



**FEDERAL TRADE COMMISSION**  
BUREAU OF COMPETITION



**DEPARTMENT OF JUSTICE**  
ANTITRUST DIVISION

# HART-SCOTT-RODINO ANNUAL REPORT

## FISCAL YEAR 2016

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

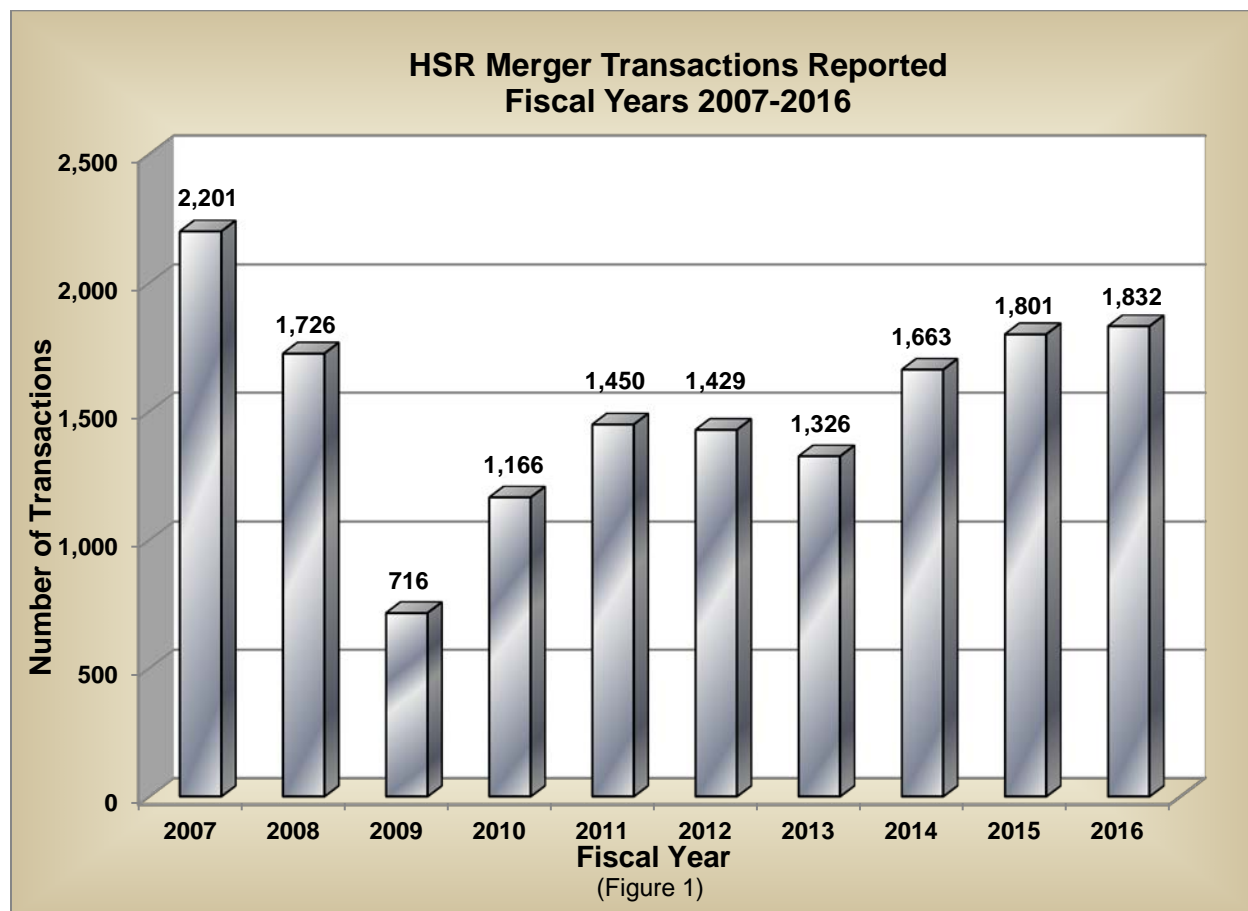
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## **INTRODUCTION**

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435 (“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 (“FTC” or “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 alerted the Commission and the Division to transactions that became the subjects of the numerous enforcement actions brought in fiscal year 2016<sup>1</sup> to protect consumers—individual, business, and government—against harm or likely potential harm from 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 2016, 1,832 transactions were reported under the HSR Act, representing about a 1.7 percent increase from the 1,801 transactions reported in fiscal year 2015. (See Figure 1 below.)



<sup>1</sup> Fiscal year 2016 covered the period of October 1, 2015, through September 30, 2016.

During fiscal year 2016, the Commission brought 22 merger enforcement challenges,<sup>2</sup> including 16 in which it accepted consent orders for public comment, all of which resulted in final orders; one in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation; and five in which the Commission initiated administrative or federal court litigation. These enforcement actions preserved competition in numerous sectors of the economy, including consumer goods and services, pharmaceuticals, healthcare, high tech and industrial goods, and energy.

For example, in May 2016, the U.S. District Court for the District of Columbia granted the Commission's request for a preliminary injunction to prevent Staples, Inc.'s proposed \$6.3 billion acquisition of a rival office supply company, Office Depot, Inc. The Commission had filed an administrative complaint, and together with attorneys general from Pennsylvania and the District of Columbia, the Commission sought a temporary restraining order and a preliminary injunction in federal court. The district court found that the proposed merger likely would have reduced competition nationwide in the market for consumable office supplies sold to large businesses for their own use. Shortly after the district court decision, Staples and Office Depot abandoned their proposed merger, and the Commission dismissed its administrative complaint.

In another litigated matter, in September 2016, the Third Circuit Court of Appeals entered a preliminary injunction blocking the combination of Penn State Hershey Medical Center and PinnacleHealth System. The Commission had challenged the merger alleging that it would violate the antitrust laws by significantly reducing competition for general acute care inpatient hospital services in the area surrounding Harrisburg, Pennsylvania, and lead to reduced quality and higher health care costs for the area's employers and residents. In May 2016, the U.S. District Court denied a preliminary injunction, but the Third Circuit overturned that decision, finding that the Commission established it had a likelihood of success on the merits. Shortly after the appeals court decision, the parties abandoned the merger.

During fiscal year 2016, the Antitrust Division challenged 25 merger transactions. In 15 of these challenges, the Antitrust Division filed a complaint in U.S. district court; in nine of these 15 cases, the Division filed a proposed settlement simultaneously with the complaint; in three, the parties abandoned the proposed transaction post-complaint; and in three others, the Division pursued litigation. Of the remaining 10 challenges, in four, the parties abandoned their transactions in light of the competitive concerns identified by the Division, and in the other six, the parties restructured their transactions to resolve the Division's concerns.

The Division pursued litigation in three filed cases. The Division sued to block Anthem, Inc.'s proposed acquisition of Cigna Corp., Aetna Inc.'s proposed acquisition of Humana Inc., and Deere & Company's proposed acquisition of Precision Planting LLC from Monsanto Company. On January 23, 2017, the Division successfully concluded its challenge to Aetna's \$34 billion proposed acquisition of Humana. The U.S. District Court for the District of Columbia found in favor of the Division and eight state attorneys general along with the District of Columbia, and blocked Aetna's proposed acquisition of Humana because the proposed merger would have substantially reduced competition for the sale of Medicare Advantage – a form of

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<sup>2</sup> To avoid double-counting, this Report includes only those merger enforcement actions in which the Commission or the Antitrust Division took its first public action during fiscal year 2016.

Medicare coverage provided by private insurers –and health insurance to individuals through public exchanges. On February 14, 2017, Aetna and Humana abandoned the transaction.

Additionally, on February 8, 2017, the U.S. District Court for the District of Columbia found in favor of the Division and eleven state attorneys general, along with the District of Columbia, and blocked Anthem’s \$54 billion proposed acquisition of Cigna because the proposed acquisition would have substantially lessened competition in the health insurance industry in dozens of markets across the country.

On May 1, 2017, shortly before trial was scheduled to begin, Deere and Monsanto abandoned their transaction.

In another significant matter, the Division filed a proposed settlement simultaneously with the complaint in its challenge to the proposed acquisition of SABMiller plc by Anheuser-Busch InBev SA/NV (“ABI”). Through its proposed acquisition of SABMiller, ABI would have gained a majority interest in MillerCoors, the joint venture through which SABMiller conducts operations in the United States. ABI and MillerCoors jointly account for approximately 70 percent of beer sold in the United States, and the proposed transaction likely would have resulted in increased beer prices and fewer choices for beer consumers across the United States. The proposed final judgment, pending entry by the court, requires the companies to divest SABMiller’s stake in MillerCoors, the right to brew and sell all SABMiller beer brands currently imported or licensed for sale in the United States, and all rights to SABMiller’s Miller-branded beer worldwide.

Finally, on May 1, 2016, Halliburton Co. and Baker Hughes, Inc. abandoned their proposed merger less than a month after the Division filed its complaint. Halliburton and Baker Hughes are two of the three largest providers of oilfield services in the United States and the world. The Division’s efforts prevented consummation of the proposed transaction, which likely would have led to higher prices and less innovation in this critically important industry affecting world energy markets.

In fiscal year 2016, the Commission’s Premerger Notification Office (“PNO”) continued to respond to thousands of telephone calls seeking information about 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 Commission continued to provide information necessary for the notification process on its HSR website,<sup>3</sup> which serves as HSR practitioners’ primary source of information on the HSR form, instructions, and tips for completion, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, and procedures for submitting post-consummation filings. The website provides training materials for new practitioners, information on scheduled HSR events, frequently asked questions regarding HSR filing requirements, and contact information for PNO staff. The website also includes a catalog of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. PNO staff continued to provide tips for avoiding common filing mistakes in blog posts on the Commission’s *Competition Matters* blog.<sup>4</sup> In addition, the Commission approved new rules to allow parties to submit HSR filings on DVD, to reduce the burden on filing parties. As always, PNO staff is available to help HSR practitioners comply with HSR notification requirements.

<sup>3</sup> See <https://www.ftc.gov/enforcement/premerger-notification-program>.

<sup>4</sup> See <https://www.ftc.gov/news-events/blogs/terms/368>.

## **BACKGROUND OF THE HSR ACT**

Section 201 of the HSR Act, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. § 18a. In general, the HSR Act requires that certain proposed acquisitions of voting securities or assets be reported to the Commission and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days (or 15 days in the case of a cash tender offer or bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends on the value of the acquisition and, in certain acquisitions, the size of the parties as measured by their sales and assets. Acquisitions valued below a certain threshold, acquisitions involving parties with assets and sales below a certain threshold, and certain classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

The legislative history makes clear that the Act's primary purpose 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.

After the notification is filed, the proposed transaction is "cleared" to one agency or the other for review (this is known as the "clearance process"). During the waiting period, if the reviewing agency determines that further inquiry is necessary, it is authorized by Section 7A(e) of the Clayton Act to issue a request for additional information and documentary material ("Second Request").<sup>5</sup> The Second Request extends the waiting period for a specified period of time (usually 30 days, but 10 days in the case of a cash tender offer or bankruptcy sale) after all parties have complied with the Second Request (or, in the case of a tender offer or bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the additional information and documents received 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 also may 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 also was published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form.<sup>6</sup> The program became effective on September 5, 1978. The Commission, with

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<sup>5</sup> 15 U.S.C. §18a(e)(1)(a) ("The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period)...require the submission of additional information or documentary material relevant to the proposed acquisition.").

<sup>6</sup> 43 Fed. Reg. 33,450 (July 31, 1978).

the concurrence of the Assistant Attorney General, has amended the rules and the filing form on many occasions over the years to improve the program's effectiveness.<sup>7</sup>

## **A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM**

The appendices to this Report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for the ten-year period covering fiscal years 2007-2016, 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.<sup>8</sup> Appendix A also shows the number of transactions in which Second Requests could have been issued, as well as the percentage of transactions in which Second Requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 2007 through 2016.

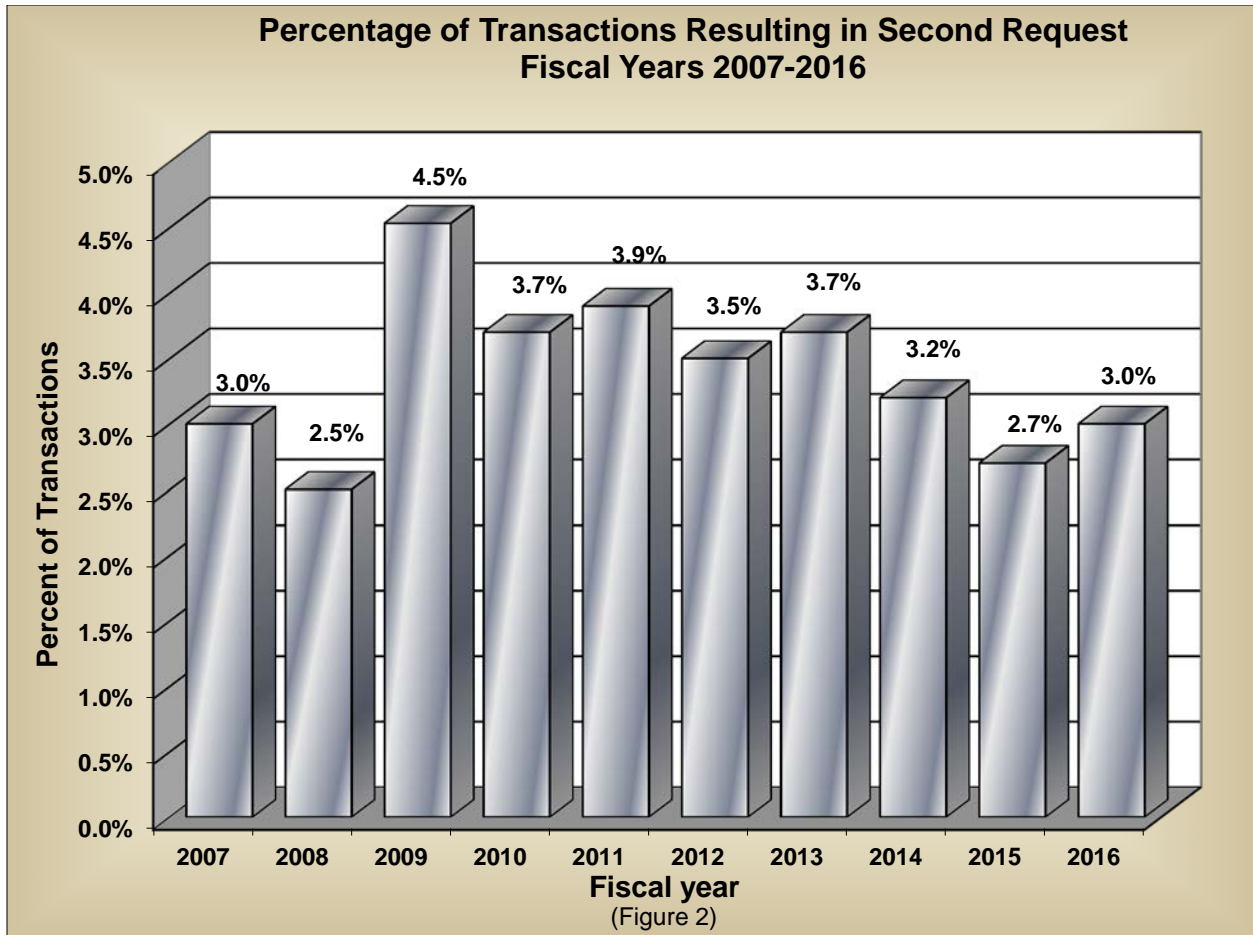
The statistics set out in these appendices show that the number of transactions reported in fiscal year 2016 increased 1.7 percent from the number of transactions reported in fiscal year 2015. In fiscal year 2016, 1,832 transactions were reported, compared to 1,801 reported in fiscal year 2015.<sup>9</sup> The statistics in Appendix A also show that the number of merger investigations in which Second Requests were issued in fiscal year 2016 increased from the number of merger investigations in which Second Requests were issued in fiscal year 2015. Second Requests were issued in 54 merger investigations in fiscal year 2016 (25 issued by the FTC and 29 issued by the Antitrust Division), while Second Requests were issued in 47 merger investigations in fiscal year 2015 (20 issued by the FTC and 27 issued by the Antitrust Division). The percentage of transactions in which a Second Request was issued increased from 2.7 percent in fiscal year 2015 to 3.0 percent in fiscal year 2016. *See* Figure 2 below.

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<sup>7</sup> *See* <https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations/statements-basis-purpose>.

<sup>8</sup> The term "transaction," as used in Appendices A and B and Exhibit A to this Report, does not refer only to individual mergers or acquisitions. A particular merger, joint venture, or acquisition may be structured such that it involves more than one filing that must be made under the HSR Act.

<sup>9</sup> This Report, like previous Reports, also includes annual data on "adjusted transactions in which a Second Request could have been issued" ("adjusted transactions"). *See* Appendix A & Appendix A n.2 (explaining calculation of that data). There were 1,772 adjusted transactions in fiscal year 2016, and the data presented in the tables and the percentages discussed in the text of this Report (*e.g.*, percentage of transactions resulting in Second Requests) are based on this figure.

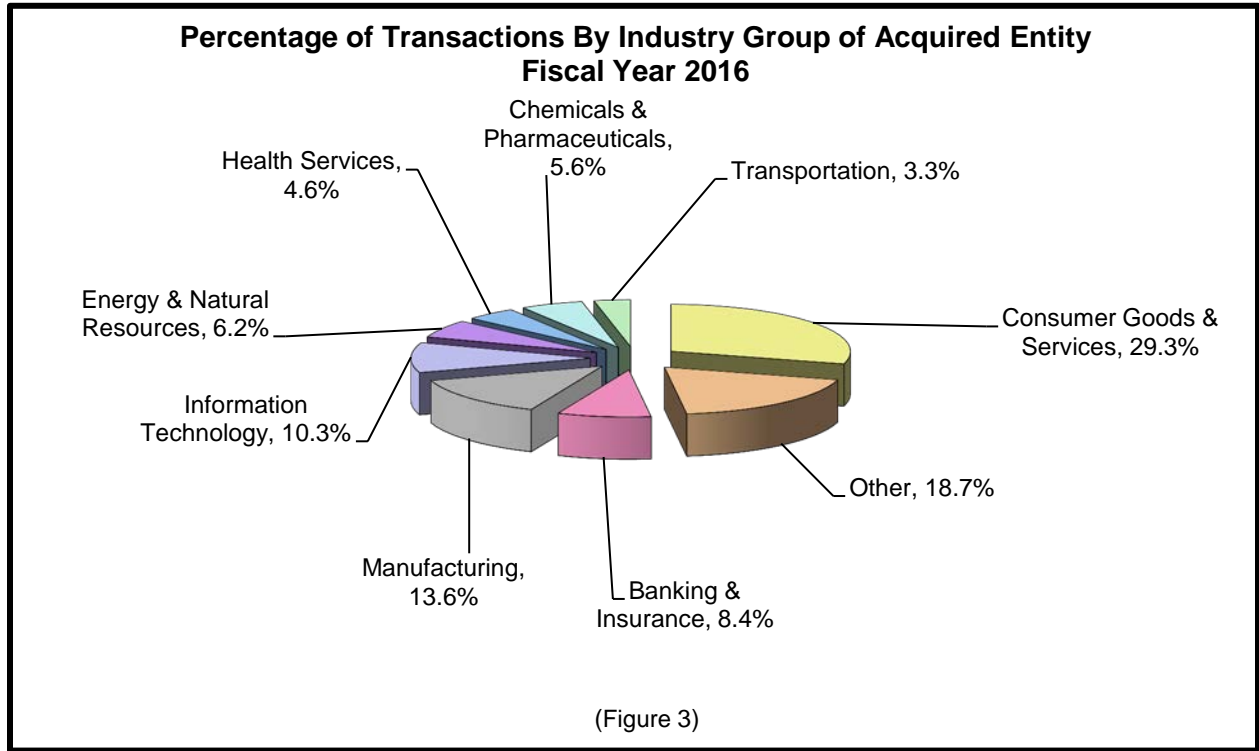


The statistics in Appendix A also show that parties requested early termination of the waiting period in the majority of transactions. In fiscal year 2016, early termination was requested in 77.5 percent (1,374) of the transactions reported. In fiscal year 2015, early termination was requested in 77.8 percent (1,366) of the transactions reported. The percentage of requests granted out of the total requested increased slightly from 79.5 percent in fiscal year 2015 to 80.2 percent in fiscal year 2016.

The tables (Tables I through XI) in Exhibit A contain information regarding the agencies' enforcement activities for transactions reported in fiscal year 2016. The tables provide, for example, various characteristics of transactions, the number and percentage of transactions in which one antitrust agency granted to the other clearance to commence an investigation, and the number of merger investigations in which either agency issued Second Requests. Table III of Exhibit A shows that in fiscal year 2016, the agencies received clearance to conduct an initial investigation in 13.4 percent of the total number of transactions reported. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. In fiscal year 2016, the aggregate dollar value of reported transactions was \$1.95 trillion.<sup>10</sup>

<sup>10</sup> The information on the value of reported adjusted transactions for fiscal year 2016 is drawn from a database maintained by the Premerger Notification Office.

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 2016 based on the acquired entity's operations.<sup>11</sup>



<sup>11</sup> The category designated as “Other” consists of industry segments that include construction, educational services, performing arts, recreation, and other non-classifiable businesses.



## **DEVELOPMENTS WITHIN THE PREMERGER PROGRAM**

### 1. *Threshold Adjustments*

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

On January 26, 2016, the Commission published a notice<sup>12</sup> to reflect adjustment of the reporting thresholds as required by the 2000 amendments. The revised thresholds, including an increase in the size-of-transaction threshold from \$76.3 million to \$78.2 million, became effective February 25, 2016.

### 2. *Compliance*

The Commission and the Antitrust Division continued to monitor compliance with the premerger notification program's filing and waiting period requirements, and initiated a number of compliance investigations in fiscal year 2016. The agencies use several methods to oversee compliance, including monitoring news outlets and industry publications for transactions that may not have been reported in accordance with the HSR Act's requirements. Industry sources, such as competitors, customers, and suppliers, interested members of the public, and, in certain cases, the parties themselves, also 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 \$40,654 for each day the violation continues.<sup>13</sup> The antitrust agencies examine the circumstances of each violation to determine whether to seek penalties.<sup>14</sup> During fiscal year 2016, 47 post-consummation "corrective" filings were received, and the agencies brought three enforcement actions, resulting in \$12.1 million in civil penalties.

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<sup>12</sup> 81 Fed. Reg. 4299 (Jan. 26, 2016).

<sup>13</sup> Dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-7 (Nov. 2, 2015). 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 of Section 7A(g)(1) (61 Fed. Reg. 54,548 (Oct. 21, 1996), corrected at 61 Fed. Reg. 55,840 (Oct. 29, 1996)), to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857 (Jan. 9, 2009)), to \$40,000 effective August 1, 2016 (81 Fed. Reg. 42,476 (June 30, 2016)), and now to \$40,654 effective January 24, 2017 (82 Fed. Reg. 8,137 (Jan. 24, 2017)).

<sup>14</sup> If parties inadvertently fail to file, the agencies generally will not seek penalties so long as the parties promptly submit corrective filings after discovering the failure to file, submit an acceptable explanation of their failure to file, and have not previously violated the Act.

In *United States v. Len Blavatnik*,<sup>15</sup> the complaint alleged that investor Len Blavatnik, via his company Access Industries, violated the HSR Act by failing to report voting shares valued at approximately \$228 million that he acquired in a California start-up company, TangoMe, in August 2014. Before acquiring the TangoMe shares, neither Access nor Mr. Blavatnik conducted any HSR review of the proposed acquisition or consulted with HSR counsel to determine whether an HSR filing was required for the TangoMe acquisition. They failed to do so notwithstanding their commitments to do so, made in connection with Mr. Blavatnik's prior HSR violation in 2010 for his failure to file for a reportable acquisition of LyondellBasell shares. Under the terms of a proposed final judgment filed at the same time as the complaint, Mr. Blavatnik agreed to pay a \$656,000 civil penalty to resolve the lawsuit. On July 12, 2016, the court entered the final judgment.

In *United States v. VA Partners I, LLC, ValueAct Capital Master Fund, L.P., and ValueAct Co-Invest International, L.P.*,<sup>16</sup> the complaint alleged that certain ValueAct Capital entities, VA Partners, LLC, ValueAct Master Capital Fund, L.P., and ValueAct Co-Invest International, L.P. violated the reporting and waiting period requirements of the HSR Act. ValueAct, an activist investment firm, purchased over \$2.5 billion of Halliburton and Baker Hughes voting securities without complying with the HSR Act's notification requirements. According to the complaint, ValueAct purchased these shares with the intent to influence the companies' business decisions as the Halliburton-Baker Hughes merger unfolded and therefore could not rely on the limited "investment-only" exemption to the HSR notification requirements. Under the terms of a proposed final judgment filed July 12, 2016, ValueAct agreed to pay a civil penalty of \$11 million to resolve the lawsuit. On November 1, 2016, the court entered the final judgment.

In *United States v. Caledonia Investments plc*,<sup>17</sup> the complaint alleged that Caledonia Investments plc failed to report its purchase of voting shares in the helicopter services company Bristow Group, Inc. in 2014, which resulted in Caledonia holding Bristow shares valued at approximately \$111 million. The complaint alleged that in June 2008, Caledonia first acquired voting shares in Bristow and reported its purchase as required under the HSR Act. In February 2014, however, Caledonia acquired additional shares of Bristow. Although the HSR Act allows a company that has reported an initial purchase of voting shares to purchase additional voting shares from the same issuer up to the next highest reporting threshold over a five-year period following the initial purchase, Caledonia's 2014 purchase of voting shares in Bristow fell outside the five-year period following its initial purchase. Caledonia failed to report this purchase, as required under the HSR Act. Under the terms of a proposed final judgment filed at the same time as the complaint, Caledonia agreed to pay a \$480,000 civil penalty to resolve the lawsuit. On November 15, 2016, the court entered the final judgment.

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<sup>15</sup> *United States v. Len Blavatnik*, No. 1:15-cv-01631 (D.D.C. filed Oct. 6, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0060/len-blavatnik-care-access-industries>.

<sup>16</sup> *United States v. ValueAct Partners I, LLC, ValueAct Capital Master Fund, L.P., and ValueAct Co-Invest International, L.P.*, No. 3:16-cv-01672 (N.D. Cal. filed Apr. 4, 2016), available at <https://www.justice.gov/atr/case/us-v-va-partners-i-llc-et-al>.

<sup>17</sup> *United States v. Caledonia Investments PLC*, No. 1:16-cv-01620 (D.D.C. filed Aug. 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0123/caledonia-investments-plc>.

### 3. *Rulemaking*

The Commission approved final amendments to the HSR Premerger Notification Rules allowing filers to submit their HSR forms and documentary attachments on DVD and streamlining the Premerger Notification Form instructions.<sup>18</sup> These updates made the process of submitting HSR filings more efficient, and less burdensome. By allowing HSR filings to be submitted on DVD, the amendments reduced the expensive and time-consuming printing and duplication of electronically maintained documents that are submitted to the antitrust agencies.

## **MERGER ENFORCEMENT ACTIVITY**

### 1. *The Department of Justice*

During fiscal year 2016, the Antitrust Division challenged 25 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. In nine of these challenges, the Division filed settlement papers simultaneously with the complaint. In four of the filed court challenges, the parties abandoned the proposed transactions. Two other filed court challenges have been litigated; the court found in favor of the Division and blocked the merger in those two cases. The parties abandoned their transactions in four of the ten remaining challenges, and in six instances restructured their transactions, resolving the Division's concerns.<sup>19</sup>

In *United States, et al. v. Anthem, Inc. and Cigna Corp.*,<sup>20</sup> the Division along with the attorneys general of California, Colorado, Connecticut, the District of Columbia, Georgia, Iowa, Maine, Maryland, New Hampshire, New York, Tennessee, and Virginia, filed suit to block Anthem, Inc.'s proposed acquisition of Cigna Corp. The complaint alleged that the proposed merger would substantially reduce competition for millions of consumers who receive commercial health insurance coverage from national employers throughout the United States and from large-group employers in at least 35 metropolitan areas, including New York, Los Angeles, San Francisco, Denver, and Indianapolis; and from public exchanges created by the Affordable Care Act in St. Louis and Denver. The complaint further alleged that the elimination of Cigna threatens competition among commercial insurers for the purchase of healthcare services from hospitals, physicians and other healthcare providers. The proposed merger would eliminate substantial head-to-head competition in all these markets, and it would remove the independent

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<sup>18</sup> 81 Fed. Reg. 60,257 (Sept. 1, 2016).

<sup>19</sup> Hostess's proposed re-acquisition of Butternut; Waste Management, Inc.'s proposed acquisition of Southwest Waste System Holdings, LP; Thai Union Frozen Products, PLC's proposed acquisition of Bumble Bee Seafoods, LLC; Partners Healthcare System, Inc.'s proposed acquisition of Hallmark Health System; Canadian Pacific's proposed acquisition of Norfolk Southern; Tribune Publishing Co.'s proposed acquisition of Merrick Media; KeyCorp's proposed acquisition of First Niagara Financial; Huntington Bancshares Incorporated's proposed acquisition of FirstMerit Corporation; Tullett Prebon plc's proposed acquisition of ICAP Global Broking Holdings Ltd.; and JW Aluminum, Inc.'s proposed acquisition of Noranda Aluminum, Inc.

<sup>20</sup> *United States, et al. v. Anthem, Inc. and Cigna Corp.*, No. 1:16-cv-01493 (D.D.C. filed Jul. 21, 2016).

competitive force of Cigna, which has been a leader in the industry's transition to value-based care. Eleven states – California, Colorado, Connecticut, Georgia, Iowa, Maine, Maryland, New Hampshire, New York, Tennessee and Virginia – and the District of Columbia joined the Division's challenge of Anthem's acquisition of Cigna. On February 8, 2017, the U.S. District Court for the District of Columbia found in favor of the Division and blocked the proposed acquisition.

In [\*United States, et al. v. Aetna Inc. and Humana Inc.\*](#),<sup>21</sup> the Division along with the attorneys general of Delaware, the District of Columbia, Florida, Georgia, Illinois, Iowa, Ohio, Pennsylvania and Virginia, filed a challenge to Aetna Inc.'s proposed acquisition of Humana Inc. The complaint alleged that the proposed merger would substantially reduce competition in the market for Medicare Advantage, a market-based alternative to traditional Medicare, affecting more than 1.5 million Medicare Advantage customers. As alleged in the complaint, before seeking to acquire Humana, Aetna had pursued aggressive expansion in Medicare Advantage. Aetna, the nation's fourth-largest Medicare Advantage insurer by membership, has nearly doubled its Medicare Advantage footprint over the past four years. Humana is the nation's second-largest Medicare Advantage insurer by membership. The lawsuit also alleged that Aetna's purchase of Humana would substantially reduce competition to sell commercial health insurance to individuals and families on the public exchanges. If the acquisition were to proceed as originally proposed, Aetna would have eliminated one of its strongest and most capable competitors in these markets. On January 23, 2017, the U.S. District Court for the District of Columbia found in favor of the Division and blocked the proposed acquisition. On February 14, 2017, Aetna and Humana abandoned the transaction.

In [\*United States v. Deere & Company, Precision Planting LLC, and Monsanto Company\*](#),<sup>22</sup> the Division filed a lawsuit seeking to block Deere & Company's proposed acquisition of Precision Planting LLC from Monsanto Company. The complaint alleged that the proposed transaction would have combined the only two significant U.S. providers of high-speed precision planting systems. High-speed precision planting enables farmers to plant corn, soybeans, and other row crops at up to twice the speed of a conventional planter without sacrificing accuracy. According to the complaint, Precision Planting has been a key innovator in high-speed precision planting and Deere's only significant competitor in developing and selling these technologies. If this deal were allowed to proceed as originally structured, Deere would emerge as the dominate provider in this product market with the ability to raise prices and slow innovation at the expense of American farmers who rely on these systems. On May 1, 2017, Deere and Monsanto abandoned the transaction.

In [\*United States v. United Continental Holdings, Inc. and Delta Air Lines, Inc.\*](#),<sup>23</sup> the Division challenged United Continental Holdings, Inc.'s proposed purchase of 24 take-off and landing authorizations – or “slots” – from Delta Airlines, Inc. at Newark Liberty International Airport (“Newark”). The complaint, filed on November 10, 2015, alleged that the purchase agreement would violate Sections 1 and 2 of the Sherman Act by increasing United's already

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<sup>21</sup> *United States, et al. v. Aetna Inc. and Humana Inc.*, No. 1:16-cv-01494 (D.D.C. filed Jul. 21, 2016).

<sup>22</sup> *United States v. Deere & Company, Precision Planting LLC, and Monsanto Company*, No. 1:16-cv-08515 (N.D. Ill. filed Aug. 31, 2016).

<sup>23</sup> *United States v. United Continental Holdings, Inc. and Delta Air Lines, Inc.*, 2:15-cv-07992-WHW-CLW (D.N.J. filed Nov. 10, 2015).

dominant share of slots at Newark Airport and subjecting passengers at Newark to higher fares and fewer choices. On April 1, 2016, the Federal Aviation Administration (“FAA”) announced plans to lift slot controls at Newark in order to ease entry and promote competition at the airport. The FAA explained that capacity existed for additional flights at Newark, in part because slots that had been allocated were not being fully utilized. As the Division alleged in its complaint, United did not use all of the slots it controlled at Newark Airport, limiting flight options while keeping the slots out of the hands of competitors. Following the FAA’s announcement, on April 6, 2016, the parties abandoned the transaction.

In *United States, et al. v. Springleaf Holdings, Inc., OneMain Financial Holdings, LLC, and CitiFinancial Credit Company*,<sup>24</sup> the Division, along with the attorneys general of Colorado, Idaho, Pennsylvania, Texas, Virginia, Washington, and West Virginia, challenged the proposed acquisition of OneMain Financial Holdings, LLC by Springleaf Holdings, Inc. The complaint alleged that OneMain and Springleaf are the two largest lenders specializing in personal installment loans to subprime borrowers in the United States. The loss of head-to-head competition between Springleaf and OneMain would have resulted in a reduction of consumer choice that likely would drive subprime borrowers to much more expensive forms of credit or leave them with no reasonable alternative. As originally structured, the proposed acquisition would have substantially lessened competition in local markets within and around 126 towns and municipalities in eleven states (Arizona, California, Colorado, Idaho, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia). A proposed final judgment was filed simultaneously with the complaint on November 13, 2015. Under the terms of the decree, Springleaf was required to divest 127 branches to Lendmark Financial Services or to an alternative buyer approved by the Division. On April 15, 2016, the court entered the final judgment.

In *United States and State of Connecticut v. AMC Entertainment Holdings, Inc. and SMH Theatres, Inc.*,<sup>25</sup> the Division challenged AMC Entertainment Holdings, Inc.’s proposed acquisition of SMH Theatres, Inc. (“Starplex”). AMC and Starplex are each other’s most significant competitor in Berlin, Connecticut, and East Windsor, New Jersey. To attract moviegoers in the affected geographic areas, the parties competed vigorously on ticket prices and provided consumers with a high quality viewing experience by offering sophisticated sound systems, large screens, picture clarity, premium seating, and high quality food and beverages. As originally proposed, the acquisition would have reduced price competition as well as the overall quality of the movie viewing experience. A proposed final judgment, filed simultaneously with the complaint on December 15, 2015, required AMC to divest Starplex Berlin 12 in Berlin, Connecticut, and Starplex Town Center Plaza 10 in East Windsor, New Jersey, to buyers approved by the Division in order to proceed with the proposed acquisition. On March 2, 2016, the court entered the final judgment.

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<sup>24</sup> *United States, et al. v. Springleaf Holdings, Inc., OneMain Financial Holdings, LLC, and CitiFinancial Credit Company*, No. 1:15-cv-01992 (D.D.C. filed Nov. 13, 2015).

<sup>25</sup> *United States, et al. v. AMC Entertainment Holdings, Inc. and SMH Theatres, Inc.*, No. 1:15-cv-02181 (D.D.C. filed Dec. 15, 2015).

In [\*United States v. Gray Television, Inc. and Schurz Communications, Inc.\*](#),<sup>26</sup> the Division challenged the proposed acquisition of Schurz Communications, Inc. by Gray Television, Inc. The complaint alleged that the transaction, as originally proposed, would eliminate the substantial head-to-head competition between Gray's and Schurz's television stations for the business of local and national advertisers in South Bend, Indiana, and Wichita, Kansas. A proposed final judgment, filed simultaneously with the complaint on December 22, 2015, required Gray to divest two broadcast television stations, WSBT-TV (CBS affiliate) in South Bend and KAKE-TV (ABC affiliate) in Wichita, Kansas. On March 3, 2016, the court entered the final judgment.

In [\*United States v. BBA Aviation PLC, Landmark U.S. Corp LLC and LM U.S. Member LLC\*](#),<sup>27</sup> the Division challenged the proposed acquisition of Landmark U.S. Corp LLC and LM U.S. Member LLC, collectively doing business as Landmark Aviation, by BBA Aviation plc. The complaint alleged that the transaction, as originally proposed, would eliminate head-to-head competition between the parties in the market for fixed-base operator services ("FBOs"), resulting in higher prices and lower quality of services for general aviation customers at Washington Dulles International Airport in Dulles, Virginia; Scottsdale Municipal Airport in Scottsdale, Arizona; Fresno Yosemite International Airport in Fresno, California; Jacqueline Cochran Regional Airport in Thermal, California; Westchester County Airport in White Plains, New York; and Ted Stevens Anchorage International Airport in Anchorage, Alaska. FBOs provide fuel and related support services to general aviator customers, which include charter, private and corporate aircraft carriers. A proposed final judgment, filed simultaneously with the complaint on February 3, 2016, required BBA to divest the FBO assets it is acquiring from Landmark at each of the six impacted airports. On June 9, 2016, the court entered the final judgment.

In [\*United States v. Tribune Publishing Co.\*](#),<sup>28</sup> the Division challenged the proposed acquisition of Freedom Communications, Inc., publisher of the *Orange County Register* and the *Riverside County Press-Enterprise*, by Tribune Publishing Company, publisher of the *Los Angeles Times*. Tribune was selected as purchaser of Freedom's newspapers following a bankruptcy auction. The complaint, filed on March 17, 2016, alleged that if the acquisition were to proceed as originally structured, Tribune would have a monopoly over newspaper sales in Orange County and Riverside County, California, and be able to increase subscription prices, raise advertising rates, and invest less to maintain the quality of its newspapers. On March 18, 2016, the court granted the Division's application for a temporary restraining order blocking Tribune from acquiring Freedom. On March 21, 2016, the bankruptcy court approved Digital First Media as the purchaser of Freedom, and Tribune abandoned its proposed acquisition.

In [\*United States v. Iron Mountain Inc. and Recall Holdings Ltd.\*](#),<sup>29</sup> the Division challenged the proposed acquisition of Recall Holdings Ltd. by Iron Mountain Inc. Iron

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<sup>26</sup> *United States v. Gray Television, Inc. and Schurz Communications, Inc.*, No. 1:15-cv-02232-RC (D.D.C. filed Dec. 22, 2015).

<sup>27</sup> *United States v. BBA Aviation plc, Landmark U.S. Corp LLC, and LM U.S. Member LLC*, No. 1:16-cv-00174 (D.D.C. filed Feb. 3, 2016).

<sup>28</sup> *United States v. Tribune Publishing Co.*, No. 2:16-cv-01822 (C.D. Cal. filed Mar. 17, 2016).

<sup>29</sup> *United States v. Iron Mountain Inc. and Recall Holdings Ltd.*, No. 1:16-cv-00595-APM (D.D.C. filed Mar. 31, 2016).

Mountain and Recall both offer records management services (“RMS”) – storing, protecting, and organizing large volumes of hard-copy records at secure, off-site locations – in many cities across the United States. The complaint alleged that the transaction, as originally proposed, would reduce or eliminate benefits delivered to customers in the provision of RMS in 15 metropolitan areas: Detroit, Michigan; Kansas City, Missouri; Charlotte, North Carolina; Durham, North Carolina; Raleigh, North Carolina; Buffalo, New York; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Greenville/Spartanburg, South Carolina; Nashville, Tennessee; San Antonio, Texas; Richmond, Virginia; San Diego, California; Atlanta, Georgia; and Seattle, Washington. A proposed final judgment, filed simultaneously with the complaint on March 31, 2016, requires Iron Mountain to divest Recall records management assets in the fifteen metropolitan areas. The Division cooperated closely with the Australian Competition and Consumer Commission, the United Kingdom’s Competition and Markets Authority, and the Canadian Competition Bureau throughout the course of its investigation. On November 11, 2016, the court entered the final judgment.

In [\*United States v. Halliburton Co. and Baker Hughes Inc.\*](#),<sup>30</sup> the Division challenged the proposed acquisition of Baker Hughes, Inc. by Halliburton Co. Halliburton and Baker Hughes are two of the three largest providers of oilfield services in the United States and the world. They compete vigorously to win the business of exploration and production companies and to develop next generation technologies to allow them to drill deeper and operate in ever-more challenging conditions. The complaint, filed on April 6, 2016, alleged that the proposed transaction would eliminate substantial head-to-head competition in markets for 23 products and services used for on- and off-shore oil exploration and production in the United States. The complaint further alleged that the proposed transaction would lead to higher prices and less innovation in this critically important industry, harming American consumers and potentially world energy markets. The Division cooperated with the European Commission as well as agencies in eight additional jurisdictions: Australia, Brazil, Canada, China, Ecuador, India, Mexico, and South Africa. On May 1, 2016, Halliburton and Baker Hughes abandoned the transaction, ensuring continued competition in the industry.

In [\*United States v. Charter Communications, Inc., Time Warner Cable Inc., Advance/Newhouse Partnership, and Bright House Networks, LLC\*](#),<sup>31</sup> the Division challenged the proposed acquisitions of Time Warner Cable Inc. and Bright House Networks, LLC by Charter Communications, Inc. The complaint alleged that the transactions, as originally proposed, would create the second-largest cable company and the third-largest multi-channel video programming distributor (“MVPD”) in the United States, with a greater ability and incentive to secure restrictions on programmers that limit or foreclose online video distributors’ (“OVDs”) access to important content. A proposed final judgment was filed simultaneously with the complaint on April 25, 2016. The terms of the settlement ensure competition remains strong because the merged company, known as New Charter, is prohibited from engaging in certain conduct or agreements that could make it more difficult for competing OVDs to obtain programming content. The Division worked with the Federal Communications Commission to achieve a successful outcome and on September 9, 2016, the court entered the final judgment.

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<sup>30</sup> *United States v. Halliburton Co. and Baker Hughes Inc.*, No. 1:16-cv-00233-UNA (D. Del. filed Apr. 6, 2016).

<sup>31</sup> *United States v. Charter Communications, Inc., Time Warner Cable Inc., Advance/Newhouse Partnership, and Bright House Networks, LLC*, No. 1:16-cv-00759 (D.D.C. filed Apr. 25, 2016).

In [\*United States v. GTCR Fund X/A, AIV LP, Cision US Inc., UBM plc, PRN Delaware, Inc., and PWW Acquisition LLC\*](#),<sup>32</sup> the Division challenged the proposed acquisition of PR Newswire from UBM plc by GTCR's subsidiary, Cision US Inc. The complaint alleged that the transaction, as originally proposed, would likely result in many consumers paying higher net prices and receiving lower quality products and services in the media contact database industry. Businesses, nonprofits, and other organizations rely on media contact databases to identify journalists and other influencers for public relations purposes. In the United States, Cision operates the dominant media contact database and PR Newswire operates the third largest media contact database, sold under the Agility and Agility Plus brands. As originally proposed, the acquisition would have left many customers throughout the country with only two media contact database companies capable of fulfilling their needs. The two remaining companies would have decreased incentives to discount their media contact database subscription prices during negotiations with prospective customers or improve their products to meet competition. A proposed final judgment, filed simultaneously with the complaint on June 10, 2016, required the defendants to divest PR Newswire's Agility and Agility Plus business to Innodata, Inc., or to another buyer approved by the Division. On September 14, 2016, the court entered the final judgment.

In [\*United States v. Anheuser-Busch InBEV SA/NV and SABMiller plc\*](#),<sup>33</sup> the Division challenged the proposed acquisition of SABMiller plc by Anheuser-Busch InBev SA/NV, ("ABI"). The complaint alleged that the transaction, as originally proposed, would substantially lessen competition in the national market for the sale of beer in the United States and in at least 58 local markets in the United States. Through its acquisition of SABMiller, ABI would gain a majority interest in MillerCoors, the joint venture through which SABMiller conducts substantially all of its operations in the United States. ABI and MillerCoors jointly account for approximately 70 percent of beer sold in the United States. The acquisition would create many highly concentrated local geographic markets, with some combined shares in excess of 90 percent. This reduction in competition likely would have resulted in increased beer prices and fewer choices for beer consumers across the United States. A proposed final judgment, filed simultaneously with the complaint on July 20, 2016, requires the companies to divest SABMiller's entire ownership stake in MillerCoors. The companies will also divest the right to brew and sell all SABMiller beer brands currently imported or licensed for sale in the United States. Finally, the companies will divest all rights to SABMiller's Miller-branded beer worldwide. The Division cooperated with its counterparts in a number of jurisdictions that also reviewed the transaction, including the European Commission, Canada, and China. The proposed final judgment is pending entry by the court.

In [\*United States v. Nexstar Broadcasting Group, Inc. and Media General, Inc.\*](#),<sup>34</sup> the Division challenged the proposed acquisition of Media General, Inc. by Nexstar Broadcasting

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<sup>32</sup> *United States v. GTCR Fund X/A, AIV LP, Cision US Inc., UBM plc, PRN Delaware, Inc., and PWW Acquisition LLC*, No. 1:16-cv-01091 (D.D.C. filed Jun. 10, 2016).

<sup>33</sup> *United States v. Anheuser-Busch InBEV SA/NV and SABMiller plc*, No. 1:16-cv-01483 (D.D.C. filed Jul. 20, 2016).

<sup>34</sup> *United States v. Nexstar Broadcasting Group, Inc. and Media General, Inc.*, No. 1:16-cv-01772 (D.D.C. filed Sept. 2, 2016).



Group, Inc. The complaint alleged that the transaction, as originally proposed, would lessen competition in the sale of broadcast television spot advertising and the licensing of broadcast television programming to multichannel video programming distributors (“MVPDs”) – such as cable and satellite providers – for retransmission to MVPD subscribers in the following markets: Roanoke-Lynchburg, Virginia; Terre Haute, Indiana; Fort Wayne, Indiana; Green Bay-Appleton, Wisconsin; Lafayette, Louisiana; and Davenport, Iowa/Rock Island-Moline, Illinois (“Quad Cities”). A proposed final judgment, filed simultaneously with the complaint on September 2, 2016, requires Nexstar to divest the following television stations: WBAY-TV, in Green Bay-Appleton, Wisconsin, to Gray Television Inc.; WSLS-TV, in Roanoke- Lynchburg, Virginia, to Graham Holdings Company; KADN-TV and KLAF-LD, in Lafayette, Louisiana, to Bayou City Broadcasting Lafayette Inc.; WTHI-TV, in Terre Haute, Indiana, to USA Television MidAmerica Holdings Inc.; WFFT-TV, in Fort Wayne, Indiana, to USA Television; and KWQC-TV, in Quad Cities, to Gray Television. On November 16, 2016, the court entered the final judgment.

## 2. *The Federal Trade Commission*

In *Staples/Office Depot*,<sup>35</sup> the Commission filed an administrative complaint challenging Staples, Inc.’s proposed \$6.3 billion acquisition of rival office supply company, Office Depot, Inc., and at the same time sought a [temporary restraining order and preliminary injunction](#) in federal court to maintain the status quo pending the outcome of the administrative proceeding. The Commission alleged that the acquisition would violate the antitrust laws by significantly reducing competition nationwide in the market for consumable office supplies sold to large business customers for their own use. Consumable office supplies include items such as pens, pencils, notepads, sticky notes, file folders, paper clips, and paper used for printers and copy machines. The Commission alleged that Staples and Office Depot were each other’s closest competitor, and among the only companies that can provide the low prices, nationwide distribution, and combined services and features that many large business customers require. The complaint further alleged that, by eliminating the competition between Staples and Office Depot, the transaction would lead to higher prices and reduced quality. The complaint also asserted that entry or expansion into the market—by other office supplies vendors, manufacturers, wholesalers, or online retailers—would not be timely, likely, or sufficient to counteract the anticompetitive effects of the merger. On May 10, 2016, the U.S. District Court for the District of Columbia granted a preliminary injunction. Shortly thereafter, Staples and Office Depot abandoned their proposed merger, and the Commission dismissed its administrative complaint.

In *The Penn State Hershey Medical Center/PinnacleHealth System*,<sup>36</sup> the Commission filed an administrative complaint challenging the combination of Penn State Hershey Medical

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<sup>35</sup> *Staples, Inc. and Office Depot, Inc.*, FTC Dkt. No. 9367 (final order May 19, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0065/staplesoffice-depot-matter>; *FTC v. Staples, Inc. and Office Depot, Inc.*, Case No. 1:15-cv-02115(EGS) (D.D.C.), available at <https://www.ftc.gov/enforcement/cases-proceedings/1510065/ftc-v-staplesoffice-depot>.

<sup>36</sup> *The Penn State Hershey Medical Center and PinnacleHealth System*, FTC Dkt. No. 9368 (final order Oct. 23, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0191/penn-state-hershey-medical-centerpinnaclehealth-system>; *FTC and Commonwealth of Pennsylvania v. Penn State Hershey Medical Center and PinnacleHealth System*, Case No. 1:15-cv-2362(JEJ) (M.D. Pa.), available at

Center and PinnacleHealth System and authorized staff to file for a [preliminary injunction](#) in federal district court to maintain the status quo pending the outcome of its administrative proceeding. The Commission alleged that the acquisition would violate the antitrust laws by significantly reducing competition for general acute care inpatient hospital services in the area surrounding Harrisburg, Pennsylvania, and lead to reduced quality and higher health care costs for the area's employers and residents. According to the complaint, the merged entity would control approximately 64 percent of the relevant market, likely leading to increased healthcare costs and reduced quality of care for more than 500,000 local residents and patients. On May 9, 2016, the U.S. District Court for the Middle District of Pennsylvania denied a preliminary injunction. After an appeal, on September 27, 2016, the Third Circuit Court of Appeals found that the Commission had established a likelihood of success on the merits, and ordered the District Court to enter a preliminary injunction blocking the combination of Penn State Hershey and Pinnacle. Shortly after, Penn State Hershey and Pinnacle abandoned their proposed merger, and the Commission dismissed its administrative complaint.

In [Advocate Health and Hospitals/NorthShore University HealthSystem](#),<sup>37</sup> the Commission filed an administrative complaint challenging the combination of Advocate Health and Hospitals and NorthShore University HealthSystem, and authorized FTC staff to file a preliminary injunction to maintain the status quo pending the outcome of its administrative proceeding. The Commission alleged that the acquisition would violate the antitrust laws by substantially lessening competition in the market for general acute care inpatient hospital services sold and provided to commercial payers and their insured members in the North Shore area of Chicago. According to the complaint, the merged entity would operate a majority of the hospitals in the area and control more than 50 percent of the general acute care inpatient hospital services. The likely results of the transaction would be higher healthcare costs, and the incentive to decrease service offerings and lessen the quality of healthcare. On June 14, 2016, the U.S. District Court for the Northern District of Illinois denied a preliminary injunction. On October 31, 2016, the U.S. Court of Appeals for the Seventh Circuit reversed the district court's denial of a preliminary injunction because "the district court's geographic market finding here was clearly erroneous." The circuit court remanded the case to the district court for further proceedings; in March, 2017, the district court granted the preliminary injunction motion and the parties abandoned the transaction.

In [Cabell Huntington Hospital/St. Mary's Medical Center](#),<sup>38</sup> the Commission filed an administrative complaint challenging Cabell Huntington Hospital's proposed acquisition of St. Mary's Medical Center, two hospitals located three miles apart in Huntington, West Virginia.

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<https://www.ftc.gov/enforcement/cases-proceedings/141-0191-d09368/penn-state-hershey-medical-center-ftc-commonwealth>.

<sup>37</sup> *Advocate Health Care Network, Advocate Health and Hospitals Corp. and NorthShore University HealthSystem*, FTC Dkt. No. 9369 (filed Dec. 18, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0231/advocate-health-care-network-advocate-health-hospitals>; *FTC and State of Illinois v. Advocate Health Care Network, Advocate Health and Hospitals Corp., and NorthShore University HealthSystem*, Case No. 1:15-cv-11473(JLA) (N.D. Ill.), available at <https://www.ftc.gov/enforcement/cases-proceedings/1410231/ftc-v-advocate-health-care-network>.

<sup>38</sup> *Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.*, FTC Dkt. No. 9366 (filed Nov. 6, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0218/cabell-huntington-hospitalst-marys-medical-center-matter>.

The Commission alleged that the acquisition would violate the antitrust laws by significantly reducing competition, creating a dominant firm with a near-monopoly over general acute care inpatient hospital services and outpatient surgical services in the adjacent counties of Cabell, Wayne, and Lincoln, West Virginia, and Lawrence County, Ohio. The Commission further alleged that this likely would lead to higher prices and lower quality of care than would be the case without the acquisition. According to the complaint, the two hospitals are each other's closest competitor for health plans and patients, and the acquisition would substantially lessen competition between the hospitals for patients and for inclusion in health plan networks. The complaint also alleged that, at times, the parties have attempted to limit their intense head-to-head competition through collusive conduct, such as restrictive marketing agreements. In March 2016, the West Virginia governor and legislature enacted a new West Virginia law relating to certain "cooperative agreements" between hospitals in the state. The West Virginia Health Care Authority approved a cooperative agreement between the hospitals, with which the West Virginia Attorney General concurred. Cooperative agreement laws seek to replace antitrust enforcement with state regulation and supervision of healthcare provider combinations. On July 6, 2016, the Commission voted to dismiss without prejudice its administrative complaint challenging the proposed merger between Cabell Huntington Hospital and St. Mary's Medical Center in light of the passage of the new West Virginia law and the state health care authority's approval of the hospitals' cooperative agreement. The Commission stated that "[t]his case presents another example of healthcare providers attempting to use state legislation to shield potentially anticompetitive combinations from antitrust enforcement" and that "[t]he Commission believes that state cooperative agreement laws such as SB 597 are likely to harm communities through higher healthcare prices and lower healthcare quality."<sup>39</sup> The Commission plans to "continue to vigorously investigate and, where appropriate, challenge anticompetitive mergers in the courts and, if necessary, through state cooperative agreement processes."

In *Superior/Canexus*,<sup>40</sup> the Commission challenged Superior Plus Corp.'s proposed \$982 million acquisition of Canexus Corp. The Commission's complaint alleged that the proposed merger would have reduced competition in the North American market for sodium chlorate—a commodity chemical used to bleach wood pulp that is then processed into paper, tissue, diaper liners, and other products—because Superior and Canexus are two of the three major producers of sodium chlorate in North America. The Commission also authorized staff to seek a temporary restraining order and a preliminary injunction in federal court to prevent the parties from consummating the merger and to maintain the status quo pending the administrative proceeding. The Commission and the Canadian Competition Bureau collaborated in this investigation. On June 30, 2016, the parties abandoned the transaction.

The Commission also accepted for public comment and finalized consent orders in the following 16 merger matters.

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<sup>39</sup> Statement of the Federal Trade Commission, *In the Matter of Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc.*, FTC Dkt. No. 9366 (July 6, 2015), available at <https://www.ftc.gov/public-statements/2016/07/statement-federal-trade-commission-matter-cabell-huntington-hospital-inc>.

<sup>40</sup> *Superior Plus Corp. and Canexus Corp.*, FTC Dkt. No. C-9371 (final order Aug. 3, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0020/superiorcanexus-matter>.

In *Keystone Orthopaedic Specialist, LLC*,<sup>41</sup> the Commission challenged the formation of an orthopedic practice, Keystone Orthopaedic Specialists, LLC, formed through a combination of six independent orthopedic practices. The Commission's complaint alleged that the merger substantially reduced competition for orthopedic services in Berks County, Pennsylvania. The complaint also named Orthopaedic Associates, one of the six practices that merged into Keystone in 2011, but split from Keystone in 2014. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Keystone and Orthopaedic Associates to obtain prior approval from the Commission before acquiring any interests in each other, before acquiring another orthopedic practice in Berks County, and before hiring or offering membership to an orthopedist who has provided services in Berks County in the past year. Following a public comment period, the Commission approved the final order on December 18, 2015.

In *Mylan/Perrigo*,<sup>42</sup> the Commission challenged Mylan N.V.'s \$27 billion acquisition of Perrigo Company plc. The Commission's complaint alleged that the acquisition would likely have harmed current competition in U.S. markets for four generic drugs because both Mylan and Perrigo either were currently selling the drugs, or had the approval of the Food and Drug Administration to do so. These four drugs included: (1) Bromocriptine mesylate, used to treat conditions including type 2 diabetes and Parkinson's disease; (2) Clindamycin phosphate/benzoyl peroxide, used to treat acne; (3) Liothyronine sodium, used to treat hypothyroidism and to treat or prevent enlarged thyroid glands; and (4) Polyethylene glycol 3350, a laxative used to treat occasional constipation. The complaint also alleged harm to competition for three other generic drugs because the acquisition would have eliminated at least one likely future entrant from a very limited pool of future entrants. These three drugs included: (1) Acyclovir, used to slow the growth and spread of the herpes virus in the body; (2) Hydromorphone hydrochloride, used to treat moderate to severe pain in narcotic-tolerant patients; and (3) Scopolamine, which prevents symptoms associated with motion sickness and helps patients recover from anesthesia and surgery. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Mylan to sell the rights and assets related to the seven generic drugs to the generic pharmaceutical company Alvogen Group Inc. Following a public comment period, the Commission approved the final order on February 22, 2016.

In *NXP Semiconductors/Freescale Semiconductor*,<sup>43</sup> the Commission challenged NXP Semiconductors N.V.'s proposed \$11.8 billion acquisition of Freescale Semiconductor Ltd. because it would substantially lessen competition in the worldwide market for radio frequency ("RF") power amplifiers. RF power amplifiers are semiconductors that amplify radio signals used to transmit information between electronic devices such as cellular base stations and mobile phones. The market for RF power amplifiers is extremely concentrated, with Freescale and NXP together comprising more than 60 percent of the relevant market, and only one other significant

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<sup>41</sup> *Keystone Orthopaedic Specialists, LLC, and Orthopaedic Associates of Reading, Ltd.*, FTC Dkt. No. C-4562 (final order Dec. 18, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0025/keystone-orthopaedic-specialists-llc-orthopaedic-associates>.

<sup>42</sup> *Mylan N.V.*, FTC Dkt. No. C-4557 (final order Feb. 22, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0129-c-4557/mylan-n-v-matter-perrigo-company>.

<sup>43</sup> *NXP Semiconductors N.V.*, FTC Dkt. No. C-4560 (final order Jan. 29, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0090/nxp-semiconductors-nv-matter>.

competitor. To remedy these concerns and maintain competition, the Commission issued a consent order requiring NXP to divest all its assets that are used primarily for manufacturing, research, and development of RF power amplifiers to the Chinese private equity firm Jianguang Asset Management Co. Ltd. These assets included a manufacturing facility in the Philippines, a building in the Netherlands to house management and some testing labs, as well as all patents and technologies used exclusively or predominantly for the RF power amplifier business, and a royalty-free license to use all other NXP patents and technologies required by that business. The divestiture also required Jianguang to evaluate and retain RF power amplifier employees and managers necessary to operate the divested assets. Following a public comment period, the Commission approved the final order on January 29, 2016.

In *Cumberland Gulf/ArcLight Capital Partners*,<sup>44</sup> the Commission challenged ArcLight Energy Partners Fund VI, L.P.'s acquisition of Gulf Oil Limited Partnership from its parent company, Cumberland Farms, Inc. The Commission's complaint alleged that the acquisition would be anticompetitive in three Pennsylvania terminal markets: (1) Altoona, where ArcLight would own the only terminal handling gasoline and one of two terminals handling distillates; (2) Scranton, where ArcLight would own one of two terminals handling gasoline and distillates; and (3) Harrisburg, where ArcLight would own one of two terminals handling gasoline and one of three terminals handling distillates. To remedy these concerns and maintain competition, the Commission issued a consent order requiring ArcLight to divest its ownership interest in four light petroleum product terminals in Pennsylvania: (1) one in Altoona; (2) one in Pittston Township in the Scranton market; and (3) one each in Mechanicsburg and Williamsport in the Harrisburg market. Following a public comment period, the Commission approved the final order on February 9, 2016.

In *DSI Renal/U.S. Renal Care*,<sup>45</sup> the Commission challenged U.S. Renal Care, Inc.'s proposed \$640 million acquisition of competitor DSI Renal. U.S. Renal Care is the third-largest provider of outpatient dialysis services in the United States and DSI Renal is the sixth-largest. The Commission's complaint alleged that the acquisition would lead to a significant increase in market concentration and anticompetitive effects in one local market—Laredo, Texas—by reducing the number of providers from three to two, and likely resulting in reduced incentives to improve service or quality for dialysis patients, and a higher likelihood that the merged company would unilaterally increase prices. To remedy these concerns and maintain competition, the Commission issued a consent order requiring divestiture of three DSI Renal outpatient dialysis clinics in Laredo to Satellite Healthcare, Inc. Following a public comment period, the Commission approved the final order on March 18, 2016.

In *Lupin Ltd. And Lupin Pharmaceuticals/GAVIS Pharmaceuticals*,<sup>46</sup> the Commission challenged Lupin Ltd.'s proposed \$850 million acquisition of Gavis Pharmaceuticals LLC. The Commission's complaint alleged that the acquisition would have combined two of only four

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<sup>44</sup> *ArcLight Energy Partners Fund VI, L.P.*, FTC Dkt. No. C-4563 (final order Feb. 9, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0149/arclight-energy-partners-fund-vi-lp-matter>.

<sup>45</sup> *Rangers Renal Holding, LP, US Renal Care, Inc., Dialysis Parent, LLC, and Dialysis HoldCo, LLC*, FTC Dkt. No. 4570 (final order Mar. 18, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0215/rangers-renal-holding-lp-us-renal-care-inc-dialysis-parent>.

<sup>46</sup> *Lupin Ltd., Gavis Pharmaceuticals LLC, and Novel Laboratories, Inc.*, FTC Dkt. No. C-4566 (final order Apr. 26, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0202/lupin-ltd-et-al-matter>.

companies that sold generic doxycycline monohydrate capsules in two dosage strengths, used to treat bacterial infections, and also have eliminated one of only a few companies likely to enter the market for generic mesalamine extended release capsules, used to treat ulcerative colitis. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Lupin and Gavis to sell to G&W Laboratories the rights and assets for Gavis's generic doxycycline monohydrate capsules, and generic mesalamine capsules, including helping G&W to complete the required regulatory work and begin manufacturing the product. Following a public comment period, the Commission approved the final order on April 26, 2016.

In *Hikma Pharmaceuticals/Ben Venue Laboratories*,<sup>47</sup> the Commission challenged Hikma Pharmaceuticals PLC's \$5 million acquisition of the rights to various drug products and related assets from Ben Venue Laboratories, Inc. The Commission's complaint alleged that Hikma's purchase of five generic injectables from Ben Venue, a U.S. subsidiary of Boehringer Ingelheim Corporation, would likely harm future competition in the U.S. markets for these products, which included: (1) Acyclovir sodium injection, an antiviral drug used to treat chicken pox, herpes, and other related infections; (2) Diltiazem hydrochloride injection, a calcium channel blocker and antihypertensive used to treat hypertension, angina, and arrhythmias; (3) Famotidine injection, a treatment for ulcers and gastroesophageal reflux disease; (4) Prochlorperazine edisylate injection, an antipsychotic drug used to treat schizophrenia and nausea; and (5) Valproate sodium injection, a treatment for epilepsy, seizures, bipolar disorder, anxiety, and migraine headaches. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Hikma to divest these five generic injectable drug assets to Amphastar Pharmaceuticals, Inc., a specialty pharmaceutical company that sells generic injectable and inhalation products. Following a public comment period, the Commission approved the final order on March 31, 2016.

In *Hikma Pharmaceuticals/Roxane Laboratories*,<sup>48</sup> the Commission challenged Hikma Pharmaceuticals PLC's proposed \$2 billion acquisition of Roxane. The Commission's complaint alleged that the acquisition would combine two of five firms marketing prednisone tablets and two of four firms marketing lithium carbonate capsules. Additionally, in the market for flecainide tablets, which are used to prevent and treat abnormally fast heart rhythms, Roxane is currently one of only two firms with significant market share. Absent the acquisition, Hikma was expected to market flecainide tablets in the United States following FDA approval. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Hikma to divest to Pennsylvania-based Renaissance Pharma, Inc., three strengths of anti-inflammatory and immunosuppressant prednisone tablets and all strengths of lithium carbonate capsules, used to treat bipolar disorder. The order also requires Hikma to relinquish to its drug development partner, Unimark Remedies Ltd., the rights to market flecainide acetate tablets in the United States. Following a public comment period, the Commission approved the final order on May 5, 2016.

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<sup>47</sup> *Hikma Pharmaceuticals PLC and C.H. Boehringer-Ingelheim AG & Co. KG*, FTC Dkt. No. C-4572 (final order Mar. 31, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0044/bedford-laboratories-hikma-pharmaceuticals>.

<sup>48</sup> *Hikma Pharmaceuticals PLC*, FTC Dkt. No. C-4568 (final order May 5, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0198/hikma-pharmaceuticals-plc-matter>.

In *Koninklijke Ahold/Delhaize Group*,<sup>49</sup> the Commission challenged Koninklijke Ahold's proposed \$28 billion acquisition of Delhaize Group. The Commission's complaint alleged that the proposed merger would have reduced competition among supermarkets in 46 local markets in Delaware, Maryland, Massachusetts, New York, Pennsylvania, Virginia, and West Virginia. Supermarkets operated by Ahold and Delhaize competed closely for shoppers based on price, format, service, product offerings, promotional activity, and location. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Ahold and Delhaize to divest 81 stores to seven divestiture buyers: (1) one store in Maryland to New Albertson's Inc.; (2) seven stores in Massachusetts to Big Y Foods, Inc.; (3) 10 stores in Virginia to Publix North Carolina, LP; (4) one store in Pennsylvania to Saubel's Market, Inc.; (5) 18 stores in Maryland, Pennsylvania, Virginia, and West Virginia to Shop 'N Save East, LLC, an affiliate of Supervalu; (6) six stores in Massachusetts and New York to Tops Markets, LLC; and (7) 38 stores in Delaware, Maryland, and Virginia to Weis Markets Inc. Following a public comment period, the Commission approved the final order on October 31, 2016.

In *Teva/Allergan*,<sup>50</sup> the Commission challenged Teva Pharmaceutical Industries' proposed \$40.5 billion acquisition of Allergan plc's generic pharmaceutical business. The Commission's complaint alleged that the proposed merger would have reduced current or future competition by reducing the number of current or future suppliers in the pharmaceutical markets for one or more strengths of 79 pharmaceutical products ("the drug portfolio"), which include anesthetics, antibiotics, weight loss drugs, oral contraceptives, and treatments for a wide variety of diseases and conditions, including ADHD, allergies, arthritis, cancers, diabetes, high blood pressure, high cholesterol, mental illnesses, opioid dependence, pain, Parkinson's disease, and respiratory, skin, and sleep disorders. Competitive concerns arising from the acquisition fall into three categories: (1) current competition between Teva and Allergan; (2) future competition between Teva and Allergan in an existing generic market; and (3) future competition between Teva and Allergan in a future generic market. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Teva to divest the drug portfolio to eleven firms, which marks the largest drug divestiture order in an FTC pharmaceutical merger case. The Commission's complaint also alleged that the proposed merger would have lessened current or future competition in fifteen pharmaceutical markets because Teva would have the incentive and ability to foreclose rival suppliers of fifteen newly acquired Allergan pharmaceutical products by withholding supply of eight Teva API products that it had previously supplied. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Teva to offer existing API customers the option of entering into long-term API supply contracts. Following a public comment period, the Commission approved the final order on September 15, 2016.

In *Mylan/Meda*,<sup>51</sup> the Commission challenged Mylan N.V.'s proposed \$7.2 billion acquisition of Meda AB. The Commission's complaint alleged that the proposed merger would

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<sup>49</sup> *Koninklijke Ahold N.V. and Delhaize Group NV/SA*, FTC Dkt. No. C-4267 (final order Oct. 31, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0175/koninklijke-ahold-delhaize-group>.

<sup>50</sup> *Teva Pharmaceutical Industries Ltd., a corporation and Allergan PLC*, FTC Dkt. No. C-4589 (final order Sept. 15, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0196/teva-allergan-matter>.

<sup>51</sup> *Mylan N.V.*, FTC Dkt. No. C-4590 (final order Sept. 8, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0102/mylan-nv-matter>.

have reduced competition by combining two of three companies currently offering 400 mg and 600 mg generic felbamate tablets, which treat refractory epilepsy, and would eliminate future competition between Mylan and Meda in the market for 250 mg generic carisoprodol tablets, which treat muscle spasms and stiffness. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Mylan to relinquish its U.S. marketing rights for 250 mg generic carisoprodol tablets to Indicus Pharma LLC, and to divest Mylan's rights and assets related to 400 mg and 600 mg felbamate tablets to Alvogen Pharma US Inc. Following a public comment period, the Commission approved the final order on September 8, 2016.

In *ON Semiconductor/Fairchild Semiconductor*,<sup>52</sup> the Commission challenged ON Semiconductor Corporation's proposed \$2.4 billion acquisition of Fairchild Semiconductor International, Inc. The Commission's complaint alleged that the proposed merger would have reduced competition in the worldwide market for Insulated-Gate Bipolar Transistors specifically designed and calibrated for automotive ignition systems ("Ignition IGBTs") because the merged company would have a combined share of over 60 percent. ON and Fairchild are each other's closest competitors for Ignition IGBTs sold to automotive suppliers, who then incorporate Ignition IGBTs into the ignition systems they sell to automakers. To remedy these concerns and maintain competition, the Commission issued a consent order requiring ON to divest its Ignition IGBT business to Littelfuse, Inc. Following a public comment period, the Commission approved the final order on October 5, 2016.

In *American Air Liquide/Airgas*,<sup>53</sup> the Commission challenged American Air Liquide Holdings, Inc.'s proposed \$13.4 billion acquisition of Airgas, Inc. The Commission's complaint alleged that the proposed merger would have reduced competition, in national and/or regional markets, for the supply of seven types of industrial gas: bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, and packaged welding gases sold in retail stores. These gases are used in a number of industries, including oil and gas, steelmaking, health care, and food manufacturing, according to the complaint. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Air Liquide to divest 16 air separation units, four vertically integrated dry ice and liquid carbon dioxide plants, two separate liquid carbon dioxide plants, two nitrous oxide plants, and three retail packaged welding gas and hardgoods stores. Following a public comment period, the Commission approved the final order on July 18, 2016.

In *Ball/Rexam*,<sup>54</sup> the Commission challenged Ball Corporation's proposed \$8.4 billion acquisition of Rexam plc. The Commission's complaint alleged that the proposed merger would have reduced competition by eliminating direct competition in the United States between Ball and Rexam, the first- and second-largest manufacturers of aluminum beverage cans in both the United States and the world. The proposed merger would have substantially lessened competition for standard 12-ounce aluminum cans in three regional U.S. markets, and

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<sup>52</sup> *ON Semiconductor Corp. and Fairchild Semiconductor International, Inc.*, FTC Dkt. No. C-4593 (final order Oct. 5, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0061/semiconductor-corporation>.

<sup>53</sup> *American Air Liquide Holdings, Inc.*, FTC Dkt. No. C-4574 (final order July 18, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0045/american-air-liquide-holdings-inc-matter>.

<sup>54</sup> *Ball Corporation and Rexam PLC*, FTC Dkt. No. C-4581 (final order Aug. 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0088/ball-corporation-rexam-plc-matter>.



substantially lessened competition for specialty aluminum cans nationwide. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Ball to sell to Ardagh Group S.A. eight U.S. aluminum can plants and associated assets. Following a public comment period, the Commission approved the final order on August 16, 2016.

In *HeidelbergCement/Italcementi*,<sup>55</sup> the Commission challenged HeidelbergCement AG's proposed \$4.2 billion acquisition of Italcementi S.p.A. The Commission's complaint alleged that the proposed merger would have reduced competition for the sale of portland cement, an essential ingredient in making concrete, in five metropolitan areas: Baltimore-Washington, DC; Richmond, Virginia; Virginia Beach-Norfolk-Newport News, Virginia; Syracuse, New York; and Indianapolis, Indiana. In each of these geographic markets, the Commission alleged that the merger would have reduced the number of competitively significant suppliers from three to two. To remedy these concerns and maintain competition, the Commission issued a consent order requiring the parties to divest a cement plant and quarry in Martinsburg, West Virginia, and up to eleven cement distribution terminals in Indiana, Maryland, New York, Ohio, Pennsylvania, and Virginia. Following a public comment period, the Commission approved the final order on August 16, 2016.

In *Energy Transfer Equity/The Williams Companies*,<sup>56</sup> the Commission challenged Energy Transfer Equity, L.P.'s proposed \$37.7 billion acquisition of The Williams Companies. The Commission's complaint alleged that the proposed merger would have reduced competition in the market for "firm" (i.e., guaranteed) pipeline capacity to deliver natural gas to points within the Florida peninsula. Absent a remedy, the acquisition would eliminate competition between the parties, which historically enabled Florida customers to obtain lower transportation rates and better terms of service. The Commission's complaint also alleged that the proposed merger likely would harm future competition from a new interstate pipeline, Sabal Trail Transmission LLC. According to the complaint, Sabal Trail will rely on leased access to a segment of a Williams-owned, large interstate pipeline, and the newly merged company would have an incentive to deny Sabal Trail additional capacity expansions on Williams' pipeline. To remedy these concerns and maintain competition, the Commission issued a consent order requiring Energy Transfer Equity to divest Williams' ownership interest in Gulfstream Natural Gas System L.L.C., an interstate natural gas pipeline serving peninsular (central and southern) Florida. The consent order also would have maintained the premerger bargaining position of the new interstate pipeline for future capacity expansions over the Williams pipeline segment. For reasons unrelated to the Commission's investigation or the proposed order, Energy Transfer Equity subsequently terminated its merger agreement with Williams.

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<sup>55</sup> *HeidelbergCement AG, a corporation, and Italcementi S.p.A.*, FTC Dkt. No. C-4579 (final order Aug. 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0200/heidelbergcement-ag-italcementi-spa-matter>.

<sup>56</sup> *Energy Transfer Equity, L.P., and The Williams Companies, Inc.*, FTC Dkt. No. C-4377 (closed Aug. 18, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0172/energy-transfer-equitythe-williams-companies-matter>.

## **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. The premerger notification program ensures that the antitrust agencies review virtually every relatively large merger and acquisition that affects U.S. consumers before consummation. Prior to the HSR Act, businesses could, and often did, consummate transactions that raised significant antitrust concerns before the agencies had an opportunity to consider adequately their competitive effects. This practice forced the agencies to engage in lengthy post-acquisition litigation, during the course of which the transaction's anticompetitive effects continued to harm consumers, and if effective post-acquisition relief was not practicable, the harm continued. Because the premerger notification program requires reporting before consummation, the agencies' ability to obtain timely, effective relief to prevent anticompetitive effects has vastly improved. Thus, the HSR Act is doing what Congress intended—giving the government the opportunity to investigate and challenge those relatively large mergers that are likely to harm consumers before injury can arise.

The Commission and the Antitrust Division also regularly examine the premerger notification program's effectiveness and continually seek ways to increase accessibility, promote transparency, and improve the review process to reduce the burden on the filing parties without compromising the agencies' ability to investigate and challenge proposed transactions that may substantially lessen competition.

## **LIST OF APPENDICES**

Appendix A: Summary of Transactions, Fiscal Years 2007 - 2016

Appendix B: Number of Transactions Reported and Filings Received by Month for Fiscal Years 2007 - 2016

## **LIST OF EXHIBITS**

Exhibit A: Statistical Tables for Fiscal Year 2016 – Data Profiling Hart-Scott-Rodino Notification Filings and Enforcement Interests

**APPENDIX A**

**SUMMARY OF TRANSACTIONS**

**FISCAL YEARS 2007 – 2016**

**APPENDIX A**  
**SUMMARY OF TRANSACTIONS BY FISCAL YEAR**

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Transactions Reported	2,201	1,726	716	1,166	1,450	1,429	1,326	1,663	1,801	1,832
Filings Received <sup>1</sup>	4,378	3,455	1,411	2,318	2,882	2,829	2,628	3,307	3,585	3,674
Adjusted Transactions In Which A Second Request Could Have Been Issued <sup>2</sup>	2,108	1,656	684	1,128	1,414	1,400	1,286	1,618	1,754	1,772
Investigations in Which Second Requests Were Issued	63	41	31	42	55	49	47	51	47	54
FTC <sup>3</sup>	31	21	15	20	24	20	25	30	20	25
Percent <sup>4</sup>	1.5%	1.3%	2.2%	1.8%	1.7%	1.4%	1.9%	1.9%	1.1%	1.4%
DOJ <sup>3</sup>	32	20	16	22	31	29	22	21	27	29
Percent <sup>4</sup>	1.5%	1.2%	2.3%	2.0%	2.2%	2.1%	1.7%	1.3%	1.5%	1.6%
Transactions Involving a Request For Early Termination <sup>5</sup>	1,840	1,385	575	953	1,157	1,094	990	1,274	1,366	1,374
Granted <sup>5</sup>	1,402	1,021	396	704	888	902	797	1,020	1,086	1,102
Not Granted <sup>5</sup>	438	364	179	249	269	192	193	254	280	272

Note: The data for FY 2007 "Filings Received" reflects a correction to some prior Annual reports to account for a coding error. Additionally, the data for FY 2010 and FY 2011 reflect corrections to some prior annual reports and the DOJ number of investigations in which second requests were issued and the percentage of transactions in which second requests were issued by DOJ.

<sup>1</sup> 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.

<sup>2</sup> These figures omit from the total number of transactions reported all transactions for which the agencies were not authorized to request additional information. These include (1) incomplete transactions (only one party filed a complete notification); (2) transactions reported pursuant to the exemption provisions of Sections 7A (c)(6) and 7A(c)(8) of the Act; (3) transactions which were found to be non-reportable; and (4) transactions withdrawn before the waiting period began. In addition, where a party filed more than one notification in the same year to acquire voting securities of the same corporation, e.g., filing one threshold and later filing for a higher threshold, only a single consolidated transaction has been counted because as a practical matter the agencies do not issue more than one Second Request in such a case. These statistics also omit from the total number the transactions reported secondary acquisitions filed pursuant to §801.4 of the Premerger Notification rules. Secondary acquisitions have been deducted in order to be consistent with the statistics presented in most of the prior annual reports.

<sup>3</sup> These statistics are based on the date the Second Request was issued and not the date the investigation was opened.

<sup>4</sup> Second Request 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.

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

**APPENDIX B**

**NUMBER OF TRANSACTIONS REPORTED**

**AND**

**FILINGS RECEIVED BY MONTH**

**FOR**

**FISCAL YEARS 2007 - 2016**

**APPENDIX B**  
**TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTH FOR FISCAL YEARS**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
October	201	158	91	66	128	122	127	124	144	168
November	189	191	85	135	217	169	260	159	157	243
December	151	172	37	84	91	95	92	108	122	157
January	143	158	42	62	97	104	78	125	118	117
February	157	119	32	61	81	90	82	114	140	127
March	194	131	42	116	97	111	87	100	128	125
April	156	128	60	92	96	96	77	140	131	129
May	250	150	58	108	142	117	117	157	152	168
June	202	146	51	108	117	142	90	150	155	150
July	219	128	62	94	120	130	91	162	170	140
August	200	126	77	120	164	133	122	151	216	166
September	139	119	79	120	100	120	103	173	168	142
<b>TOTAL</b>	<b>2,201</b>	<b>1,726</b>	<b>716</b>	<b>1,166</b>	<b>1,450</b>	<b>1,429</b>	<b>1,326</b>	<b>1,663</b>	<b>1,801</b>	<b>1,832</b>

**APPENDIX B**  
**TABLE 2. NUMBER OF FILINGS RECEIVED<sup>1</sup> BY MONTH FOR FISCAL YEARS**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
October	401	319	185	146	252	242	255	247	289	345
November	376	380	165	242	422	332	511	325	322	483
December	294	343	79	177	193	188	180	211	239	314
January	288	316	77	126	188	203	151	244	244	236
February	317	246	63	116	157	185	169	236	257	249
March	381	242	81	232	195	215	172	195	252	265
April	312	272	119	182	190	193	151	271	265	249
May	481	294	114	216	284	231	228	315	305	331
June	403	293	99	213	231	275	181	304	322	304
July	441	259	121	187	240	269	186	323	327	284
August	396	251	149	238	329	259	240	292	425	339
September	288	240	159	243	201	237	204	344	338	275
<b>TOTAL</b>	<b>4,378</b>	<b>3,455</b>	<b>1,411</b>	<b>2,318</b>	<b>2,882</b>	<b>2,829</b>	<b>2,628</b>	<b>3,307</b>	<b>3,585</b>	<b>3,674</b>

Note: The data for FY 2007 “Filings Received” reflects a correction to some prior Annual reports to account for a coding error.

<sup>1</sup> 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 2016**

**DATA PROFILING HART-SCOTT-RODINO PREMERGER**

**NOTIFICATION FILINGS AND ENFORCEMENT INTERESTS**

**TABLE I**  
**FISCAL YEAR 2016<sup>1</sup>**  
**ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)<sup>2</sup>**

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER <sup>4</sup>	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>Below 50M<sup>5</sup></b>	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
<b>50M - 100M</b>	144	8.1%	8	4	5.6%	2.8%	8.3%	3	2	2.1%	1.4%	3.5%
<b>100M - 150M</b>	333	18.8%	23	5	6.9%	1.5%	8.4%	2	0	0.6%	0.0%	0.6%
<b>150M - 200M</b>	223	12.6%	13	4	5.8%	1.8%	7.6%	0	1	0.0%	0.4%	0.4%
<b>200M - 300M</b>	211	11.9%	20	3	9.5%	1.4%	10.9%	2	1	0.9%	0.5%	1.4%
<b>300M - 500M</b>	249	14.1%	22	7	8.8%	2.8%	11.6%	1	6	0.4%	2.4%	2.8%
<b>500M - 1000M</b>	371	20.9%	34	13	9.2%	3.5%	12.7%	4	8	1.1%	2.2%	3.2%
<b>Over 1000M</b>	240	13.5%	56	26	23.3%	10.8%	34.2%	13	11	5.4%	4.6%	10.0%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%

**TABLE II**  
**FISCAL YEAR 2016<sup>1</sup>**  
**ACQUISITIONS BY SIZE OF TRANSACTION<sup>2</sup>(CUMULATIVE)**

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER <sup>4</sup>	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENTAGE OF TOTAL NUMBER OF SECOND REQUESTS		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50M <sup>5</sup>	1	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100M	145	8.2%	8	4	3.4%	1.7%	5.0%	3	2	5.6%	3.7%	9.3%
LESS THAN 150M	478	27.0%	31	9	13.0%	3.8%	16.8%	5	2	9.3%	3.7%	13.0%
LESS THAN 200M	701	39.6%	44	13	18.5%	5.5%	23.9%	5	3	9.3%	5.6%	14.8%
LESS THAN 300M	912	51.5%	64	16	26.9%	6.7%	33.6%	7	4	13.0%	7.4%	20.4%
LESS THAN 500M	1,161	65.5%	86	23	36.1%	9.7%	45.8%	8	10	14.8%	18.5%	33.3%
LESS THAN 1000M	1,528	86.2%	119	36	50.0%	15.1%	65.1%	12	18	22.2%	33.3%	55.6%
<i>ALL TRANSACTIONS</i>	1,772	100.0%	176	62	73.9%	26.1%	100.0%	25	29	46.3%	53.7%	100.0%

**TABLE III  
FISCAL YEAR 2016<sup>1</sup>  
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$MILLIONS)	CLEARANCES GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF:								
				TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
<b>Below 50M <sup>5</sup></b>	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
<b>50M - 100M</b>	8	4	12	5.6%	2.8%	8.3%	4.5%	6.5%	3.4%	1.7%	5.0%	
<b>100M - 150M</b>	23	5	28	6.9%	1.5%	8.4%	13.1%	8.1%	9.7%	2.1%	11.8%	
<b>150M - 200M</b>	13	4	17	5.8%	1.8%	7.6%	7.4%	6.5%	5.5%	1.7%	7.1%	
<b>200M - 300M</b>	20	3	23	9.5%	1.4%	10.9%	11.4%	4.8%	8.4%	1.3%	9.7%	
<b>300M - 500M</b>	22	7	29	8.8%	2.8%	11.6%	12.5%	11.3%	9.2%	2.9%	12.2%	
<b>500M - 1000M</b>	34	13	47	9.2%	3.5%	12.7%	19.3%	21.0%	14.3%	5.5%	19.7%	
<b>Over 1000M</b>	56	26	82	23.3%	10.8%	34.2%	31.8%	41.9%	23.5%	10.9%	34.5%	
<b><i>ALL TRANSACTIONS</i></b>	176	62	238	9.9%	3.5%	13.4%	100.0%	100.0%	73.9%	26.1%	100.0%	

**TABLE IV  
FISCAL YEAR 2016<sup>1</sup>  
TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH A SECOND REQUEST WAS ISSUED <sup>3</sup>			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
<b>Below 50M <sup>5</sup></b>	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>50M - 100M</b>	3	2	5	0.2%	0.1%	0.3%	2.1%	1.4%	3.5%	5.6%	3.7%	9.3%
<b>100M - 150M</b>	2	0	2	0.1%	0.0%	0.1%	0.6%	0.0%	0.6%	3.7%	0.0%	3.7%
<b>150M - 200M</b>	0	1	1	0.0%	0.1%	0.1%	0.0%	0.4%	0.4%	0.0%	1.9%	1.9%
<b>200M - 300M</b>	2	1	3	0.1%	0.1%	0.2%	0.9%	0.5%	1.4%	3.7%	1.9%	5.6%
<b>300M - 500M</b>	1	6	7	0.1%	0.3%	0.4%	0.4%	2.4%	2.8%	1.9%	11.1%	13.0%
<b>500M - 1000M</b>	4	8	12	0.2%	0.5%	0.7%	1.1%	2.2%	3.2%	7.4%	14.8%	22.2%
<b>Over 1000M</b>	13	11	24	0.7%	0.6%	1.4%	5.4%	4.6%	10.0%	24.1%	20.4%	44.4%
<b><i>ALL TRANSACTIONS</i></b>	25	29	54	1.4%	1.6%	3.0%	1.4%	1.6%	3.0%	46.3%	53.7%	100.0%

**TABLE V**  
**FISCAL YEAR 2016<sup>1</sup>**  
**ACQUISITIONS BY REPORTING THRESHOLD**

THRESHOLD <sup>6</sup>	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER	PERCENT	NUMBER		PERCENT OF THRESHOLD GROUP			NUMBER		PERCENT OF THRESHOLD GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>\$50M (as adjusted)</b>	119	6.7%	1	1	0.8%	0.8%	1.7%	0	0	0.0%	0.0%	0.0%
<b>\$100M (as adjusted)</b>	162	9.1%	4	2	2.5%	1.2%	3.7%	0	1	0.0%	0.6%	0.6%
<b>\$500M (as adjusted)</b>	39	2.2%	2	3	5.1%	7.7%	12.8%	0	2	0.0%	5.1%	5.1%
<b>ASSETS ONLY</b>	283	16.0%	30	8	10.6%	2.8%	13.4%	7	10	2.5%	3.5%	6.0%
<b>25%</b>	7	0.4%	1	0	14.3%	0.0%	14.3%	0	0	0.0%	0.0%	0.0%
<b>50%</b>	834	47.1%	97	41	11.6%	4.9%	16.5%	18	16	2.2%	1.9%	4.1%
<b>N/A</b>	328	18.5%	41	7	12.5%	2.1%	14.6%	0	0	0.0%	0.0%	0.0%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%

**TABLE VI**  
**FISCAL YEAR 2016<sup>1</sup>**  
**TRANSACTION BY ASSETS OF ACQUIRING PERSON**

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>Below 50M</b>	213	12.0%	0	3	0.0%	1.4%	1.4%	0	1	0.0%	0.5%	0.5%
<b>50M - 100M</b>	24	1.4%	1	0	4.2%	0.0%	4.2%	0	0	0.0%	0.0%	0.0%
<b>100M - 150M</b>	36	2.0%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
<b>150M - 200M</b>	54	3.0%	1	1	1.9%	1.9%	3.7%	0	0	0.0%	0.0%	0.0%
<b>200M - 300M</b>	78	4.4%	2	1	2.6%	1.3%	3.8%	1	1	1.3%	1.3%	2.6%
<b>300M - 500M</b>	93	5.2%	14	1	15.1%	1.1%	16.1%	0	1	0.0%	1.1%	1.1%
<b>500M - 1000M</b>	151	8.5%	4	5	2.6%	3.3%	6.0%	0	2	0.0%	1.3%	1.3%
<b>Over 1000M</b>	1,123	63.4%	154	51	13.7%	4.5%	18.3%	24	24	2.1%	2.1%	4.3%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%

**TABLE VII  
FISCAL YEAR 2016<sup>1</sup>  
TRANSACTION BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>Below 50M</b>	168	9.5%	1	0	0.6%	0.0%	0.6%	0	0	0.0%	0.0%	0.0%
<b>50M - 100M</b>	51	2.9%	1	1	2.0%	2.0%	3.9%	0	1	0.0%	2.0%	2.0%
<b>100M - 150M</b>	42	2.4%	2	0	4.8%	0.0%	4.8%	0	0	0.0%	0.0%	0.0%
<b>150M - 200M</b>	34	1.9%	0	1	0.0%	2.9%	2.9%	0	1	0.0%	2.9%	2.9%
<b>200M - 300M</b>	70	4.0%	5	1	7.1%	1.4%	8.6%	1	1	1.4%	1.4%	2.9%
<b>300M - 500M</b>	126	7.1%	10	4	7.9%	3.2%	11.1%	0	1	0.0%	0.8%	0.8%
<b>500M - 1000M</b>	168	9.5%	12	5	7.1%	3.0%	10.1%	2	2	1.2%	1.2%	2.4%
<b>Over 1000M</b>	943	53.2%	144	48	15.3%	5.1%	20.4%	22	22	2.3%	2.3%	4.7%
<b>Sales Not Available<sup>7</sup></b>	170	9.6%	1	2	0.6%	1.2%	1.8%	0	1	0.0%	0.6%	0.6%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%



**TABLE VIII**  
**FISCAL YEAR 2016<sup>1</sup>**  
**TRANSACTION BY ASSETS OF ACQUIRED ENTITIES<sup>8</sup>**

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>Below 50M</b>	287	16.2%	16	4	5.6%	1.4%	7.0%	1	1	0.3%	0.3%	0.7%
<b>50M - 100M</b>	201	11.3%	15	3	7.5%	1.5%	9.0%	3	2	1.5%	1.0%	2.5%
<b>100M - 150M</b>	163	9.2%	15	1	9.2%	0.6%	9.8%	1	0	0.6%	0.0%	0.6%
<b>150M - 200M</b>	95	5.4%	11	6	11.6%	6.3%	17.9%	0	1	0.0%	1.1%	1.1%
<b>200M - 300M</b>	113	6.4%	14	5	12.4%	4.4%	16.8%	1	3	0.9%	2.7%	3.5%
<b>300M - 500M</b>	140	7.9%	15	3	10.7%	2.1%	12.9%	2	3	1.4%	2.1%	3.6%
<b>500M - 1000M</b>	150	8.5%	19	3	12.7%	2.0%	14.7%	2	3	1.3%	2.0%	3.3%
<b>Over 1000M</b>	401	22.6%	46	28	11.5%	7.0%	18.5%	10	15	2.5%	3.7%	6.2%
<b>Assets Not Available<sup>8</sup></b>	222	12.5%	25	9	11.3%	4.1%	15.3%	5	1	2.3%	0.5%	2.7%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%

**TABLE IX**  
**FISCAL YEAR 2016<sup>1</sup>**  
**TRANSACTION BY SALES OF ACQUIRED ENTITIES <sup>9</sup>**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
<b>Below 50M</b>	312	17.6%	16	7	5.1%	2.2%	7.4%	0	3	0.0%	1.0%	1.0%
<b>50M - 100M</b>	256	14.4%	20	7	7.8%	2.7%	10.5%	4	2	1.6%	0.8%	2.3%
<b>100M - 150M</b>	155	8.7%	14	6	9.0%	3.9%	12.9%	3	2	1.9%	1.3%	3.2%
<b>150M - 200M</b>	106	6.0%	14	3	13.2%	2.8%	16.0%	1	2	0.9%	1.9%	2.8%
<b>200M - 300M</b>	135	7.6%	11	2	8.1%	1.5%	9.6%	1	1	0.7%	0.7%	1.5%
<b>300M - 500M</b>	166	9.4%	21	4	12.7%	2.4%	15.1%	2	2	1.2%	1.2%	2.4%
<b>500M - 1000M</b>	176	9.9%	23	9	13.1%	5.1%	18.2%	2	4	1.1%	2.3%	3.4%
<b>Over 1000M</b>	375	21.2%	47	23	12.5%	6.1%	18.7%	12	12	3.2%	3.2%	6.4%
<b>Sales not Available <sup>10</sup></b>	91	5.1%	10	1	11.0%	1.1%	12.1%	0	1	0.0%	1.1%	1.1%
<b>ALL TRANSACTIONS</b>	1,772	100.0%	176	62	9.9%	3.5%	13.4%	25	29	1.4%	1.6%	3.0%

**TABLE X  
FISCAL YEAR 2016<sup>1</sup>  
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 <sup>13</sup>	Not Available	193	10.9%	3.0%	0	2	2	0	1	1
112	Animal Production	5	0.3%	0.2%	0	0	0	0	0	0
113	Forestry and and Logging	5	0.3%	0.2%	0	0	0	0	0	0
115	Support Activities for Agriculture and Forestry	1	0.1%	0.1%	0	0	0	0	0	0
211	Oil and Gas Extraction	16	0.9%	-0.1%	0	0	0	0	0	0
212	Mining (except Oil and Gas)	7	0.4%	0.0%	0	0	0	0	0	0
213	Support Activities for Mining	6	0.3%	-0.4%	0	0	0	0	0	0
221	Utilities	43	2.4%	0.3%	4	4	8	0	0	0
236	Construction of Buildings	4	0.2%	0.2%	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	10	0.6%	0.0%	0	0	0	0	0	0
238	Specialty Trade Contractors	11	0.6%	0.4%	1	0	1	0	0	0
311	Food and Kindred Products	35	2.0%	-0.5%	10	1	11	2	0	2
312	Beverage and Tobacco Product Manufacturing	15	0.8%	0.2%	0	3	3	0	2	2
313	Textile Mills	1	0.1%	0.1%	0	0	0	0	0	0
314	Textile Products	2	0.1%	-0.1%	0	0	0	0	0	0
315	Apparel Manufacturing	2	0.1%	-0.1%	0	0	0	0	0	0
321	Wood Product Manufacturing	6	0.3%	-0.3%	0	0	0	0	0	0
322	Paper Manufacturing	11	0.6%	-0.1%	0	1	1	0	0	0
323	Printing and Related Support Activities	4	0.2%	-0.3%	1	1	2	0	0	0
324	Petroleum and Coal Products Manufacturing	21	1.2%	0.0%	3	0	3	0	1	1
325	Chemical Manufacturing	129	7.3%	-1.0%	27	2	29	9	1	10

**TABLE X**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
326	Plastics and Rubber Manufacturing	24	1.4%	0.5%	2	1	3	0	0	0
327	Nonmetallic Mineral Product Manufacturing	12	0.7%	0.5%	4	0	4	2	0	2
331	Primary Metal Manufacturing	11	0.6%	-0.1%	0	1	1	0	1	1
332	Fabricated Metal Product Manufacturing	20	1.1%	0.0%	1	0	1	0	0	0
333	Machinery Manufacturing	35	2.0%	0.2%	6	4	10	0	2	2
334	Computer and Electronic Product Manufacturing	45	2.5%	-0.7%	13	2	15	3	0	3
335	Electrical Equipment, Appliance, and Component Manufacturing	11	0.6%	0.0%	1	1	2	0	0	0
336	Transportation Equipment Manufacturing	41	2.3%	0.1%	4	1	5	0	2	2
337	Furniture and Related Product Manufacturing	4	0.2%	0.2%	1	0	1	0	0	0
339	Miscellaneous Manufacturing	24	1.4%	-0.4%	5	0	5	0	0	0
423	Merchant Wholesalers, Durable Goods	89	5.0%	1.4%	10	3	13	3	1	4
424	Merchant Wholesales, Nondurable Goods	78	4.4%	-1.0%	16	1	17	1	1	2
425	Wholesale Electric Markets and Agent and Brokers	4	0.2%	-0.1%	2	0	2	0	0	0
441	Motor Vehicle and Parts Dealers	15	0.8%	0.1%	0	0	0	0	0	0
442	Furniture and Home Furnishing Stores	4	0.2%	0.2%	1	0	1	0	0	0
443	Miscellaneous Repair Services	2	0.1%	0.0%	0	0	0	0	0	0
444	Electronics and Appliance Stores	1	0.1%	0.0%	0	0	0	0	0	0
445	Food and Beverage Stores	4	0.2%	-0.1%	1	0	1	0	0	0
446	Health and Personal Care Stores	5	0.3%	-0.1%	3	0	3	1	0	1
447	Gasoline Stations	7	0.4%	0.1%	2	0	2	0	0	0
448	Clothing and Clothing Accessories Stores	4	0.2%	0.0%	0	0	0	0	0	0

**TABLE X  
FISCAL YEAR 2016<sup>1</sup>  
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
451	Sporting Goods, Hobby, Book, and Music Stores	3	0.2%	0.1%	0	0	0	0	0	0
452	General Merchandise Stores	4	0.2%	0.0%	2	0	2	0	0	0
453	Miscellaneous Store Retailers	1	0.1%	0.0%	1	0	1	0	0	0
454	Nonstore Retailers	5	0.3%	-0.3%	0	0	0	0	0	0
481	Air Transportation	2	0.1%	0.0%	0	2	2	0	2	2
483	Water Transportation	4	0.2%	0.0%	0	0	0	0	0	0
484	Truck Transportation	7	0.4%	0.2%	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	9	0.5%	0.3%	1	0	1	0	0	0
488	Support Activities for Transportation	9	0.5%	-0.1%	0	2	2	0	1	1
492	Couriers	2	0.1%	0.0%	0	0	0	0	0	0
493	Warehousing and Storage	1	0.1%	-0.1%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	47	2.7%	0.9%	3	5	8	0	2	2
512	Motion Pictures and Sound Recording Industries	12	0.7%	0.2%	0	2	2	0	1	1
515	Broadcasting (except Internet)	10	0.6%	-0.4%	0	2	2	0	3	3
517	Telecommunications	36	2.0%	-0.2%	2	3	5	0	1	1
518	Internet Service Providers, Web Search Portals, and Data Processing Services	16	0.9%	-0.4%	3	0	3	1	0	1
519	Other Information Services	12	0.7%	-0.4%	0	2	2	0	0	0
522	Credit Intermediation and Related Activities	29	1.6%	-0.1%	2	2	4	0	0	0
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	173	9.8%	-1.6%	4	3	7	0	2	2
524	Insurance Carriers and Related Activities	53	3.0%	-1.4%	3	0	3	0	0	0

**TABLE X**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
525	Funds, Trusts, and Other Financial Vehicles	67	3.8%	1.2%	0	2	2	0	2	2
531	Real Estate	8	0.5%	-0.2%	0	0	0	0	0	0
532	Rental and Leasing Services	13	0.7%	-0.1%	0	0	0	0	0	0
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	12	0.7%	0.2%	1	1	2	0	0	0
541	Professional, Scientific, and Technical Services	104	5.9%	-0.2%	5	5	10	0	0	0
551	Management Companies and Enterprises	2	0.1%	0.0%	1	0	1	0	0	0
561	Administrative and Support Services	50	2.8%	0.6%	2	1	3	0	1	1
562	Waste Management and Remediation Services	4	0.2%	-0.3%	0	2	2	0	2	2
611	Educational Services	5	0.3%	-0.2%	0	0	0	0	0	0
621	Ambulatory Health Care Services	23	1.3%	0.0%	8	0	8	1	0	1
622	Hospitals	35	2.0%	-0.4%	15	0	15	0	0	0
623	Nursing Care Facilities	3	0.2%	0.1%	0	0	0	0	0	0
624	Social Assistance	2	0.1%	0.0%	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	1	0.1%	-0.1%	0	0	0	0	0	0
713	Amusement, Gambling, and Recreation Industries	1	0.1%	-0.2%	0	0	0	0	0	0
721	Accommodation	13	0.7%	0.6%	3	0	3	1	0	1
722	Food Services and Drinking Places	15	0.8%	0.1%	1	0	1	0	0	0
811	Repairs and Maintenance	3	0.2%	-0.2%	0	0	0	0	0	0
812	Personal and Laundry Services	6	0.3%	0.0%	1	0	1	1	0	1
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	2	0.1%	-0.1%	0	0	0	0	0	0

**TABLE X  
FISCAL YEAR 2016<sup>1</sup>  
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
		1,772	100.0%		176	62	238	25	29	54

**TABLE XI**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST <sup>3</sup> INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS <sup>14</sup>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 <sup>1</sup>	Not Available	83	4.7%	-1.1%	10	1	11	0	1	1	0
113	Forestry and and Logging	2	0.1%	0.1%	0	0	0	0	0	0	1
115	Support Activities for Agriculture and Forestry	1	0.1%	0.0%	0	0	0	0	0	0	0
211	Oil and Gas Extraction	30	1.7%	0.2%	1	0	1	0	0	0	8
212	Mining (except Oil and Gas)	8	0.5%	-0.2%	0	0	0	0	1	1	2
213	Support Activities for Mining	11	0.6%	-0.3%	0	2	2	0	2	2	1
221	Utilities	54	3.0%	0.6%	2	4	6	0	0	0	20
236	Construction of Buildings	5	0.3%	0.2%	0	0	0	0	0	0	1
237	Heavy and Civil Engineering Construction	13	0.7%	0.6%	0	0	0	0	0	0	3
238	Specialty Trade Contractors	12	0.7%	0.3%	0	0	0	0	0	0	1
311	Food and Kindred Products	39	2.2%	-0.9%	5	1	6	0	0	0	11
312	Beverage and Tobacco Product Manufacturing	22	1.2%	0.5%	0	3	3	0	2	2	13
314	Textile Products	2	0.1%	0.0%	0	0	0	0	0	0	1
315	Apparel Manufacturing	2	0.1%	0.1%	0	0	0	0	0	0	1
321	Wood Product Manufacturing	2	0.1%	-0.6%	0	0	0	0	0	0	1
322	Paper Manufacturing	10	0.6%	-0.4%	0	2	2	0	0	0	5
323	Printing and Related Support Activities	7	0.4%	0.2%	2	0	2	0	0	0	0
324	Petroleum and Coal Products Manufacturing	6	0.3%	0.1%	0	0	0	0	0	0	4
325	Chemical Manufacturing	100	5.6%	-0.9%	15	1	16	11	0	11	31
326	Plastics and Rubber Manufacturing	23	1.3%	-0.5%	1	0	1	0	0	0	6
327	Nonmetallic Mineral Product Manufacturing	12	0.7%	0.2%	4	0	4	2	0	2	7



**TABLE XI**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST <sup>3</sup> INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION <sup>14</sup>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
331	Primary Metal Manufacturing	13	0.7%	0.1%	1	1	2	0	1	1	6
332	Fabricated Metal Product Manufacturing	23	1.3%	0.3%	4	0	4	0	0	0	4
333	Machinery Manufacturing	39	2.2%	0.0%	4	5	9	0	2	2	12
334	Computer and Electronic Product Manufacturing	65	3.7%	1.2%	14	1	15	4	0	4	22
335	Electrical Equipment, Appliance, and Component Manufacturing	18	1.0%	-0.1%	0	1	1	0	0	0	5
336	Transportation Equipment Manufacturing	33	1.9%	-0.8%	1	1	2	0	2	2	10
337	Furniture and Related Product Manufacturing	2	0.1%	-0.1%	1	0	1	0	0	0	1
339	Miscellaneous Manufacturing	33	1.9%	0.2%	3	0	3	0	0	0	12
423	Merchant Wholesalers, Durable Goods	84	4.7%	-0.3%	8	1	9	1	0	1	16
424	Merchant Wholesales, Nondurable Goods	114	6.4%	1.4%	20	3	23	0	2	2	25
425	Wholesale Electric Markets and Agent and Brokers	9	0.5%	0.1%	2	0	2	0	0	0	0
441	Motor Vehicle and Parts Dealers	15	0.8%	0.0%	0	0	0	0	0	0	5
442	Furniture and Home Furnishing Stores	6	0.3%	-0.3%	1	0	1	0	0	0	1
443	Miscellaneous Repair Services	2	0.1%	-0.2%	0	0	0	0	0	0	0
445	Food and Beverage Stores	7	0.4%	0.0%	1	0	1	0	0	0	2
446	Health and Personal Care Stores	7	0.4%	-0.2%	2	0	2	1	0	1	2
447	Gasoline Stations	7	0.4%	0.1%	2	0	2	0	0	0	2
448	Clothing and Clothing Accessories Stores	8	0.5%	-0.1%	0	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	2	0.1%	-0.1%	0	0	0	0	0	0	0
452	General Merchandise Stores	2	0.1%	-0.3%	0	0	0	0	0	0	0
453	Miscellaneous Store Retailers	9	0.5%	0.3%	3	0	3	0	0	0	1

**TABLE XI**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST <sup>3</sup> INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION <sup>14</sup>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
454	Nonstore Retailers	22	1.2%	0.0%	4	0	4	1	0	1	0
481	Air Transportation	5	0.3%	0.2%	0	2	2	0	2	2	2
482	Railroad Transportation	1	0.1%	0.1%	0	0	0	0	0	0	0
483	Water Transportation	4	0.2%	-0.1%	0	0	0	0	0	0	3
484	Truck Transportation	5	0.3%	-0.1%	0	0	0	0	0	0	1
486	Pipeline Transportation	24	1.4%	0.4%	3	0	3	0	0	0	5
488	Support Activities for Transportation	19	1.1%	0.2%	0	0	0	0	0	0	4
492	Couriers	5	0.3%	0.3%	0	0	0	0	0	0	0
493	Warehousing and Storage	5	0.3%	0.1%	1	1	2	0	0	0	0
511	Publishing Industries (except Internet)	84	4.7%	0.8%	1	6	7	0	3	3	21
512	Motion Pictures and Sound Recording Industries	8	0.5%	-0.3%	0	3	3	0	1	1	3
515	Broadcasting (except Internet)	6	0.3%	-0.5%	0	2	2	0	2	2	2
517	Telecommunications	26	1.5%	-0.2%	0	3	3	0	1	1	6
518	Internet Service Providers, Web Search Portals, and Data Processing Services	60	3.4%	0.2%	2	4	6	0	1	1	7
519	Other Information Services	32	1.8%	-0.4%	1	2	3	0	1	1	5
522	Credit Intermediation and Related Activities	45	2.5%	1.0%	4	1	5	0	0	0	12
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	46	2.6%	1.2%	1	5	6	1	2	3	24
524	Insurance Carriers and Related Activities	44	2.5%	-1.2%	1	1	2	0	0	0	18
525	Funds, Trusts, and Other Financial Vehicles	3	0.2%	0.1%	0	0	0	0	0	0	0
531	Real Estate	11	0.6%	0.2%	2	0	2	0	0	0	2
532	Rental and Leasing Services	12	0.7%	0.1%	0	0	0	0	0	0	3

**TABLE XI**  
**FISCAL YEAR 2016<sup>1</sup>**  
**INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2015 <sup>12</sup>	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST <sup>3</sup> INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION <sup>14</sup>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	11	0.6%	-0.1%	0	1	1	0	0	0	1
541	Professional, Scientific, and Technical Services	155	8.7%	0.0%	14	2	16	1	1	2	35
551	Management Companies and Enterprises	2	0.1%	0.1%	0	0	0	0	0	0	0
561	Administrative and Support Services	43	2.4%	-0.5%	5	0	5	0	0	0	9
562	Waste Management and Remediation Services	9	0.5%	0.0%	0	2	2	0	2	2	3
611	Educational Services	5	0.3%	-0.2%	0	0	0	0	0	0	1
621	Ambulatory Health Care Services	45	2.5%	-0.2%	11	0	11	1	0	1	15
622	Hospitals	32	1.8%	-0.4%	11	0	11	0	0	0	19
623	Nursing Care Facilities	2	0.1%	-0.2%	0	0	0	0	0	0	1
624	Social Assistance	2	0.1%	-0.1%	0	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	5	0.3%	-0.4%	0	0	0	0	0	0	1
713	Amusement, Gambling, and Recreation Industries	12	0.7%	0.4%	0	0	0	0	0	0	0
721	Accommodation	8	0.5%	0.0%	3	0	3	1	0	1	6
722	Food Services and Drinking Places	15	0.8%	0.2%	1	0	1	0	0	0	2
811	Repairs and Maintenance	9	0.5%	0.4%	3	0	3	0	0	0	0
812	Personal and Laundry Services	7	0.4%	0.1%	1	0	1	1	0	1	1
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	1	0.1%	0.1%	0	0	0	0	0	0	1
		1,772	100.0%		176	62	238	25	29	54	456

<sup>1</sup> Fiscal year 2016 figures include transactions reported between October 1, 2015 and September 30, 2016.

<sup>2</sup> The size of transaction is based on the aggregate total amount of voting securities, non-corporate interests and/or assets held by the acquiring person as a result of the transaction and are taken from the response to Item 2(d)(iii), 2(d)(vii), and 2(d)(ix) of the Notification and Report Form.

<sup>3</sup> These statistics are based on the date the Second Request was issued.

<sup>4</sup> During fiscal year 2016, 1832 transactions were reported under the HSR Premerger Notification program. The smaller number, 1772, 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).

<sup>5</sup> The total number of filings under \$50M submitted in Fiscal Year 2016 reflects corrective filings.

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

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

<sup>8</sup> Assets of an acquired entity are not available when the acquired entity’s financial data is consolidated within its ultimate parent.

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

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> This represents the deviation from the fiscal year 2015 percentage.

<sup>13</sup> This category includes transactions by newly-formed entities.

<sup>14</sup> 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.