGROUND OF THE HSR ACT

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

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

If either agency determines during the waiting period that further inquiry is necessary, however, the agency is authorized by Section 7A(e) of the Clayton Act to issue a request for additional information and documentary material (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 a ten-year period, the number of transactions reported, the number of filings received, the number of merger investigations in which second requests were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted.⁵ Appendix A also

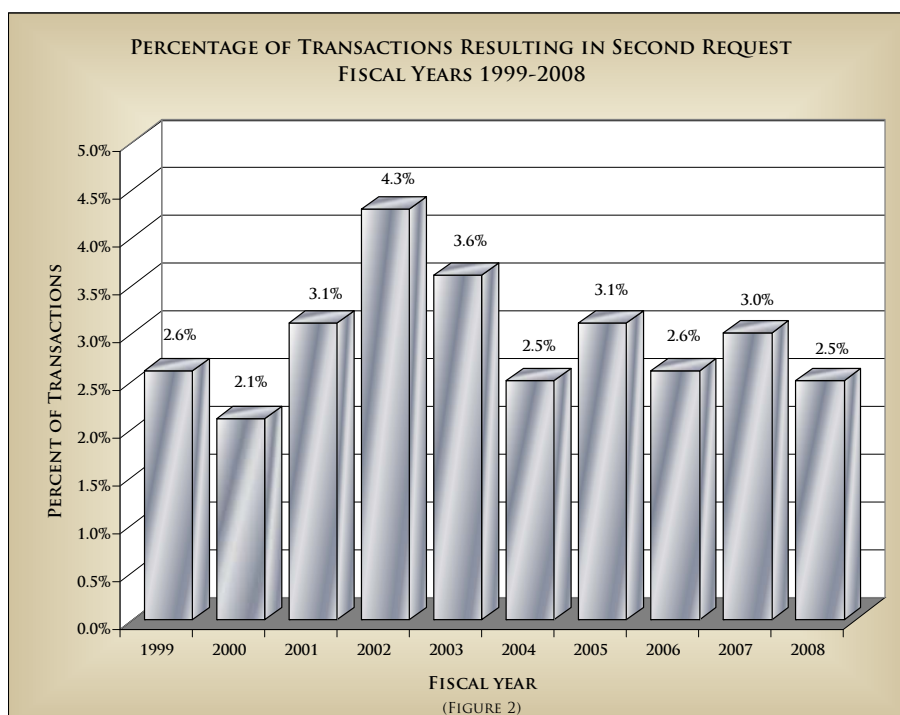
³ 43 Fed. Reg. 33450 (July 31, 1978).

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

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

shows for fiscal years 1999 through 2008 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 1999 through 2008.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2008 decreased 22% from the number of transactions reported in fiscal year 2007. In fiscal year 2008, 1,726 transactions were reported, while 2,201 were reported in fiscal year 2007. The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2008 decreased by 35% from the number of merger investigations in which second requests were issued in fiscal year 2007. Second requests were issued in 41 merger investigations in fiscal year 2008 (21 issued by the FTC and 20 issued by the Division), while second requests were issued in 63 merger investigations in fiscal year 2007 (31 issued by the FTC and 32 issued by the Division). The percentage of transactions resulting in second requests also decreased, from 3.0% in fiscal year 2007 to 2.5% in fiscal year 2008. (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 2008, early termination was requested in 80% (1,385) of the transactions reported, down slightly from fiscal year 2007 where it was requested in 84% (1,840) of the transactions reported. Similarly, the percentage of requests granted out of the total requested decreased slightly from 76% in fiscal year 2007 to 74% in fiscal year 2008.

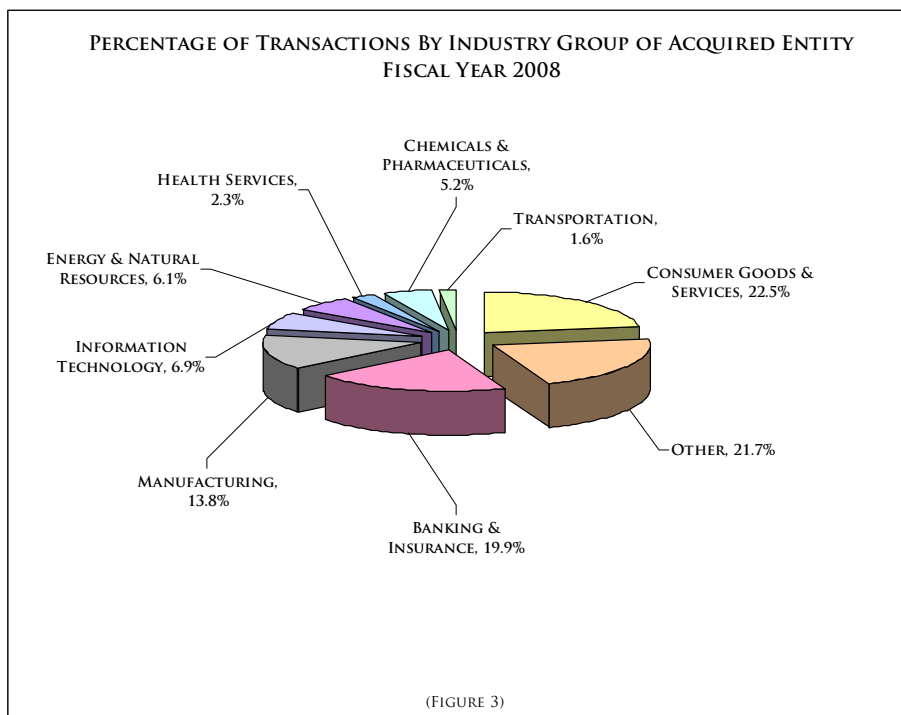
Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2008. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which

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.

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 2008, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 17.7% of the total number of adjusted HSR transactions. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report.

The total dollar value of reported transactions rose dramatically from fiscal years 1996 to 2000 from about \$677.4 billion to about \$3 trillion. After the statutory thresholds were raised, the dollar value declined to about \$1 trillion in fiscal year 2001, \$565.4 billion in fiscal year 2002, and \$406.8 billion in fiscal year 2003. This was followed by an increase in the dollar value of reported transactions over the next four years: about \$630 billion in fiscal year 2004, \$1.1 trillion in fiscal year 2005, \$1.3 trillion in fiscal year 2006, and almost \$2 trillion in 2007. The total dollar value of reported transactions declined in fiscal year 2008 to just over \$1.3 trillion.⁶

Tables X and XI provide the number of transactions by industry group in which the acquiring person or the acquired entity derived the most revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 2008 based on the acquired entity's operations.⁷



⁶ The information on the value of reported transactions for fiscal year 2008 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>)

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

DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. *Compliance*

The Commission and the Antitrust Division continued to monitor compliance with the premerger notification program's filing and waiting period requirements and initiated a number of compliance investigations in fiscal year 2008. The agencies monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, and interested members of the public, often provide the agencies with information about transactions and possible violations of the Act's requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$11,000 – recently increased to \$16,000 – for each day the violation continues.⁸ The antitrust agencies examine the circumstances of each violation to determine whether penalties should be sought.⁹ During fiscal year 2008, 48 corrective filings for violations were received.

During fiscal year 2008, the agencies brought two enforcement actions, resulting in the payment of \$1.65 million in civil penalties.

In [*United States v. Iconix Brand Group, Inc.*](#),¹⁰ the complaint alleged that Iconix Brand Group failed to produce certain pertinent documents before buying the Rocawear brand. The HSR Act and Rules require parties to a transaction that requires premerger reporting to supply with their notification certain documents prepared or reviewed by the company's officers and directors in connection with their evaluation or analysis of competitive aspects of the proposed transaction. Iconix submitted no such documents, despite the fact that such documents existed, including a formal presentation made to its Board of Directors about the transaction and a less formal e-mail among officers and directors. In addition, when initially asked to review whether such documents existed, the company falsely reaffirmed that no such documents existed. Under the terms of a consent decree that was filed simultaneously with the complaint and entered by the Court on October 16, 2007, Iconix agreed to pay \$550,000 in civil penalties to settle the charges.

In [*United States v. ValueAct Capital Partners, L.P.*](#),¹¹ the complaint alleged that ValueAct, a San Francisco-based investment fund, violated premerger reporting requirements by failing to file before making acquisitions of voting securities of three issuers in 2005. Each of the three acquisitions, when aggregated with ValueAct's prior holdings of each issuer, resulted in holdings sufficient to trigger the HSR Act notification and waiting period requirements. In 2003, ValueAct had made corrective HSR filings relating to three other failures to file and had outlined

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

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

¹⁰ *United States v. Iconix Brand Group, Inc.*, No. 1:07-CV-01852 (D.D.C. filed October 15, 2007).

¹¹ *United States v. ValueAct Capital Partners, L.P.*, No. 1:07-CV-02267 (D.D.C. filed December 19, 2007).

steps it would take to avoid future violations. Under the terms of a consent decree that was filed simultaneously with the complaint and entered by the Court on January 11, 2008, ValueAct agreed to pay \$1.1 million in civil penalties to settle the charges.

2. *Threshold Adjustments*

The 2000 amendments to Section 7A 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) for each fiscal year beginning after September 30, 2004. The Commission in 2005 amended the rules to provide a method for future adjustments as required by the 2000 amendments and to reflect the revised thresholds in the examples contained in the rules. The revised thresholds are published annually in January and are effective 30 days after publication.

On January 29, 2008, the Commission published a notice¹² to reflect adjustment of reporting thresholds as required by the 2000 amendments¹³ to Section 7A of the Clayton Act, 15 U.S.C. 18a. The revised thresholds became effective February 28, 2008.

MERGER ENFORCEMENT ACTIVITY¹⁴

1. *The Department of Justice*

During fiscal year 2008, the Antitrust Division challenged 16 merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In 15 of these challenges, the Antitrust Division filed a complaint in U.S. district court. All of these cases were settled by consent decree. In the remaining one challenge to a merger during fiscal year 2008, when apprised of the Antitrust Division's concerns regarding the proposed transaction, the parties restructured their transaction to avoid competitive problems.¹⁵

In *United States v. Abitibi-Consolidated Inc. and Bowater Incorporated*,¹⁶ the Division challenged the proposed \$1.6 billion merger of Abitibi and Bowater, the two largest newsprint producers in North America. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the production and sale of newsprint in North America. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Abitibi and Bowater were required to divest Abitibi's newsprint mill in Snowflake, Arizona, which is one of the largest and most profitable mills in North America. In addition, the merged company is required to notify the Division before acquiring an additional interest in any mill or machine that is jointly-owned by either

¹² 73 Fed. Reg. 19 (January 29, 2008).

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

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

¹⁵ In this instance, the Division informed the parties of its concerns, but did not issue a press release: proposed acquisition of Nymex Holdings, Inc. by CME Group, Inc. (gold and silver futures).

¹⁶ *United States v. Abitibi-Consolidated Inc. and Bowater Incorporated*, No. 1:07-CV-01912 (D.D.C. filed October 23, 2007).

Abitibi or Bowater with any third party if the value of the acquisition exceeds \$2 million. The Court entered the consent decree on November 6, 2008.

In *United States v. AT&T Inc. and Dobson Communications Corporation*,¹⁷ the Division challenged the proposed \$2.8 billion acquisition of Dobson Communications by AT&T. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition to the detriment of rural consumers of mobile wireless telecommunication services in seven markets in Kentucky, Missouri, Pennsylvania, Oklahoma and Texas, resulting in higher prices, lower quality and diminished investment in network improvements. Specifically, in five of these areas, businesses wholly or partially owned by AT&T and Dobson collectively served more than 60% of subscribers; in two markets where AT&T's primary competitor was operating using a Cellular One license from Dobson, AT&T would have had the incentive and ability to harm competition by limiting the licensee's ability to use the Cellular One brand effectively. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, the combined firm must divest assets to address competitive concerns in these seven markets, including rights to the Cellular One brand. The Division coordinated with the Federal Communications Commission throughout its investigation, and the transaction was also subject to FCC review. The Court entered the consent decree on March 20, 2008.

In *United States v. Vulcan Materials Company and Florida Rock Industries, Inc.*,¹⁸ the Division challenged the proposed \$4.6 billion acquisition of Florida Rock by Vulcan Materials. The complaint alleged that the transaction, as originally proposed, likely would result in increased prices for coarse aggregate in several areas: parts of the Atlanta, GA metropolitan area; Columbus, GA; Chattanooga, TN; and South Hampton Roads, VA. Coarse aggregate, a type of construction aggregate, is crushed stone produced at quarries or mines and is used in a variety of applications, such as road construction, and for the production of ready mix concrete and asphalt. The Division filed a proposed consent decree simultaneously with the complaint, requiring divestiture of eight quarries that produce coarse aggregate in Georgia, Tennessee and Virginia, as well as one distribution yard in Virginia. The Court entered the consent decree on April 29, 2008.

In *United States v. CommScope, Inc. and Andrew Corporation*,¹⁹ the Division challenged CommScope's proposed \$2.6 billion acquisition of Andrew Corporation and simultaneously filed a consent decree requiring divestiture of Andrew's minority interest in Andes Industries, Inc. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the development, manufacture and sale of drop cable. Drop cable is coaxial cable used by cable television companies to connect their transmission systems to their customers' premises and to the equipment inside the premises. By acquiring Andrew, CommScope would have obtained Andrew's 30% ownership interest in Andes, including the right to appoint members to Andes' board of directors and substantial governance rights. CommScope and a subsidiary of Andes, PCT International Inc., were two of only four companies providing drop cable to cable television companies in the United States, and the complaint alleged that the transaction would substantially reduce competition in drop cable by giving CommScope the incentive and ability to coordinate the activities of CommScope and

¹⁷ *United States v. AT&T Inc. and Dobson Communications Corporation*, No. 1:07-CV-01952 (D.D.C. filed October 30, 2007).

¹⁸ *United States v. Vulcan Materials Company and Florida Rock Industries, Inc.*, No. 1:07-CV-02044 (D.D.C. filed November 13, 2007).

¹⁹ *United States v. CommScope, Inc. and Andrew Corporation*, No. 1:07-CV-02200 (D.D.C. filed December 6, 2007).

PCT, or undermine PCT's ability to compete against CommScope, resulting in higher prices and reduced innovation. The transaction as originally proposed would also have given CommScope the ability to participate on both its own board of directors and on the board of its competitor, Andes, in violation Section 8 of the Clayton Act, which governs interlocking directorates between competitors. The consent decree, which was entered by the Court on June 23, 2008, required divestiture of Andrew's stock ownership and other interests in Andes.

In *United States v. Pearson Plc, Pearson Education Inc., Reed Elsevier Plc, Reed Elsevier NV, and Harcourt Assessment Inc.*,²⁰ the Division challenged the proposed acquisition of Harcourt Assessment, a wholly-owned subsidiary of Reed Elsevier, by Pearson Plc and Pearson Education. The complaint alleged that the transaction, as originally proposed, would have resulted in higher prices to purchasers of clinical tests, including many school districts, and impaired the launch of a competitive new test for adult abnormal personality disorders. Clinical tests are used by psychologists, speech-language pathologists, and clinicians, among others, to test for and diagnose individuals with disorders or disabilities, as well to identify individuals at risk for such disorders or disabilities. Publishers, including Pearson and Harcourt, develop, edit, standardize, norm-reference, market and sell clinical tests for a wide range of disorders and disabilities. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, Pearson was required to divest assets relating to three clinical testing markets. Specifically, the required divestiture included: Harcourt's Adaptive Behavior Assessment System, an adaptive behavior clinical test; Harcourt's Emotional Assessment System, an adult abnormal personality clinical test; and either Pearson's Comprehensive Assessment of Spoken Language and Oral Written Language Scales, or Harcourt's Clinical Evaluation of Language Fundamentals, in the speech and language clinical test market. The Court entered the consent decree on June 2, 2008.

In *United States v. Bain Capital, LLC, Thomas H. Lee Partners, L.P. and Clear Channel Communications, Inc.*,²¹ the Division challenged the proposed acquisition of a controlling interest in Clear Channel Communications by a group of private equity investors led by Bain Capital and Thomas H. Lee Partners (THL). The complaint alleged that the transaction, as originally proposed, would have resulted in increased prices and reduced levels of service in the sale of radio advertising time in the Cincinnati, OH, Houston, TX, Las Vegas, NV, and San Francisco, CA areas because of substantial ownership interests held by Bain and THL in two firms, Cumulus Media Partners LLC and Univision Communications Inc., that own radio stations that compete with Clear Channel stations in those cities. Bain and THL have ownership interests in Cumulus Media Partners, a large nationwide operator of radio stations, and THL has an ownership interest in Univision Communications, a nationwide radio station operator primarily broadcasting in Spanish. The Division filed a proposed consent decree simultaneously with the complaint, requiring Clear Channel to divest radio stations in the four affected cities. The Court entered the consent decree on July 29, 2008.

In *United States v. The Thomson Corporation and Reuters Group PLC*,²² the Division challenged Thomson's proposed \$17 billion acquisition of Reuters. The complaint alleged that the acquisition, as originally proposed, likely would have led to higher prices and reduced

²⁰ *United States v. Pearson Plc, Pearson Education Inc., Reed Elsevier Plc, Reed Elsevier NV, and Harcourt Assessment Inc.*, No. 1:08-CV-00143 (D.D.C. filed January 24, 2008).

²¹ *United States v. Bain Capital, LLC, Thomas H. Lee Partners, L.P. and Clear Channel Communications, Inc.*, No. 1:08-CV-00245 (D.D.C. filed February 13, 2008).

²² *United States v. The Thomson Corporation and Reuters Group PLC*, No. 1:08-CV-00262 (D.D.C. filed February 19, 2008).

innovation for three important types of financial data utilized by investment managers, investment bankers, traders, corporate managers and other institutional customers in making investment decisions and providing advice to their firms and clients: fundamentals data, earnings estimates data and aftermarket research reports. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, which was entered by the Court on June 17, 2008, Thomson is required to sell financial data and related assets in the three affected markets. With these assets, the acquirer of each set of data will be able to offer products comparable to those offered by Thomson or Reuters prior to the merger. The remedies required by the consent decree were consistent with those obtained by the European Commission as a result of its antitrust investigation. The Division and the European Commission cooperated extensively throughout the course of their investigations, with frequent contact between the investigative staffs and the sharing of documents and information with the consent of the parties who provided them. The Division also cooperated extensively with the Canadian Competition Bureau.

In *United States v UnitedHealth Group Inc. and Sierra Health Services, Inc.*,²³ the Department challenged the proposed acquisition of Sierra Health Services by UnitedHealth Group. The complaint alleged that the transaction, as originally proposed, would have created a combined company controlling 94% of the Medicare Advantage health insurance market in the Las Vegas area, resulting in higher prices, fewer choices and a reduction in the quality of Medicare Advantage plans purchased by senior citizens in that area. Individuals eligible for Medicare, primarily senior citizens, may elect to enroll in a privately provided Medicare Advantage plan instead of traditional Medicare. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private Medicare Advantage insurers would lead insurers to offer seniors more affordable benefits, provide a wider array of health insurance choices and be more responsive to the demands of such seniors. About 82,000 individuals in Clark and Nye counties, which make up the Las Vegas area, were enrolled in Medicare Advantage plans, accounting for \$840 million of annual commerce. The Division filed a proposed consent decree simultaneously with the complaint, requiring United to divest most of its assets relating to its Medicare Advantage business in the Las Vegas area. Further, under the terms of the decree, enrollees in United's Medicare Advantage plans would continue to receive substantially the same access to providers, including doctors, hospitals and other medical services, following the divestiture. The Court entered the consent decree on September 24, 2008. The Division worked closely with the Nevada Attorney General's office in investigating the United-Sierra merger.

In *United States v. Cookson Group, plc, Cookson America Inc., Foseco plc and Foseco Metallurgical Inc.*,²⁴ the Division challenged the proposed \$1 billion acquisition of Foseco plc by Cookson Group plc. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the United States for certain carbon bonded ceramics (CBCs) used in the continuous casting steelmaking process, resulting in increased prices and reduced service and innovation. CBCs are products made of carbon-bonded alumina graphite that control the flow of molten steel during the continuous casting of steel. Cookson and Foseco were two of only three competitors that produced CBCs in North America. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of

²³ *United States v. UnitedHealth Group Inc. and Sierra Health Services, Inc.*, No. 1:08-CV-00322 (D.D.C. filed February 25, 2008).

²⁴ *United States v. Cookson Group, plc, Cookson America Inc., Foseco plc and Foseco Metallurgical Inc.*, No. 1:08-CV-00389 (D.D.C. filed March 4, 2008).

the decree, the parties were required to divest Foseco's entire U.S. CBC business, including its plant in Saybrook, Ohio, and related assets. The remedy contained in the settlement was consistent with that obtained as a result of an antitrust investigation undertaken by the European Commission. The Division and the European Commission cooperated throughout the course of their respective investigations. The Court entered the decree on May 23, 2008.

In [*United States v. Altiivity Packaging LLC and Graphic Packaging International, Inc.*](#),²⁵ the Division challenged the proposed \$1.75 billion merger of Altiivity Packaging and Graphic Packaging International. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the production and sale of a type of paperboard – coated recycled boxboard (CRB) – used to make folding cartons for consumer and commercial packaging, including cereal boxes. The merger would have produced a single firm with about 42% of the production and sale of CRB in North America. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, divestiture was required of two mills that had been owned and operated by Altiivity, one in Wabash, Indiana and the other in Philadelphia. Altiivity's Santa Clara, California mill would be divested if for any reason divestiture of the Philadelphia mill were not accomplished. The Court entered the decree on July 15, 2008.

In [*United States v. Regal Cinemas, Inc. and Consolidated Theatres Holding, GP*](#),²⁶ the Division challenged Regal Cinemas' proposed acquisition of Consolidated Theatres Holding. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the theatrical exhibition of commercial first-run movies in the Charlotte, Raleigh and Asheville, North Carolina metropolitan areas, resulting in higher ticket prices and decreased quality viewing experience for moviegoers. The Division filed a proposed consent decree simultaneously with the complaint. Under the terms of the decree, Regal and Consolidated were required to divest the following movie theaters: the Crown Point 12 in Charlotte; the Raleigh Grand 16 in Raleigh; the Town Square 10 in Garner (a suburb of Raleigh); and the Hollywood 14 in Asheville. The Court entered the consent decree on October 29, 2008.

In [*United States v. Cengage Learning Holdings I, L.P., Cengage Learning Holdings II, L.P., Cengage Learning, Inc., APAX/TL Holdings, LLC, Education Media and Publishing Group Limited, and Houghton Mifflin Harcourt Publishing Company*](#),²⁷ the Division challenged the proposed \$750 million acquisition by Cengage Learning, Inc. of Houghton Mifflin Harcourt Publishing Company's College Division. The complaint alleged that the transaction, as originally proposed, was likely to substantially lessen competition in the development, publication and sale of textbooks and ancillary materials used in 14 college-level courses, resulting in higher prices and lower quality for these products. The Division filed a proposed consent decree simultaneously with the complaint. The decree required Cengage to divest assets related to textbooks and educational materials used in those 14 college-level courses in the fields of business, foreign languages, history and interdisciplinary studies, including all tangible and non-tangible assets related to the textbooks and materials including finished textbooks, publishing and licensing rights, author contracts and original artwork. The Court entered the

²⁵ *United States v. Altiivity Packaging LLC and Graphic Packaging International, Inc.*, No. 1:08-CV-00400 (D.D.C. filed March 25, 2008).

²⁶ *United States v. Regal Cinemas, Inc. and Consolidated Theatres Holding, GP*, No. 1:08-CV-00746 (D.D.C. filed April 29, 2008).

²⁷ *United States v. Cengage Learning Holdings I, L.P., Cengage Learning Holdings II, L.P., Cengage Learning, Inc., APAX/TL Holdings, LLC, Education Media and Publishing Group Limited, and Houghton Mifflin Harcourt Publishing Company*, No. 1:08-CV-00899 (D.D.C. filed May 28, 2008).

decree on September 19, 2008.

In *United States et al. v. Verizon Communications Inc. and Rural Cellular Corporation*,²⁸ the Division and the State of Vermont challenged Verizon Communication's proposed \$2.7 billion acquisition of Rural Cellular Corp. (RCC), a mobile wireless telecommunications services provider that did business under the Unicef name. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition to the detriment of consumers of mobile wireless telecommunications services in six geographic areas in Vermont, New York, and Washington, likely resulting in higher prices, lower quality and reduced network investments. Verizon and RCC were the most significant competitors in these six areas, and in each case collectively served more than 60% of subscribers. The Division filed a proposed consent decree simultaneously with the complaint. The decree, which was entered by the Court on April 24, 2009, requires Verizon to divest assets in the six geographic areas at issue. The Division coordinated with the FCC throughout its investigation, and the acquisition was also subject to FCC review.

In *United States v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.*,²⁹ the Division challenged the proposed acquisition of Hawker Beechcraft Services' United States fixed based operations (FBOs) by Signature Flight Support. The complaint alleged that the transaction, as originally proposed, would have combined the only two providers of FBO services to general aviation customers at Indianapolis International Airport and substantially lessened competition, resulting in higher prices and reduced service and innovation. FBOs provide flight support services – including fueling, ramp and hangar rentals, office space rentals, and other services – to general aviation customers, which include charter, private, and corporate aircraft operators. The Division filed a proposed consent decree simultaneously with the complaint, requiring the divestiture of either Signature or Hawker Beechcraft FBO assets at Indianapolis International Airport to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport. The Court entered the decree on October 29, 2008.

In *United States v. Raycom Media, Inc.*,³⁰ the Division challenged Raycom's April 2008 acquisition of the Richmond, Virginia, NBC affiliate, WWBT-TV, from Lincoln Financial Media Company. The complaint alleged that the transaction resulted in Raycom owning two of the four local broadcast stations in Richmond, likely leading to higher prices to advertise on local broadcast television. The Division filed a proposed consent decree simultaneously with the complaint, requiring Raycom to divest the local CBS affiliate in Richmond, WTVR-TV. Previously, before Raycom and Lincoln closed their transaction on April 1, 2008, they entered into an agreement with the Department. Because FCC limitations on television station ownership would require Raycom to sell one of its two Richmond television stations, Raycom agreed to sell WTVR-TV to a purchaser approved by the Division, within 90 days of closing its transaction with Lincoln. According to that agreement, if Raycom failed to divest WTVR-TV by the agreed upon deadline, the Division would file the lawsuit and settlement that it eventually filed. Raycom also agreed to preserve and hold separate that station pending its sale, thus maintaining competition in the Richmond local television spot advertising market. The Court entered the decree on December 4, 2008.

²⁸ *United States and the State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation*, No. 1:-8-CV-00993 (D.D.C. filed June 10, 2008).

²⁹ *United States v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.*, No. 1:08-CV-01164 (D.D.C. filed July 3, 2008).

³⁰ *United States v. Raycom Media, Inc.*, No. 1:08-CV-01510 (D.D.C. filed August 28, 2008).

Additionally, during fiscal year 2008, the Division initiated civil contempt proceedings in two instances where parties had failed to fulfill obligations imposed upon them by judicial decrees in previous Division merger challenges. On November 26, 2007, the Division filed a petition in the U.S. District Court for the District of Columbia asking it to find Cal Dive International, Inc. and its parent company, Helix Energy Solutions Group Inc. (collectively Cal Dive), in civil contempt of a decree entered by the Court in 2006 in [*United States v. Cal Dive International, Inc., et al.*](#)³¹ Under the 2006 consent decree, Cal Dive was required to divest two saturation diving vessels, including the Seaway Defender, and a separate saturation diving system. The decree also required Cal Dive not to impede the divestiture or operation of the assets to be sold. According to the Division's civil contempt petition, Cal Dive engaged in a course of conduct that delayed the sale of the Seaway Defender and other assets, enabling it to continue to profit from the use of the Seaway Defender during the period of high demand for saturation diving vessels due to clean up from Hurricane Katrina and Hurricane Rita. Further, the petition alleged that after the Court appointed a trustee to sell the Seaway Defender, Cal Dive failed to divest the Seaway Defender in the same condition as Cal Dive acquired the vessel in the acquisition that prompted the 2006 decree. The Division filed a proposed settlement simultaneously with the petition, requiring Cal Dive to pay \$2 million as part of a civil settlement to resolve Cal Dive's alleged violations of the 2006 decree. The \$2 million payment represents disgorgement of profits and reimbursement to the Division for the cost of its investigation. The Court approved the settlement on November 26, 2007.

On December 3, 2007, the Division and the State of Minnesota filed a petition in the U.S. District Court for the District of Minnesota asking it to find ALLTEL Corporation in civil contempt of a consent decree entered by the Court on January 8, 2007 in [*United States v. ALLTEL Corp. and Midwest Wireless Holdings*](#)³² and a related Court order. Under the decree and Court order, ALLTEL was required to divest mobile wireless telecommunications businesses in four rural service areas in southern Minnesota, and to take specific measures to preserve the assets to be divested in a manner that would maintain their competitive viability. The civil contempt petition alleged that ALLTEL failed to fulfill those obligations. According to the petition, ALLTEL failed to adhere to its existing plans for capital improvements, upgrades, and maintenance schedules and failed to provide relevant information about ALLTEL's capital improvement plans to the management trustee that was appointed to oversee the businesses to be divested. ALLTEL also allegedly provided the management trustee with misleading reports about the progress of capital improvement projects scheduled by the management trustee. The Division and Minnesota filed a proposed settlement simultaneously with the petition, requiring ALLTEL to pay \$1.325 million as part of civil settlement for its alleged violation of the two court orders. Of the \$1.325 million payment, \$745,000 was required to go to the State of Minnesota and the remainder to the U.S. Treasury. The Court approved the settlement on December 4, 2007. The Division coordinated with Minnesota and the FCC throughout its investigation.

³¹ See the HSR Annual Report, Fiscal Year 2006 for a description of this case.

³² See the HSR Annual Report, Fiscal Year 2006 for a description of this case.

2. *The Federal Trade Commission*

The Commission challenged 21 transactions that it had reason to believe may have lessened competition if allowed to proceed as proposed during fiscal year 2008,³³ leading to 13 consent orders, two administrative complaints, and six transactions where the parties either abandoned the proposed deal or where the transactions were restructured after FTC staff informed the parties of its antitrust concerns relating to the transaction. In one of the matters in which an administrative complaint was authorized, the Commission also authorized staff to seek injunctive relief in federal court; in this case the parties abandoned the transaction while in litigation due to antitrust concerns surrounding their proposed acquisition.

In *Inova Health System Foundation/Prince William Health System Inc.*,³⁴ the Commission sought a preliminary injunction and a temporary restraining order to block Inova Health System Foundation's proposed acquisition of Prince William Health System, pending a full administrative trial on the merits. The Commission's complaint alleged that the acquisition would have violated federal antitrust laws by lessening competition for general acute care inpatient hospital services in the Northern Virginia market, leading to higher prices for consumers, and reduced incentives for non-price based competition. The merger would have resulted in Inova controlling 73% of the licensed hospital beds in Northern Virginia, and six of the ten hospitals in the region, and would have eliminated direct competition between the parties, which allows health care plans to negotiate for lower prices. On June 6, 2008, the parties publicly announced their mutual decision to terminate the proposed acquisition agreement during the preliminary injunction and temporary restraining order proceeding, and the Commission subsequently dismissed its administrative complaint on June 17, 2008.

In the matter of *Polypore International, Inc.*,³⁵ the Commission issued an administrative complaint challenging Polypore's consummated acquisition of Microporous Products in the global market for battery separators, a key component in flooded lead-acid batteries. According to the Commission's complaint, the acquisition, which occurred in February 2008, substantially lessened competition and led to higher prices in several North American product markets including 1) deep-cycle separators used in golf carts, 2) motive separators for batteries used primarily in forklifts, 3) automotive separators used in car batteries, and 4) uninterruptible power supply separators used in batteries that provide backup power during power outages. Additionally, the complaint alleged that Polypore engaged in anticompetitive conduct by entering into a joint marketing agreement with a competitor, restricting the competitor's entry into the polyethylene battery separator markets. The complaint also charged that Polypore sought to maintain monopoly power through anticompetitive means in several battery separator markets. This proceeding is now before the Commission's Administrative Law Judge.

In fiscal year 2008, the Commission accepted consent agreements and issued proposed orders for public comment in 13 merger cases. Nine of the Consent Orders became final in fiscal year 2008; four became final in fiscal year 2009.

In *Kyphon Inc./Disc-O-Tech Medical Technologies LTD*,³⁶ the Commission challenged

³³ To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2007.

³⁴ *FTC v. Inova Health System Foundation*, Civ. Act. No. 1:08cv460-CMH/JFA (E.D. Va. May 12, 2008).

³⁵ *FTC v. Polypore International, Inc.*, Dkt. No. 9327 (administrative complaint issued Sept. 9, 2008).

³⁶ In the matter of *Kyphon Inc. and Disc-O-Tech Medical Technologies LTD*, Docket No. C-4201 (issued Oct. 9, 2007).

Kyphon, Inc's proposed \$220 million acquisition of the spinal assets, including the B-Twin, Sky Bone Expander, and Confidence product lines, of Disc-O-Tech Medical Technologies, Ltd, alleging that the acquisition would have been anticompetitive in the U.S. market for minimally invasive vertebral compression fracture (MIVCF) treatment products. The Commission's complaint stated that the proposed acquisition as structured would eliminate Kyphon's main competitor in the MIVCF market, and that entry by another competitor would have been unlikely or insufficient to offset the anticompetitive effects of the proposed acquisition. To settle the Commission's concerns, the parties agreed to a consent order requiring Disc-O-Tech to divest all assets pertaining to its Confidence product line, including tangible and intellectual property, and any licensing or permits required for the manufacture, sale, and distribution of such products to an FTC-approved buyer.

In *Owens Corning*,³⁷ the Commission charged that Owens Corning's proposed acquisition of the glass fiber reinforcements and composite fabric assets of Compagnie de Saint Gobain would have substantially lessened competition in the North American market for continuous filament mat (CFM) products. According to the Commission's complaint, the market for CFM was highly concentrated and Owens Corning and Saint Gobain, the two largest competitors in the market in recent years, together account for more than 90% of the CFM sold in North America. According to the consent order settling the Commission's charges, Owens Corning agreed to divest its CFM business within 10 days of acquisition to AGY, and its Huntingdon CFM facility and marbles furnace in South Carolina. This matter was reviewed in cooperation with the European Commission and the Mexican Federal Competition Commission.

In *Schering-Plough Corporation*,³⁸ the Commission challenged Schering-Plough Corporation's proposed \$14.4 billion acquisition of Organon BioSciences from Akzo-Nobel due to alleged anticompetitive effects in the U.S. markets for the manufacture and development of three common poultry vaccines. According to the Commission's complaint, the proposed acquisition would have substantially lessened competition in the highly concentrated markets for the three vaccines used to prevent poultry from developing (1) the Georgia 98 strain of bronchitis, (2) fowl cholera, and (3) mycoplasma gallisepticum, thus likely leading to higher prices for these vaccines for companies in the poultry industry. To settle the anticompetitive concerns, the Commission approved a consent order under which Schering-Plough agreed to divest the rights and assets necessary to develop, manufacture, and market Avimune IB98, CHOLERVAC-PM-1, and F VAX-MG lines to Wyeth with 10 days of the acquisition. This transaction was also reviewed by both the European Commission's Competition Directorate and Canada's Competition Bureau.

In *The Great Atlantic & Pacific Tea Company, Inc./Pathmark Stores Inc.*,³⁹ the Commission challenged A&P's proposed \$1.3 billion acquisition of Pathmark Stores alleging that the deal would have substantially lessened competition between the two supermarket firms in Staten Island and Long Island, New York. A&P operates 316 supermarkets in 5 states in the mid-Atlantic and northeast regions, as well as the District of Columbia, under various different banners. Pathmark operates 141 Pathmark supermarkets in four states. According to the Commission's complaint, the proposed deal would have allowed A&P to exercise market power and raise prices for various food and grocery items, and would also lead to the increased

³⁷ In the matter of Owens Corning, Docket No. C-4210 (issued Oct. 26, 2007).

³⁸ In the matter of Schering Plough Corporation, Docket No. C-4211 (issued Nov. 16, 2007).

³⁹ In the matter of The Great Atlantic & Pacific Tea Company, Inc. and Pathmark, Docket No. C-4209 (issued Nov. 27, 2007).

likelihood that supermarket operators in Staten Island and Long Island engage in coordinated interaction. Remedying these concerns, the Commission approved a consent order requiring A&P to sell six supermarket locations in these highly concentrated New York markets.

In [*TALX Corporation*](#),⁴⁰ the Commission challenged a series of acquisitions by TALX Corporation, a fully owned subsidiary of Equifax, Inc., that lessened competition in the markets for outsourced unemployment compensation management (UCM) and verification of income and employment (VOIE) services. Unemployment compensation management services consist of the administration of unemployment compensation claims filed with a state or territory. Verification of income and employment service consists of providing income and employment information on behalf of employers to third parties, such as lenders or other creditors. The series of transactions in question were consummated between 2002 and 2005 and include the purchases of James E Frick, Inc., the UCM business of Gates McDonald & Company, Johnson & Associates, the UCM and VOIE assets of Sheakley-Uniservice, TBT Enterprises, and UI Advantage, and the UCM business of Employers Unity. According to the Commission's complaint, the series of acquisitions substantially reduced competition in the nationwide provision of VOIE services and in the provision of outsourced UCM services, and enhanced TALX's ability to unilaterally increase prices and decrease the quality of its services. To settle the Commission's concerns, TALX agreed to a consent order designed to promote entry of competitors into the relevant markets. Specifically, under the terms of the order, Talx agreed to allow certain customers under contract with TALX to terminate their agreements with notice to outsource the relevant services with a competitor; restrict acquisitions or contractual dealings that TALX may enter into regarding the relevant products; and give notice before acquiring, or entering a management contract with a UCM or VOIE service provider.

In [*Agrium Inc./UAP Holding Corporation*](#),⁴¹ the Commission charged that Agrium, Inc.'s \$2.65 billion acquisition of UAP Holding Corporation would lessen competition for farm stores and the retail sale of bulk fertilizer in several U.S. markets. Both companies operate competing stores in the relevant geographic market which includes the central "thumb" of Michigan, east/central Michigan, and the eastern shore of Maryland. According to the complaint filed by the Commission, the proposed acquisition eliminated the existing competition between Agrium and UAP, allowing Agrium to unilaterally increase prices with unlikely entry of new competitors, and an increased likelihood that the remaining competitors in the relevant geographic market would engage in coordinated interaction to the detriment of buyers. To remedy these competitive concerns, the Commission approved a consent order requiring the divestiture of seven farm stores consisting of five UAP stores in Michigan, and two Agrium locations on the eastern shore of Maryland.

In [*PQ Corporation/INEOS Group Ltd.*](#),⁴² the Commission challenged the combination of PQ Corporation and INEOS Group, alleging that the deal would be anticompetitive in the highly concentrated Midwestern market for sodium silicate. According to the Commission's complaint, the acquisition would have joined PQ, the geographic market leader with a 50% market share with INEOS, the third-largest sodium silicate provider in the relevant market with a 12% market share. The complaint further alleged that due to the nature of the product market, the proposed acquisition would not only have substantially lessened competition in the geographic market, but also would have increased the likelihood of coordinated interaction among the remaining

⁴⁰ In the matter of Talx Corporation, Docket No. C-4228 (issued Apr. 28, 2008).

⁴¹ In the matter of Agrium Inc. and UAP Holding Corporation, Docket No. C-4219 (issued May 5, 2008).

⁴² In the matter of PQ Corporation and INEOS Group Ltd., Docket No. C-4233 (issued Jun. 30, 2008).

competitors in the market, with a minimal likelihood that entry would be likely, timely, or sufficient enough to counteract the anticompetitive effects. To resolve these concerns, the Commission approved a consent order under which PQ agreed to divest its sodium silicate plant in Utica, Illinois, and all associated intellectual property required to operate the plant to Oak Hill acquisition Company within five days of consummating the transaction.

In *Flow International Corp.*,⁴³ the Commission challenged Flow International Corporation's proposed \$109 million acquisition of rival waterjet manufacturer OMAX Corporation. Both corporations develop, manufacture, and sell computerized waterjet cutting systems which manage the waterjet cutting process whereby pressurized water is mixed with abrasive garnet particles to cut various materials, including steel and stone. According to the Commission's complaint, the proposed acquisition would unite the two largest competitors in the market for the manufacture and sale of computerized waterjet cutting systems allowing Flow to exercise market power and increase prices. Furthermore, the Commission charged that entry would be unlikely because OMAX received two broad patents relating to the control systems for waterjet cutting systems. To remedy these anticompetitive effects, the Commission approved a consent agreement requiring OMAX to grant any requesting competitor with a royalty-free license to its controller patents.

In *Pernod Ricard S.A.*,⁴⁴ the Commission challenged Pernod Ricard's proposed \$9 billion acquisition of V&S Vin & Sprit as anticompetitive in the market for "super-premium" vodka. The proposed deal would have merged the two leading brands in the relevant product market, Absolut and Stolichnaya. According to the Commission's complaint, joining the two brands, which are the first choices of many consumers of super premium vodka, would have allowed Pernod to impose an anticompetitive price increase. Additionally, the complaint alleged that the markets for cognac, domestic cordials, coffee liqueur, and popular gin would also have been subject to anticompetitive effects because sensitive pricing and promotion information for Beam Global Brands, a competitor in these product markets, would have become available to Pernod after the acquisition as a result of Beam's joint venture with V&S. To settle the FTC's challenge, Pernod agreed to divest its distribution interests in Stolichnaya Vodka and to erect a firewall to protect any competitively sensitive information regarding competing Beam Global Brands from being made available to Pernod employees.

In *McCormick & Company Inc.*,⁴⁵ the Commission challenged McCormick & Company's \$605 million acquisition of Lawry's and Adolph's brands of seasoned salt products from Unilever, alleging that the transaction would have substantially lessened competition in the highly concentrated U.S. market for seasoned salts. According to the Commission's complaint, the proposed deal would have combined the two companies that comprise almost the entire \$100 million market for seasoned salt, increasing the likelihood that McCormick would be able unilaterally to increase prices. To settle these concerns, McCormick agreed to divest its Season-All business, which consists of a product line of six varieties of seasoned salts, to Morton, an FTC approved buyer, within 10 days of completing the acquisition.

⁴³ In the matter of Flow International Corp., Docket No. C-4231 (issued Jul. 10, 2008).

⁴⁴ In the matter of Pernod Ricard S.A., Docket No. C-4224 (issued Jul. 17, 2008).

⁴⁵ In the matter of McCormick & Company, Inc., Docket No. C-4225 (issued Jul. 30, 2008).

In [*Sun Pharmaceutical Industries Ltd.*](#),⁴⁶ the Commission charged that Sun Pharmaceuticals' proposed acquisition of Taro pharmaceuticals would have substantially lessened competition, and thus likely would have resulted in higher prices for three distinct generic formulations of the anticonvulsant drug carbamazepine, used widely as an anti-epileptic drug taken alone daily, or in conjunction with other medications to prevent and control seizures. According to the Commission's complaint, the proposed deal would reduce the number of competitors in a relevant product market where the number of competitors has a direct and substantial impact on generic drug prices. To remedy these concerns, Sun agreed to divest all of its rights and assets needed to develop three generic forms of carbamazepine: 1) immediate-release tablets; 2) chewable tablets; and 3) extended-release tablets.

In [*Fresenius Medical Care AG & Co. KGaA/Daiichi Sankyo Company Ltd.*](#),⁴⁷ the Commission challenged Fresenius Medical Care's proposed acquisition of an exclusive sublicense for the manufacture and supply of the drug Venofer to U.S. dialysis clinics from Daiichi Sankyo Company. Venofer is an intravenously administered iron sucrose preparation used primarily to treat iron-deficiency anemia in patients with chronic kidney disease that are undergoing dialysis. According to the FTC's complaint, the agreement would have given Fresenius the ability to artificially inflate its internal costs for Venofer, and effectively increase Medicare reimbursement payments for all buyers of the drug. To settle these concerns, the Commission and Fresenius entered into a consent agreement that restricts Fresenius from reporting internally inflated Venofer prices by mandating that the current market price for the drug be used in reporting the average selling price to Medicare.

In [*Reed Elsevier PLC/ChoicePoint Inc.*](#),⁴⁸ the Commission issued a complaint charging that Reed Elsevier's \$4.1 billion proposed acquisition of ChoicePoint would have been anticompetitive, combining the two largest providers of electronic public record services for U.S. law enforcement customers. Public records services compile public and non-public records about people and businesses, including credit data, criminal, motor vehicle, property, and employment records, all used by law enforcement as an investigative tool in solving a wide variety of crimes. The transaction, as proposed, would have substantially lessened competition, removing the intense rivalry that had led to lower prices, product innovations, and improved services and support for law enforcement customers, and likely would have allowed LexisNexis unilaterally to raise prices for these services. To remedy these concerns, the Commission approved a consent order requiring the divestiture of ChoicePoint's AutoTrackXP and CLEAR product lines to Thomson Reuters Legal Inc. within 15 days of consummating the transaction. The Commission worked with the Attorneys General of 18 states on this investigation.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

The Commission and the Antitrust Division continually review the impact of the premerger notification program on the business community and antitrust enforcement. As indicated in past annual reports, the HSR program ensures that virtually all significant mergers or acquisitions that affect consumers in the United States will be reviewed by the antitrust agencies

⁴⁶ In the matter of Sun Pharmaceuticals Industries Ltd., Docket No. C-4230 (issued Aug. 13, 2008).

⁴⁷ In the matter of Fresenius Medical Care AG & Co. KGaA and Daiichi Sankyo Company Ltd., Docket No. C-4236 (issued Sept. 15, 2008).

⁴⁸ In the matter of Reed Elsevier PLC and ChoicePoint Inc., Docket No. C-4XXX (issued Sept. 15, 2008).

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

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

LIST OF APPENDICES

- Appendix A - Summary of Transactions, Fiscal Years 1999 - 2008
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LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal Year 2008, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 1999 - 2008

APPENDIX A
SUMMARY OF TRANSACTION BY YEAR

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Transactions Reported	4,642	4,926	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726
Filings Received ¹	9,151	9,941	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	4,340	4,749	2,237	1,142	968	1,377	1,610	1,746	2,108	1,656
Investigations in Which Second Requests Were Issued	111	98	70	49	35	35	50	45	63	41
FTC ³	45	43	27	27	15	20	25	28	31	21
Percent ⁴	1.0%	0.9%	1.2%	2.4%	1.5%	1.5%	1.6%	1.6%	1.5%	1.3%
DOJ ³	68	55	43	22	20	15	25	17	32	20
Percent ⁴	1.6%	1.2%	1.9%	1.9%	2.1%	1.1%	1.6%	1.0%	1.5%	1.2%
Transactions Involving a Request For Early Termination ⁵	4,110	4,324	2,063	1,042	700	1,241	1,385	1,468	1,840	1,385
Granted ⁵	3,103	3,515	1,603	793	606	943	997	1,098	1,402	1,021
Not Granted ⁵	1,007	809	460	249	94	298	388	370	438	364

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

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

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

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

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

⁵ These statistics are based on the date of the H-S-R 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 1999 - 2008

APPENDIX B
TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR
FISCAL YEARS 1998 - 2007

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
October	333	376	360	89	77	93	139	130	201	158
November	359	428	451	105	104	127	160	148	189	191
December	394	468	345	95	78	143	126	137	151	172
January	282	335	245	111	93	85	138	142	143	158
February	330	440	66	87	71	109	99	124	157	119
March	427	455	120	109	74	137	121	150	194	131
April	364	343	94	99	92	127	121	125	156	128
May	438	398	153	111	83	125	171	158	250	150
June	445	494	190	88	80	117	153	172	202	146
July	444	351	94	121	86	123	118	141	219	128
August	434	446	163	97	85	134	170	186	200	126
September	392	392	95	75	91	108	159	155	139	119
TOTAL	4,642	4,926	2,376	1,187	1,014	1,428	1,675	1,768	2,201	1,726

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

APPENDIX B
TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR
FISCAL YEARS 1997 - 2008

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
October	662	777	751	190	148	185	277	261	401	319
November	686	839	920	211	206	254	324	311	376	380
December	785	922	686	183	150	280	238	260	294	343
January	548	677	499	224	179	161	259	279	288	316
February	658	867	144	174	146	207	201	257	317	246
March	828	959	243	230	144	277	239	309	381	242
April	719	695	188	203	182	245	242	270	312	272
May	851	859	296	212	168	258	337	300	481	294
June	884	1,004	378	170	158	241	297	346	403	293
July	887	718	182	230	170	234	236	255	441	259
August	885	886	332	191	164	270	328	367	396	251
September	758	738	181	151	186	213	309	295	288	240
TOTAL	9,151	9,941	4,800	2,369	2,001	2,825	3,287	3,510	4,378	3,455

Note: The data for FY 2004 – FY 2007 “Filings Received” reflect corrections to 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 2008

DATA PROFILING HART-SCOTT-RODINO PREMERGER

NOTIFICATION FILINGS AND ENFORCEMENT INTERESTS

TABLE I
FISCAL YEAR 2008¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE ⁵ (\$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 50M	9	0.5%	2	0	22.2%	0.0%	22.2%	0	0	0.0%	0.0%	0.0%
50M - 100M	370	22.3%	35	6	9.5%	1.6%	11.1%	2	2	0.5%	0.5%	1.1%
100M - 150M	351	21.2%	36	16	10.3%	4.6%	14.8%	4	3	1.1%	0.9%	2.0%
150M - 200M	137	8.3%	12	1	8.8%	0.7%	9.5%	0	0	0.0%	0.0%	0.0%
200M - 300M	189	11.4%	25	15	13.2%	7.9%	21.2%	0	1	0.0%	0.5%	0.5%
300M - 500M	202	12.2%	20	11	9.9%	5.4%	15.3%	3	3	1.5%	1.5%	3.0%
500M - 1000M	226	13.6%	24	18	10.6%	8.0%	18.6%	6	4	2.7%	1.8%	4.4%
Over 1000M	172	10.4%	43	29	25.0%	16.9%	41.9%	6	7	3.5%	4.1%	7.6%
<i>ALL TRANSACTIONS</i>	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

TABLE II
FISCAL YEAR 2008¹
ACQUISITIONS BY SIZE OF TRANSACTION² (CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENT		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50⁵	9	0.5%	2	0	0.7%	0.0%	0.7%	0	0	0.0%	0.0%	0.0%
LESS THAN 100	379	22.9%	37	6	12.6%	2.0%	14.7%	2	2	4.9%	4.9%	9.8%
LESS THAN 150	730	44.1%	73	22	24.9%	7.5%	32.4%	6	5	14.6%	12.2%	26.8%
LESS THAN 200	867	52.4%	85	23	29.0%	7.8%	36.9%	6	5	14.6%	12.2%	26.8%
LESS THAN 300	1,056	63.8%	110	38	37.5%	13.0%	50.5%	6	6	14.6%	14.6%	29.3%
LESS THAN 500	1,258	76.0%	130	49	44.4%	16.7%	61.1%	9	9	22.0%	22.0%	43.9%
LESS THAN 1000	1,479	89.3%	152	66	51.9%	22.5%	74.4%	15	12	36.6%	29.3%	65.9%
ALL TRANSACTIONS	1,656		197	96	67.2%	32.8%	100.0%	21	20	51.2%	48.8%	100.0%

TABLE III
FISCAL YEAR 2008¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

TRANSACTION RANGE ⁵ (\$MILLIONS)	CLEARANCES GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
Below 50M	2	0	2	22.2%	0.0%	22.2%	1.0%	0.0%	0.7%	0.0%	0.7%	
50M - 100M	35	6	41	9.5%	1.6%	11.1%	17.8%	6.3%	11.9%	2.0%	14.0%	
100M - 150M	36	16	52	10.3%	4.6%	14.8%	18.3%	16.7%	12.3%	5.5%	17.7%	
150M - 200M	12	1	13	8.8%	0.7%	9.5%	6.1%	1.0%	4.1%	0.3%	4.4%	
200M - 300M	25	15	40	13.2%	7.9%	21.2%	12.7%	15.6%	8.5%	5.1%	13.7%	
300M - 500M	20	11	31	9.9%	5.4%	15.3%	10.2%	11.5%	6.8%	3.8%	10.6%	
500M - 1000M	24	18	42	10.6%	8.0%	18.6%	12.2%	18.8%	8.2%	6.1%	14.3%	
Over 1000M	43	29	72	25.0%	16.9%	41.9%	21.8%	30.2%	14.7%	9.9%	24.6%	
<i>ALL TRANSACTIONS</i>	197	96	293	11.9%	5.8%	17.7%	100.0%	100.0%	67.2%	32.8%	100.0%	

**TABLE IV
FISCAL YEAR 2008¹
TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE ⁵ (\$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 50M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50M - 100M	2	2	4	0.1%	0.1%	0.2%	0.5%	1.1%	1.6%	4.9%	4.9%	9.8%
100M - 150M	4	3	7	0.2%	0.2%	0.4%	1.1%	2.0%	3.1%	9.8%	7.3%	17.1%
150M - 200M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
200M - 300M	0	1	1	0.0%	0.1%	0.1%	0.0%	0.5%	0.5%	0.0%	2.4%	2.4%
300M - 500M	3	3	6	0.2%	0.2%	0.4%	1.5%	3.0%	4.5%	7.3%	7.3%	14.6%
500M - 1000M	6	4	10	0.4%	0.2%	0.6%	2.7%	4.4%	7.1%	14.6%	9.8%	24.4%
Over 1000M	6	7	13	0.4%	0.4%	0.8%	3.5%	7.6%	11.0%	14.6%	17.1%	31.7%
<i>ALL TRANSACTIONS</i>	21	20	41	1.3%	1.2%	2.5%	1.3%	1.2%	2.5%	51.2%	48.8%	100.0%

TABLE V
FISCAL YEAR 2008¹
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)	118	7.1%	11	4	9.3%	3.4%	12.7%	0	0	0.0%	0.0%	0.0%
\$100M (as adjusted)	164	9.9%	6	8	3.7%	4.9%	8.5%	0	0	0.0%	0.0%	0.0%
\$500M (as adjusted)	36	2.2%	2	2	5.6%	5.6%	11.1%	0	0	0.0%	0.0%	0.0%
25%	6	0.4%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	814	49.2%	120	54	14.7%	6.6%	21.4%	12	10	1.5%	1.2%	2.7%
ASSETS ONLY	518	31.3%	58	28	11.2%	5.4%	16.6%	9	10	1.7%	1.9%	3.7%
ALL TRANSACTIONS	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

TABLE VI
FISCAL YEAR 2008¹
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	138	8.3%	6	5	4.3%	3.6%	8.0%	0	2	0.0%	1.4%	1.4%
50M - 100M	27	1.6%	4	0	14.8%	0.0%	14.8%	0	0	0.0%	0.0%	0.0%
100M - 150M	47	2.8%	5	2	10.6%	4.3%	14.9%	1	0	2.1%	0.0%	2.1%
150M - 200M	31	1.9%	2	1	6.5%	3.2%	9.7%	0	0	0.0%	0.0%	0.0%
200M - 300M	65	3.9%	6	1	9.2%	1.5%	10.8%	0	1	0.0%	1.5%	1.5%
300M - 500M	116	7.0%	8	1	6.9%	0.9%	7.8%	0	0	0.0%	0.0%	0.0%
500M - 1000M	173	10.4%	11	6	6.4%	3.5%	9.8%	2	0	1.2%	0.0%	1.2%
Over 1000M	1,059	63.9%	155	80	14.6%	7.6%	22.2%	18	17	1.7%	1.6%	3.3%
<i>ALL TRANSACTIONS</i>	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

**TABLE VII
FISCAL YEAR 2008¹
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	140	8.5%	7	6	5.0%	4.3%	9.3%	0	0	0.0%	0.0%	0.0%
50M - 100M	62	3.7%	6	4	9.7%	6.5%	16.1%	0	1	0.0%	1.6%	1.6%
100M - 150M	45	2.7%	3	0	6.7%	0.0%	6.7%	0	0	0.0%	0.0%	0.0%
150M - 200M	46	2.8%	2	1	4.3%	2.2%	6.5%	0	0	0.0%	0.0%	0.0%
200M - 300M	72	4.3%	7	0	9.7%	0.0%	9.7%	3	0	4.2%	0.0%	4.2%
300M - 500M	113	6.8%	8	7	7.1%	6.2%	13.3%	1	1	0.9%	0.9%	1.8%
500M - 1000M	197	11.9%	12	10	6.1%	5.1%	11.2%	1	0	0.5%	0.0%	0.5%
Over 1000M	869	52.5%	148	67	17.0%	7.7%	24.7%	16	17	1.8%	2.0%	3.8%
Sales Not Available⁷	112	6.8%	4	1	3.6%	0.9%	4.5%	0	1	0.0%	0.9%	0.9%
ALL TRANSACTIONS	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

**TABLE VIII
FISCAL YEAR 2008¹
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	291	17.6%	25	7	8.6%	2.4%	11.0%	1	1	0.3%	0.3%	0.7%
50M - 100M	240	14.5%	35	5	14.6%	2.1%	16.7%	2	3	0.8%	1.3%	2.1%
100M - 150M	152	9.2%	24	8	15.8%	5.3%	21.1%	1	1	0.7%	0.7%	1.3%
150M - 200M	92	5.6%	4	6	4.3%	6.5%	10.9%	1	0	1.1%	0.0%	1.1%
200M - 300M	91	5.5%	9	6	9.9%	6.6%	16.5%	1	1	1.1%	1.1%	2.2%
300M - 500M	128	7.7%	17	5	13.3%	3.9%	17.2%	3	2	2.3%	1.6%	3.9%
500M - 1000M	139	8.4%	21	7	15.1%	5.0%	20.1%	5	3	3.6%	2.2%	5.8%
Over 1000M	360	21.7%	44	42	12.2%	11.7%	23.9%	7	7	1.9%	1.9%	3.9%
Assets Not Available⁸	163	9.8%	18	10	11.0%	6.1%	17.2%	0	2	0.0%	1.2%	1.2%
ALL TRANSACTIONS	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

**TABLE IX
FISCAL YEAR 2008¹
TRANSACTION BY SALES OF ACQUIRED ENTITIES ⁹**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	332	20.0%	45	14	13.6%	4.2%	17.8%	1	2	0.3%	0.6%	0.9%
50M - 100M	267	16.1%	26	7	9.7%	2.6%	12.4%	2	3	0.7%	1.1%	1.9%
100M - 150M	152	9.2%	15	8	9.9%	5.3%	15.1%	0	1	0.0%	0.7%	0.7%
150M - 200M	99	6.0%	11	4	11.1%	4.0%	15.2%	2	0	2.0%	0.0%	2.0%
200M - 300M	117	7.1%	15	7	12.8%	6.0%	18.8%	2	2	1.7%	1.7%	3.4%
300M - 500M	149	9.0%	18	6	12.1%	4.0%	16.1%	4	1	2.7%	0.7%	3.4%
500M - 1000M	134	8.1%	23	9	17.2%	6.7%	23.9%	5	2	3.7%	1.5%	5.2%
Over 1000M	334	20.2%	35	36	10.5%	10.8%	21.3%	4	7	1.2%	2.1%	3.3%
Sales not Available ¹⁰	72	4.3%	9	5	12.5%	6.9%	19.4%	1	2	1.4%	2.8%	4.2%
ALL TRANSACTIONS	1,656	100.0%	197	96	11.9%	5.8%	17.7%	21	20	1.3%	1.2%	2.5%

TABLE X
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 ¹³	Not Available	133	8.0%	4.5%	5	2	7	0	2	2
112	Animal Production	2	0.1%	0.1%	0	0	0	0	0	0
211	Oil and Gas Extraction	24	1.4%	0.1%	1	0	1	0	0	0
212	Mining (except Oil and Gas)	12	0.7%	0.3%	2	2	4	0	0	0
213	Support Activities for Mining	16	1.0%	0.1%	0	0	0	0	0	0
221	Utilities	42	2.5%	-0.1%	0	3	3	0	0	0
236	Construction of Buildings	6	0.4%	0.2%	1	0	1	0	0	0
237	Heavy and Civil Engineering Construction	10	0.6%	0.4%	0	2	2	0	1	1
238	Specialty Trade Contractors	11	0.7%	0.4%	0	0	0	0	0	0
311	Food and Kindred Products	25	1.5%	-0.1%	4	2	6	1	1	2
312	Beverage and Tobacco Product Manufacturing	7	0.4%	0.1%	3	1	4	1	1	2
313	Textile Mills	3	0.2%	0.1%	0	0	0	0	0	0
315	Apparel Manufacturing	1	0.1%	0.0%	0	0	0	0	0	0
321	Wood Product Manufacturing	2	0.1%	-0.2%	0	0	0	0	0	0
322	Paper Manufacturing	13	0.8%	0.4%	0	3	3	0	0	0
323	Printing and Related Support Activities	5	0.3%	-0.5%	1	0	1	1	0	1
324	Petroleum and Coal Products Manufacturing	7	0.4%	0.3%	3	0	3	0	0	0
325	Chemical Manufacturing	87	5.3%	-0.6%	32	3	35	5	1	6
326	Plastics and Rubber Manufacturing	16	1.0%	-0.5%	0	0	0	0	0	0
327	Nonmetallic Mineral Product Manufacturing	15	0.9%	0.2%	4	0	4	2	0	2
331	Primary Metal Manufacturing	28	1.7%	0.2%	0	1	1	0	0	0

**TABLE X
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
332	Fabricated Metal Product Manufacturing	26	1.6%	-0.3%	4	2	6	0	1	1
333	Machinery Manufacturing	45	2.7%	0.8%	9	5	14	1	1	2
334	Computer and Electronic Product Manufacturing	52	3.1%	0.4%	10	9	19	0	2	2
335	Electrical Equipment, Appliance, and Component Manufacturing	17	1.0%	0.3%	1	1	2	0	0	0
336	Transportation Equipment Manufacturing	29	1.8%	0.0%	4	2	6	0	2	2
337	Furniture and Related Product Manufacturing	5	0.3%	0.1%	0	0	0	0	0	0
339	Miscellaneous Manufacturing	17	1.0%	-0.3%	9	1	10	0	0	0
421	Wholesale Trade	1	0.1%	-0.1%	0	0	0	0	0	0
423	Merchant Wholesalers, Durable Goods	107	6.5%	0.6%	12	4	16	0	0	0
424	Merchant Wholesales, Nondurable Goods	69	4.2%	0.8%	19	1	20	1	1	2
425	Wholesale Electric Markets and Agent and Brokers	1	0.1%	0.1%	0	0	0	0	0	0
441	Motor Vehicle and Parts Dealers	3	0.2%	-0.1%	0	0	0	0	0	0
443	Miscellaneous Repair Services	1	0.1%	0.1%	0	0	0	0	0	0
444	Electronics and Appliance Stores	4	0.2%	0.0%	3	0	3	0	0	0
445	Food and Beverage Stores	6	0.4%	0.1%	0	0	0	0	0	0
446	Health and Personal Care Stores	6	0.4%	0.2%	1	0	1	0	0	0
447	Gasoline Stations	2	0.1%	-0.2%	0	0	0	0	0	0
448	Clothing and Clothing Accessories Stores	4	0.2%	-0.3%	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	1	0.1%	-0.1%	0	0	0	0	0	0
453	Miscellaneous Store Retailers	1	0.1%	-0.2%	0	0	0	0	0	0
454	Nonstore Retailers	6	0.4%	-0.6%	1	0	1	0	0	0

**TABLE X
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
481	Air Transportation	7	0.4%	0.1%	0	2	2	0	1	1
483	Water Transportation	3	0.2%	-0.1%	0	0	0	0	0	0
484	Truck Transportation	3	0.2%	-0.1%	0	0	0	0	0	0
485	Transit and Ground Transportation	1	0.1%	0.0%	0	0	0	0	0	0
486	Pipeline Transportation	5	0.3%	0.0%	0	0	0	0	0	0
488	Support Activities for Transportation	7	0.4%	0.0%	0	1	1	0	1	1
493	Warehousing and Storage	5	0.3%	0.2%	0	1	1	0	0	0
509	Miscellaneous Durable Goods	3	0.2%	0.2%	3	0	3	0	0	0
511	Publishing Industries (except Internet)	59	3.6%	-1.0%	7	6	13	3	1	4
512	Motion Pictures and Sound Recording Industries	8	0.5%	0.0%	1	2	3	0	1	1
515	Broadcasting (except Internet)	8	0.5%	-0.1%	0	1	1	0	0	0
516	Internet Publishing and Broadcasting	7	0.4%	0.2%	0	1	1	0	0	0
517	Telecommunications	42	2.5%	0.4%	1	5	6	0	1	1
518	Internet Service Providers, Web Search Portals, and Data Processing Services	10	0.6%	-1.0%	1	1	2	0	0	0
519	Other Information Services	3	0.2%	0.1%	1	0	1	1	0	1
522	Credit Intermediation and Related Activities	40	2.4%	-0.3%	0	2	2	0	0	0
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	186	11.2%	1.2%	6	11	17	0	0	0
524	Insurance Carriers and Related Activities	65	3.9%	1.1%	3	6	9	1	0	1
525	Funds, Trusts, and Other Financial Vehicles	34	2.1%	-0.4%	0	0	0	0	0	0
531	Real Estate	12	0.7%	0.2%	3	0	3	0	0	0
532	Rental and Leasing Services	13	0.8%	-0.1%	2	0	2	0	0	0

TABLE X
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	6	0.4%	-0.3%	1	0	1	0	0	0
541	Professional, Scientific, and Technical Services	87	5.3%	0.3%	9	6	15	0	0	0
551	Management Companies and Enterprises	5	0.3%	0.2%	3	0	3	0	0	0
561	Administrative and Support Services	33	2.0%	0.1%	3	3	6	0	0	0
562	Waste Management and Remediation Services	11	0.7%	0.1%	1	2	3	1	2	3
611	Educational Services	4	0.2%	-0.1%	0	1	1	0	0	0
621	Ambulatory Health Care Services	9	0.5%	-0.5%	6	0	6	3	0	3
622	Hospitals	20	1.2%	0.5%	9	0	9	0	0	0
623	Nursing Care Facilities	1	0.1%	-0.3%	0	0	0	0	0	0
624	Social Assistance	9	0.5%	0.4%	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	5	0.3%	0.3%	0	0	0	0	0	0
713	Amusement, Gambling, and Recreation Industries	8	0.5%	0.2%	1	0	1	0	0	0
721	Accommodation	2	0.1%	-0.1%	0	0	0	0	0	0
722	Food Services and Drinking Places	12	0.7%	-0.3%	0	0	0	0	0	0
811	Repair and Maintenance	2	0.1%	-0.2%	0	0	0	0	0	0
812	Personal and Laundry Services	4	0.2%	0.2%	1	0	1	0	0	0
924	Administration of Environmental Quality Programs	1	0.1%	0.1%	0	0	0	0	0	0
999	Nonclassifiable Establishments	48	2.9%	-6.9%	6	1	7	0	0	0
		1,656	100.0%		197	96	293	21	20	41

TABLE XI
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 ¹³	Not Available	39	2.4%	0.5%	5	0	5	0	2	2	0
112	Animal Production	1	0.1%	0.1%	0	0	0	0	0	0	1
211	Oil and Gas Extraction	23	1.4%	-0.9%	1	0	1	0	0	0	15
212	Mining (except Oil and Gas)	13	0.8%	-0.1%	2	2	4	0	0	0	6
213	Support Activities for Mining	18	1.1%	-0.3%	0	0	0	0	0	0	12
221	Utilities	59	3.6%	-1.7%	0	3	3	0	0	0	27
236	Construction of Buildings	6	0.4%	0.2%	0	0	0	0	0	0	3
237	Heavy and Civil Engineering Construction	12	0.7%	0.2%	0	1	1	0	1	1	5
238	Specialty Trade Contractors	9	0.5%	-0.1%	1	0	1	0	0	0	5
311	Food and Kindred Products	30	1.8%	0.2%	4	3	7	1	1	2	20
312	Beverage and Tobacco Product Manufacturing	9	0.5%	0.1%	2	1	3	1	1	2	5
313	Textile Mills	2	0.1%	-0.2%	0	0	0	0	0	0	2
315	Apparel Manufacturing	1	0.1%	0.0%	0	0	0	0	0	0	0
316	Leather and Allied Product Manufacturing	1	0.1%	0.1%	0	0	0	0	0	0	0
321	Wood Product Manufacturing	3	0.2%	0.0%	0	0	0	0	0	0	2
322	Paper Manufacturing	12	0.7%	-0.6%	1	3	4	0	0	0	7
323	Printing and Related Support Activities	4	0.2%	-0.6%	0	0	0	1	0	1	1
324	Petroleum and Coal Products Manufacturing	7	0.4%	-0.1%	2	0	2	0	0	0	4
325	Chemical Manufacturing	74	4.5%	-1.7%	30	2	32	5	1	6	37
326	Plastics and Rubber Manufacturing	16	1.0%	-1.5%	0	0	0	0	0	0	7
327	Nonmetallic Mineral Product Manufacturing	16	1.0%	0.2%	4	0	4	2	0	2	11

TABLE XI
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
331	Primary Metal Manufacturing	26	1.6%	0.0%	2	0	2	0	0	0	9
332	Fabricated Metal Product Manufacturing	26	1.6%	-0.3%	2	1	3	0	1	1	12
333	Machinery Manufacturing	43	2.6%	0.4%	4	6	10	1	1	2	25
334	Computer and Electronic Product Manufacturing	50	3.0%	-0.6%	5	9	14	0	2	2	26
335	Electrical Equipment, Appliance, and Component Manufacturing	12	0.7%	-0.1%	0	1	1	0	0	0	7
336	Transportation Equipment Manufacturing	22	1.3%	-1.1%	1	3	4	0	2	2	9
337	Furniture and Related Product Manufacturing	3	0.2%	-0.1%	0	0	0	0	0	0	2
339	Miscellaneous Manufacturing	22	1.3%	-0.6%	12	0	12	0	0	0	9
423	Merchant Wholesalers, Durable Goods	85	5.1%	-1.3%	15	1	16	0	0	0	47
424	Merchant Wholesales, Nondurable Goods	58	3.5%	-0.4%	14	0	14	1	1	2	37
425	Wholesale Electric Markets and Agent and Brokers	1	0.1%	0.1%	0	0	0	0	0	0	1
441	Motor Vehicle and Parts Dealers	3	0.2%	-0.7%	0	0	0	0	0	0	2
444	Electronics and Appliance Stores	3	0.2%	0.2%	3	0	3	0	0	0	3
445	Food and Beverage Stores	5	0.3%	-0.1%	0	0	0	0	0	0	1
446	Health and Personal Care Stores	7	0.4%	0.2%	0	0	0	0	0	0	3
447	Gasoline Stations	3	0.2%	-0.3%	0	0	0	0	0	0	2
448	Clothing and Clothing Accessories Stores	1	0.1%	-0.8%	0	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	2	0.1%	-0.2%	0	0	0	0	0	0	0
452	General Merchandise Stores	2	0.1%	-0.2%	0	0	0	0	0	0	0
453	Miscellaneous Store Retailers	1	0.1%	-0.2%	0	0	0	0	0	0	1
454	Nonstore Retailers	7	0.4%	-0.4%	1	0	1	0	0	0	2

TABLE XI
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
481	Air Transportation	6	0.4%	0.0%	0	2	2	0	1	1	4
483	Water Transportation	9	0.5%	0.0%	0	0	0	0	0	0	1
484	Truck Transportation	2	0.1%	-0.4%	0	0	0	0	0	0	2
485	Transit and Ground Transportation	2	0.1%	0.0%	0	0	0	0	0	0	0
486	Pipeline Transportation	6	0.4%	0.0%	0	0	0	0	0	0	3
488	Support Activities for Transportation	9	0.5%	-0.7%	0	2	2	0	1	1	1
493	Warehousing and Storage	3	0.2%	0.0%	0	0	0	0	0	0	1
511	Publishing Industries (except Internet)	62	3.7%	-1.7%	7	5	12	3	1	4	40
512	Motion Pictures and Sound Recording Industries	7	0.4%	-0.5%	1	2	3	0	1	1	4
515	Broadcasting (except Internet)	13	0.8%	-0.2%	0	2	2	0	0	0	4
516	Internet Publishing and Broadcasting	12	0.7%	0.2%	0	2	2	0	0	0	6
517	Telecommunications	27	1.6%	-1.5%	0	3	3	0	1	1	13
518	Internet Service Providers, Web Search Portals, and Data Processing Services	17	1.0%	-1.4%	2	1	3	0	0	0	6
519	Other Information Services	4	0.2%	0.2%	0	0	0	1	0	1	1
522	Credit Intermediation and Related Activities	37	2.2%	-0.8%	0	1	1	0	0	0	15
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	47	2.8%	0.1%	2	7	9	0	0	0	34
524	Insurance Carriers and Related Activities	54	3.3%	0.1%	1	6	7	1	0	1	37
531	Real Estate	9	0.5%	-0.2%	3	0	3	0	0	0	4
532	Rental and Leasing Services	13	0.8%	-0.4%	5	0	5	0	0	0	5
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	11	0.7%	-0.3%	3	0	3	0	0	0	5
541	Professional, Scientific, and Technical Services	97	5.9%	0.0%	11	3	14	0	0	0	49

TABLE XI
FISCAL YEAR 2008¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2007 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
561	Administrative and Support Services	31	1.9%	0.5%	4	3	7	0	0	0	13
562	Waste Management and Remediation Services	10	0.6%	0.1%	1	1	2	1	2	3	4
611	Educational Services	6	0.4%	0.0%	0	0	0	0	0	0	1
621	Ambulatory Health Care Services	19	1.1%	-0.3%	4	0	4	3	0	3	5
622	Hospitals	20	1.2%	0.8%	9	0	9	0	0	0	14
623	Nursing Care Facilities	1	0.1%	-0.5%	0	0	0	0	0	0	0
624	Social Assistance	5	0.3%	0.3%	0	0	0	0	0	0	1
711	Performing Arts, Spector Sports, and Related Industries	5	0.3%	-0.2%	0	0	0	0	0	0	3
713	Amusement, Gambling, and Recreation Industries	4	0.2%	0.0%	0	0	0	0	0	0	1
721	Accommodation	3	0.2%	-0.3%	0	0	0	0	0	0	0
722	Food Services and Drinking Places	6	0.4%	-0.3%	0	0	0	0	0	0	3
811	Repair and Maintenance	1	0.1%	-0.3%	0	0	0	0	0	0	0
812	Personal and Laundry Services	7	0.4%	0.3%	1	0	1	0	0	0	3
999	Nonclassifiable Establishments	354	21.4%	21.4%	32	20	52	0	0	0	0
		1,656	100.0%		197	96	293	21	20	41	651

¹ Fiscal year 2008 figures include transactions reported between October 1, 2007 and September 30, 2008.

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

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

⁴ During fiscal year 2008, 1,726 transactions were reported under the HSR Premerger Notification program. The smaller number 1,656 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 (as adjusted) submitted in Fiscal Year 2008 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 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 2007 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.