Federal Trade Commission
Bureau of Competition

Department of Justice
Antitrust Division

Annual Report to Congress
Fiscal Year 1999

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

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INTRODUCTION

Merger activity remains strong and as a result, the antitrust enforcement agencies concluded another extremely active year receiving 4,642 HSR filings in FY 1999, a number just slightly below the record pace of filings received last year. (*See* Figure 1 below). While this represents about a two percent decrease from the 4,728 filing transactions reported in 1998, it is 203% percent increase over the 1,529 transactions reported in fiscal year 1991.[1]

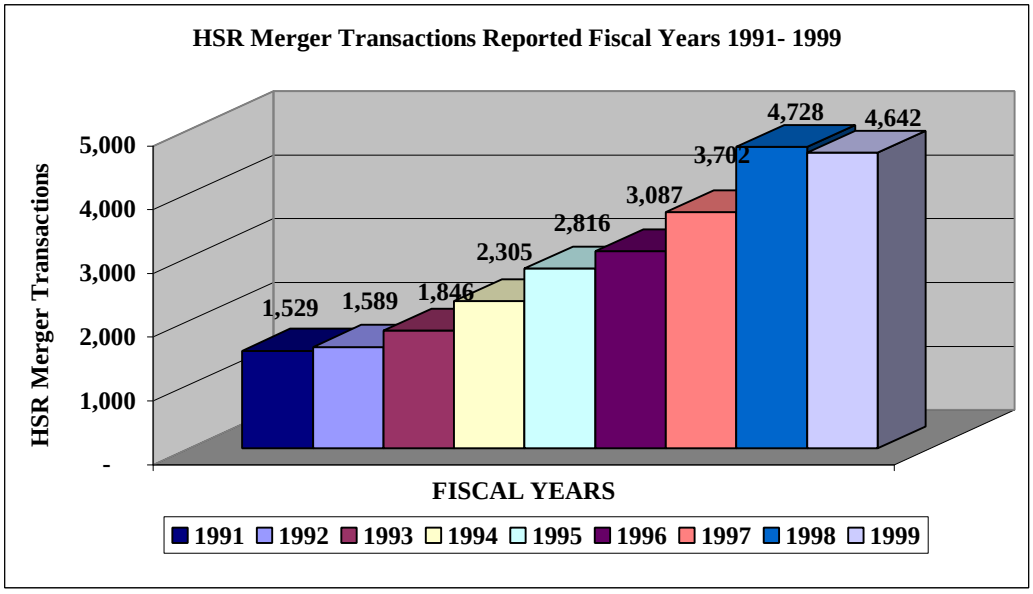

Figure 1

The Hart-Scott-Rodino ("HSR") Act, together with Section 13(b) of the Federal Trade Commission Act ("FTC") and Section 15 of the Clayton Act, gives the Federal Trade Commission (the "Commission") and the Antitrust Division of the Department of Justice (the "Antitrust Division" or "Division") the opportunity to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger program was instrumental in detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 1999 to protect consumers -- individuals, businesses, and government -- against anticompetitive mergers. The Commission challenged

[1] *See* Appendix A.

30 transactions, leading to 18 consent orders and 12 abandoned transactions. The Antitrust Division challenged 47 transactions – 20 of these challenges were resolved by consent decrees, 26 transactions were either restructured or abandoned after the Antitrust Division sued or informed the parties that it intended to sue, and one challenge is being litigated.

Swift and efficient review of the proposed mergers is possible only if the parties comply with the Act's requirements and provide complete information. When parties fail to file the notification, or file a materially deficient notification form, the HSR Act provides that the courts may impose civil penalties. During fiscal year 1999, Commission investigations resulted in the collection of $3,285,000.00 in civil penalties stemming from two transactions consummated in violation of the Act.[2]

While the number of merger investigations remains high, the percentage of requests for additional information from merging parties ("second requests") declined slightly and the percentage of early termination requests granted increased.[3]

In addition to the Commission's and the Antitrust Division's review of a high number of filings in fiscal year 1999, the Commission's Premerger Notification Office ("PNO") responded to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing premerger notification forms. The HSR website[4] adds to the PNO's efficiency by improving access to information necessary to the notification process. The website, expanded in FY 1999, includes such information as the premerger notification filing form and instructions, the HSR Statement of Basis and Purpose, the PNO Sourcebook, the premerger rules, formal interpretations of the rules, filing fee instructions, grants of early termination, information regarding HSR events, and other useful publications and information.

BACKGROUND

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

> Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and the need for

[2] *See* p. 8 *infra*.

[3] *See* Appendix A.

[4] www.ftc.gov/bc/hsr/

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

This is the twenty-second annual report to Congress pursuant to this provision. It covers fiscal year 1999 -- October 1, 1998 through September 30, 1999.

In general, the Act requires that certain proposed acquisitions of voting stock or assets must be reported to the Commission and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days (15 days in the case of a cash tender offer or a bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Small acquisitions, acquisitions involving small parties, and other classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

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

If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) of the Clayton Act to request additional information or documentary materials from both of the parties to a reported transaction (a "second request"). A second request extends the waiting period for a specified period, usually 20 days (10 days in the case of a cash tender offer), after all parties have complied with the request (or, in the case of a tender offer, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may substantially lessen competition, it may seek an injunction in federal district court to prohibit consummation of the transaction.

The Commission promulgated final rules implementing the premerger notification program with the concurrence of the Assistant Attorney General, on July 31, 1978.[5] At that time, a comprehensive Statement of Basis and Purpose was also published containing a section-by-section analysis of the rules and an item-by-item analysis of the Premerger Notification and Report Form. The program became effective on September 5, 1978. In 1983,

[5] 43 Fed. Reg. 33450 (1978). The rules also appear in 16 C.F.R. Parts 801 through 803. For more information concerning the development of the rules and operating procedures of the premerger notification program, see the second, third and seventh annual reports covering the years 1978, 1979 and 1983, respectively.

the Commission, with the concurrence of the Assistant Attorney General, made several changes in the premerger notification rules. Those amendments became effective on August 29, 1983.[6] Additional amendments were published in the Federal Register on March 6, 1987,[7] May 29, 1987,[8] and March 28, 1996.[9]

STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported,[10] 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. Appendix A also shows for fiscal years 1990 through 1999 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 (Table 1) and the number of filings received for fiscal years 1990 through 1999.

The statistics set out in these appendices show that the number of transactions reported in 1999 decreased approximately two percent from the number of transactions reported in 1998. In 1999, 4,642 transactions were reported, while 4,728 were reported in 1998. The statistics in Appendix A show that the number of merger investigations in which second requests were issued in 1999 decreased approximately nine percent from the number of merger investigations in which second request were issued in 1998. Second requests were issued in 113 merger investigations in 1999, while second requests were issued in 125 merger investigations in 1998.

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[6] 48 Fed. Reg. 34427 (1983) (codified at 16 C.F.R. Parts 801 through 803).

[7] 52 Fed. Reg. 7066 (1987) (codified at 16 C.F.R. Parts 801 through 803).

[8] 52 Fed. Reg. 20058 (1987) (codified at 16 C.F.R. Parts 801 through 803).

[9] 61 Fed. Reg. 13666 (1996) (codified at 16 C.F.R. Parts 801 through 803).

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

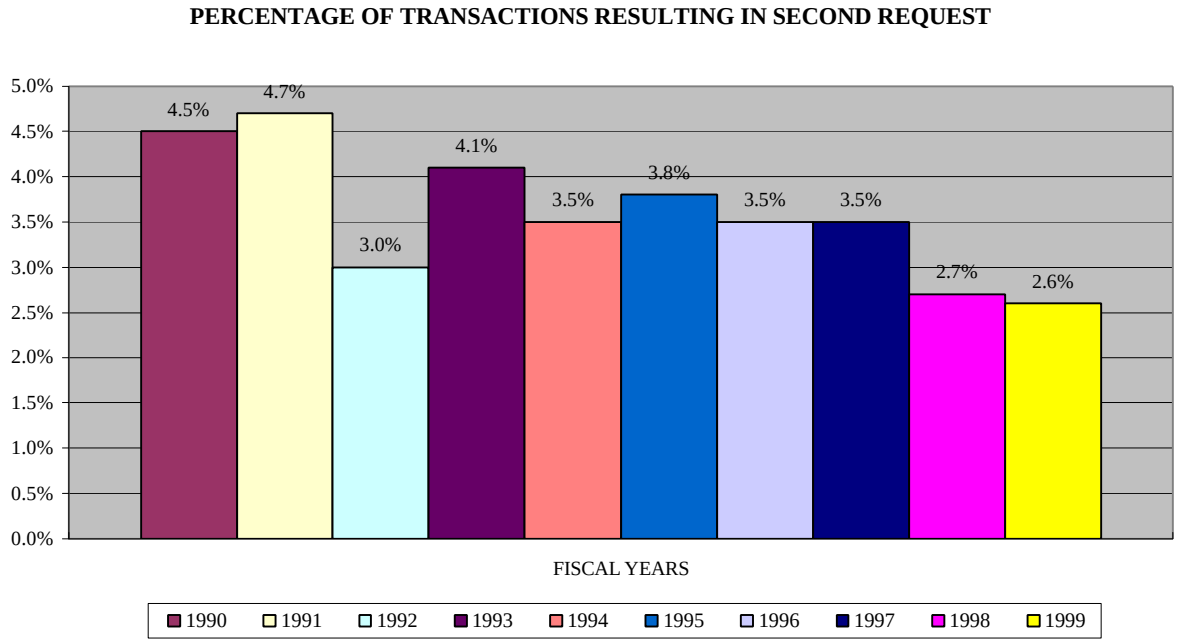

Figure 2

The statistics in Appendix A also show that in recent years, early termination was requested for most transactions. In 1999, early termination was requested in 88.5 percent (4,110) of the transactions reported while in 1998 it was requested in 91.4 percent of the transactions reported. The percentage of requests granted out of the total requested increased slightly (from 74.8 percent in 1998 to 75.5 percent in 1999).

Statistical tables (Table I - XI) in Exhibit A contain information about the agencies' enforcement interest in transactions reported in fiscal year 1999. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued. The tables in Exhibit A show that, in 1999, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 9.0 percent of the total number of transactions in which a second request could have been issued. The tables also indicate, for example, that 31.7 percent of all clearances granted involved transactions valued at $50 million or less.

Tables I - XI also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. The total dollar value of reported transactions has risen during the last six years from less than $375 billion to over a trillion dollars.

Tables X-XI provide the number of transactions based on the industry group 2-digit SIC code in which the acquiring person or the acquired entity derived revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 1999 based on the acquired entity's operations.[11]

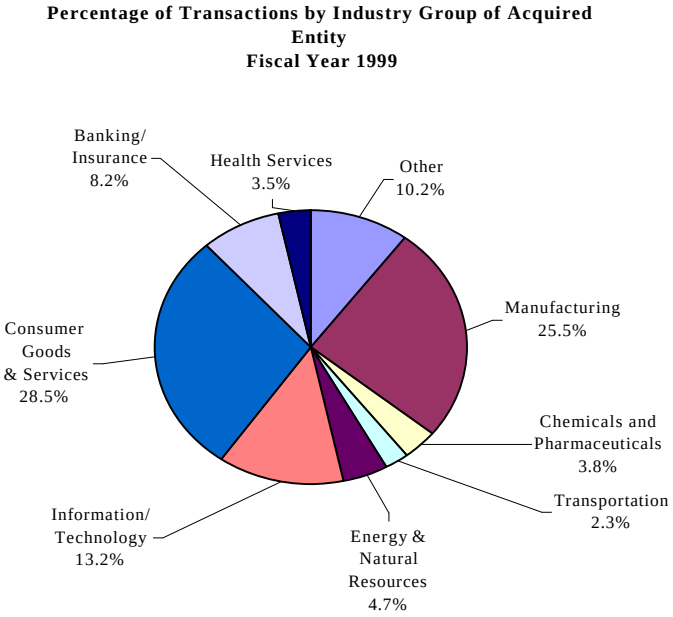

Figure 3

DEVELOPMENTS IN FISCAL YEAR 1999 RELATING TO COMPLIANCE WITH THE PREMERGER NOTIFICATION RULES AND PROCEDURES

1. Compliance

The Commission and the Department of Justice continue to monitor compliance with the premerger notification program's filing requirements and initiated a number of compliance investigations in fiscal year 1999. The agencies monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, and interested members of the public provide the agencies with information about transactions and possible violations of the filing requirements.

[11] As reflected in Figure 3, any increase in manufacturing-related or decrease in consumer goods-related transactions during fiscal year 1999 compared to other fiscal years may be accounted for, in part, by a change in attribution methodology (*see* Annual Report to Congress for Fiscal Year 1997).

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting requirements is liable for a civil penalty of up to $11,000 for each day the violation continues.[12] The antitrust agencies examine the circumstances of each unlawful failure to file to determine whether penalties should be sought. During fiscal year 1999, 35 corrective filings for violations were received and the agencies brought enforcement actions totaling a collection of $3,285,000.00 in civil penalties.

In *United States v. Blackstone Capital Partners II Merchant Banking Fund L.P., and Howard Andrew Lipson*,[13] the complaint alleged that the Act was violated when the defendants failed to file a key document in a timely manner before making an acquisition of a chain of funeral homes. The New York merchant banking fund failed to submit an internal document that was required to have been provided with its premerger filing and would have informed the agencies that the acquisition was an acquisition between competitors, and, therefore, that the acquisition raised potential antitrust concerns. According to the complaint, Mr. Lipson should have known that his certification of the premerger filing form was not accurate. Under the terms of the final judgment, the merchant banking fund and Lipson agreed to pay $2.785 million and $50,000, respectively, in civil penalties to settle the charges. This is the first time HSR penalties have been imposed on a company official for his role in certifying the completeness and accuracy of a premerger filing.

In *United States v. Input/Output, Inc. and Laitram Corp.*,[14] the complaint alleged that the defendants violated the Act by failing to observe the HSR waiting period before combining Input/Output's operations with those of Laitram's subsidiary, DigiCourse. Input/Output manufactures seismic data acquisition systems and related equipment for ocean bottom exploration. DigiCourse manufactures cable positioning systems, such as acoustic transponders, that are integral to the effective operation of ocean seismic data acquisition systems. Under the terms of a final judgment, Input/Output and Laitram agreed to pay $225,000 each in civil penalties to settle the charges.

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[12] Effective November 20, 1996, dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction were adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (April 26, 1996). The adjustments included, in part, an increase from $10,000 to $11,000 for each day during which a person is in violation under Section 7A(g)(1), 15 U.S.C. 18a(g)(1). 61 Fed. Reg. 54548 (October 21, 1996), corrected at 61 Fed. Reg. 55840 (October 29, 1996).

[13] *United States v. Blackstone Capital Partners II Merchant Banking Fund L.P., and Howard Andrew Lipson*, C.V. No. 99 0795 (D.D.C. complaint filed March 30, 1999); 1999-1 Trade Cas. (CCH) ¶72,484.

[14] *United States v. Input/Output, Inc. and Laitram Corp.*, C.V. No. 99 0912 (D.D.C. complaint filed April 12, 1999); 1999-1 Trade Cas. (CCH) ¶72,528.

2. Formal Interpretations of the Rules

In fiscal year 1999, the Commission's Premerger Notification Office, with the concurrence of the Assistant Attorney General, issued two formal interpretations of the premerger notification rules.

Limited Liability Companies

Under the HSR rules, certain types of transactions, such as mergers, consolidations and the formation of corporate joint ventures, are treated as acquisitions of voting securities potentially subject to the Act, while other transactions, such as the formation of partnerships, are deemed non-reportable. The Limited Liability Company (LLC) is a relatively new form of business organization that is neither a partnership nor a corporation, but a hybrid legal entity that combines certain desirable features of both partnerships and corporations. LLCs are often formed as start-up businesses but may also be formed to combine competing businesses, which, may be of potential antitrust concern. Under Formal Interpretation 15, [15] the formation of an LLC that combines, under common control, two or more pre-existing businesses will be treated as subject to the requirements of the Act.

Affidavits and Certification

Section 803.5 of the premerger notification rules requires all acquiring persons in transactions falling under section 801.30 and all parties to non-section 801.30 transactions to submit certain affidavits and certification pages with their premerger notification filings. Section 803.6 of the rules requires a notarized certification of such filings. In the past, the PNO interpreted the rules to require one original affidavit and certification for each copy of the form submitted. Formal Interpretation 16 now makes clear the parties are required to submit only one original and four duplicate copies of affidavits and certification pages, thus reducing the burden on the parties.

[15] 64 Fed. Reg. 34804 (1999).

MERGER ENFORCEMENT ACTIVITY DURING FISCAL YEAR 1999[16]

1. Department of Justice

The Antitrust Division challenged 47 merger transactions that it concluded could lessen competition if allowed to proceed as proposed during fiscal year 1999. In 21 of these transactions, the Antitrust Division filed a complaint in U.S. District Court. All of these cases have been settled by consent decree, except for one that is in litigation.

In the other 26 challenges during fiscal year 1999, the Antitrust Division informed the parties to a proposed transaction that it would file suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.[17] In 16 instances, the parties restructured the proposed transactions, and in ten instances, the parties abandoned the proposed transactions.

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

[17] In 18 instances, the Department of Justice issued press releases: October 2, 1998--Lamar Advertising Company acquisition of Outdoor Communications, Inc. (billboard assets in six counties in Alabama, Mississippi, and Tennessee); October 9, 1998--U.S. Bancorp merger with Northwest Bancshares, Inc. (business banking services, Clark County, Washington); October 13, 1998--Norwest Corporation merger with Wells Fargo & Company (business banking services in Arizona and Nevada); November 30, 1998--City Holding Company's acquisition of Horizon Bancorp Inc. (business banking services in West Virginia); November 30, 1998--Monsanto Company's acquisition of DeKalb Genetics Corporation (biotechnology developments in corn); January 15 and 19, 1999--Formica Corporation acquisition of International Paper Company (high pressure laminate business); January 27, 1999--Media One Group-Erie Ltd. acquisition of two radio stations from Rambaldo Communications, Inc. (Erie, Pennsylvania radio market); April 22, 1999--Clear Channel Communication, Inc. acquisition of Jacor Communications, Inc. (Cleveland and Dayton, Ohio; Louisville, Kentucky; Tampa, Florida radio markets); May 7, 1999--Fox Paine Capital Fund, L.P. acquisition of Century Telephone Enterprises, Inc. (mobile wireless telephone services in Fairbanks, Alaska); May 12, 1999--Chittenden Corporation merger with Vermont Financial Services Corporation (business banking services in Vermont); May 28, 1999--Lamar Advertising Company acquisition of Vivid, Inc. (billboard operations in Wisconsin and Illinois); July 2, 1999--Consolidated Edison Inc. and Orange & Rockland Utilities Inc. merger (electric generating plants); July 16, 1999--Abry Broadcasting Partners acquisition of Bastet Broadcasting Corporation (TV advertising in Wilkes/Barre-Scranton, Pennsylvania); August 17, 1999--Thomas E. and James D. Ingstad acquisition of MSB, Inc. (Fargo, North Dakota radio market); August 26, 1999--AK Steel Corporation acquisition of Armco, Inc. (aluminized stainless steel); September 1, 1999--Marathon Media, L.P. acquisition of five radio stations from Citadel Communications Corporation (Billings, Montana radio market); September 2, 1999--Fleet Financial Group, Inc. merger with Bank Boston Corporation (business banking services in Massachusetts, New Hampshire, Rhode Island and Connecticut); September 15, 1999--Lamar Advertising Company acquisition of Chancellor Media Company (outdoor advertising assets in 31 markets in 13 states).

In addition to the 18 in which it issued press releases, the Department of Justice informed the parties in eight other instances that their proposed acquisitions were likely to have anticompetitive effects: merger between Southeast Missouri Hospital and St. Francis Memorial Hospital (Cape Girardeau, Missouri); Capstar Broadcasting acquisition of WPAW-FM from Radio of Vero, Inc. (Vero Beach, Florida radio market); Capstar Broadcasting acquisition of KTBT-FM from Powell Broadcasting (Baton Rogue, Louisiana radio market); Reilly Industries, Inc. acquisition of Allied Signal, Inc. (binder pitch); General Dynamics acquisition of Newport News Shipyard (shipbuilding); Chancellor Media Corporation acquisition of Petry Media Corporation (TV rep firms); Litton Industries, Inc. acquisition of Newport News Shipyard (shipbuilding); and Capstar Broadcasting acquisition of

In *United States v. Northwest Airlines Corp. and Continental Airlines, Inc.*,[18] the Division challenged Northwest Airlines' acquisition of a controlling stake in Continental Airlines. Northwest and Continental are the fourth and fifth largest U.S. airlines respectively, and compete to provide air transportation services on thousands of routes across the country. The Division claimed that the proposed acquisition would allow Northwest to acquire voting control over Continental, as well as share in Continental's profits, diminishing substantially both Northwest's and Continental's incentives to compete against each other. The complaint alleges that Northwest and Continental are each other's most significant competitors--if not their only competitors--for nonstop airline services between the cities where they operate hubs. According to the complaint, Northwest planned to acquire stock representing 14 percent of Continental's equity but carrying 51 percent of its voting rights. Although a related agreement with Continental required Northwest to place its stock in a "voting trust" for six years, the complaint alleges that the voting trust would not prevent the competitive harm likely to result from the acquisition. Northwest has gone ahead with its acquisition, and litigation is pending in U.S. District Court in Detroit, Michigan. Trial is scheduled to commence October 24, 2000.

In *United States v. Chancellor Media Corp. and Kunz & Co.*,[19] the Division challenged Chancellor Media's $39.5 million acquisition of Kunz & Co. Chancellor and Kunz were head-to-head competitors in the business of selling outdoor advertising, such as billboard space, to business customers. The complaint alleged the acquisition would substantially lessen competition for outdoor advertising in Kern, Kings, and Inyo Counties, California, and Mojave Country, Arizona, giving Chancellor a virtual monopoly in some areas and more than 60 percent of the market in others. A proposed consent decree was filed simultaneously to settle the suit. The decree required Chancellor to divest outdoor advertising assets valued at more that $5 million in those four counties. The court entered the consent decree on April 6, 1999.

In *United States, States of New York and Florida and Commonwealth of Pennsylvania v. Waste Management, Inc., Ocho Acquisition Corp., and Eastern Environmental Services, Inc.*,[20] the Division, joined by three states, sued to block the nation's largest waste collection and disposal firm, Waste Management, from acquiring a large regional rival, Eastern Environmental Services. The complaint alleged that the $1.2 billion merger would reduce competition on a multi-billion dollar contract to dispose of New York City's residential solid

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WPVR-FM and WFIR-AM radio stations from James L. Gibbons (Roanoke-Lynchburg, Virginia radio market).

[18] United States v. Northwest Airlines Corporation and Continental Airlines, Inc., C.V. No. 98-74611 (E.D. MI filed 10/23/98).

[19] United States v. Chancellor Media Corporation and Kunz Company, C.V. No. 1:98CV02763 (D.D.C. filed 11/12/98).

[20] United States and State of New York, State of Florida and Commonwealth of Pennsylvania v. Waste Management, Inc., Ocho Acquisition Corp. and Eastern Environmental Services, Inc., C.V. No. C.V. 98-7168 (E.D.N.Y. filed 11/17/98).

waste and would also reduce competition for other solid waste collection and disposal services in New York, Pennsylvania, and Florida. A proposed consent decree settling the suit was filed December 31, 1998. The consent decree required the companies to divest waste collection and/or disposal operations in nine markets in those three states. In addition, Eastern was required to sell its pending proposal to be awarded part of a $6 billion contract to dispose of New York City's residential waste. The court entered the consent decree on May 25, 1999.

In *United States v. Pearson plc, Pearson, Inc. c/o Addison Wesley Longman, Inc. and Viacom International, Inc. c/o Viacom, Inc.*,[21] the Division challenged Pearson's $4.6 billion acquisition of educational, professional, and reference publishing businesses from Viacom and simultaneously filed a proposed consent decree settling the suit. The decree required Pearson to sell off an elementary school science textbooks program and textbooks in numerous college courses. Pearson and Viacom were two of only four publishers of major comprehensive elementary school science programs (which include textbooks and related materials and services) and two of only a few publishers of textbooks and educational materials for over thirty college courses in which the decree required divestitures. The court entered the consent decree on June 30, 1999.

In *United States v. Chancellor Media Corp., Whiteco Industries, Inc., and Metro Management Associates*,[22] the Division challenged Chancellor Media's $930 million acquisition of Whiteco Industries. Chancellor and Whiteco were head-to-head competitors in the business of selling outdoor advertising, such as billboard space. The complaint alleged that the acquisition would have reduced competition in seven counties located in Kansas, Pennsylvania, Connecticut and Texas. The combined entity allegedly would have had a market share of 100 percent in Hartford County, Connecticut and market shares ranging from 48 percent to 88 percent in the remaining markets. A proposed consent decree was filed and was entered by the court on May 12, 1999. The decree required divestiture of billboard assets in those seven counties.

In *United States v. AT&T Corporation and Tele-Communications, Inc.*,[23] the Division challenged the $48 billion merger between AT&T and TCI and simultaneously filed a proposed consent decree, which settled the suit and required the complete divestiture of TCI's interest in Sprint PCS over a five-year period. According to the complaint, AT&T was the largest provider of mobile wireless telephone services in the United States, and TCI owned approximately 23.5 percent of the stock of Sprint's mobile wireless telephone business, Sprint PCS; and AT&T and Sprint operate wireless networks that offer nearly complete nationwide

[21] United States v. Pearson plc, Pearson Inc. c/o Addison Wesley Longman, Inc. and Viacom International, Inc. c/o Viacom, Inc., C.V. No.1:98CC02836 (D.D.C. filed 11/23/98).

[22] United States v. Chancellor Media Corporation, Whiteco Industries, Inc. and Metro Management Associates, C.V. No. 1:98CV02815 (D.D.C. filed 11/25/98).

[23] United States v. AT&T Corporation and Tele-Communications, Inc., C.V. No: 1:98CV03170 (D.D.C.filed 12/30/98).

geographic coverage. The settlement required the parties to transfer the Sprint PCS stock to an independent trustee before closing their merger. The trustee will then have approximately five years to complete the sale. The settlement was structured to minimize any risk that the divestiture of Sprint PCS stock would interfere with Sprint's ability to issue new stock or otherwise raise capital in order to continue to construct its wireless network. The court entered the consent decree on August 23, 1999.

In *United States v. Signature Flight Support Corp., AMR Combs, Inc. and AMR Corp.*,[24] the Division challenged Signature's acquisition of AMR Combs, Inc. and simultaneously filed a proposed consent decree settling the suit. The decree required Signature to divest its flight support business at Palm Springs, Bradley International (Hartford, CT) and Denver Centennial Airports. The complaint alleged that Signature and Combs were the only two fixed-base operators and were head-to-head competitors in the business of providing flight support services, such as fueling, ramp and hangar space rentals, at Palm Springs and Bradley International Airports. At Denver Centennial, Signature allegedly had agreed to become the operator of a flight support facility, which upon completion in the year 2000 would have put it in direct competition with Combs. The court entered the consent decree on July 30, 1999.

In *United States v. Central Parking Corp. and Allright Holdings, Inc.*,[25] the Division challenged the $585 million merger between Central Parking and Allright Holdings, the two largest parking management companies in the nation. A proposed consent decree was filed simultaneously, settling the suit. The decree required the companies to divest or terminate their interest in certain off-street parking facilities in 18 cities in ten states: Cincinnati and Columbus, Ohio; Nashville, Knoxville and Memphis, Tennessee; Dallas, Houston, El Paso and San Antonio, Texas; Baltimore, Maryland; Denver, Colorado; Jacksonville, Tampa and Miami, Florida; San Francisco, California; Kansas City, Missouri; New York, New York; and Philadelphia, Pennsylvania. Without the divestitures required under the decree, Central allegedly would have been given a dominant market share of off-street parking facilities in certain areas of each of these 18 cities, and would have had the ability to control the prices and the type of services offered to motorists. The state attorney general offices of six states assisted in the investigation. The court entered the consent decree on February 14, 2000.

In *United States v. Suiza Foods Corp., d/b/a Flav-O-Rich Dairy, Land O' Sun Dairy, Louis Trauth Dairy, and Broughton Foods Co., d/b/a Southern Belle Dairy*,[26] the Division filed suit to block Suiza Food's $109.7 million acquisition of Broughton Foods because the

[24] United States v. Signature Flight Support Corporation, AMR Combs, Inc., and AMR Corporation, C.V. No. 1:99CV0537 (D.D.C. filed 3/1/99).

[25] United States v. Central Parking Corporation and Allright Holdings, Inc., C.V. No. 99CV00652 (D.D.C. filed 3/16/99).

[26] United States v. Suiza Foods Corporation, d/b/a Flav-o-Rich Dairy, Land O' Sun Dairy, Louis Trauth Dairy, and Broughton Foods Company, d/b/a/ Southern Belle Dairy, C.V. No. 99-CV-130 (E.D. KY filed 3/18/99).

merger would have resulted in higher prices for milk sold to school districts in South Central Kentucky. The complaint alleged that Suiza and Broughton were head-to-head competitors for school milk contracts in dozens of school districts in South Central Kentucky. In some of those districts, the merger allegedly would have created a monopoly on bids to supply milk, and in other districts, it could have reduced the number of bidders from three to two. The Division noted that the merger was set to occur in an industry that has been plagued by a history of collusion (with the Division having prosecuted more than 100 criminal cases involving bid rigging on school milk contracts) and stated that the Division would be vigilant in preventing anticompetitive mergers that threaten to recreate the harmful effects of the prior bid-rigging conspiracies. A proposed consent decree was filed on April 28, 1999, which required the divestiture of the Southern Belle Dairy, thereby maintaining the current level of competition for school milk bidding in Kentucky that would have been threatened by the merger. The court entered the decree on August 30, 1999.

In *United States v. SBC Communications, Inc. and Ameritech Corp.*,[27] the Division's suit and proposed consent decree resolved antitrust concerns about SBC's $58 billion acquisition of Ameritech and its $1.67 billion acquisition of Comcast Cellular Corporation. The acquisition of Ameritech, as originally proposed, allegedly would have led to a loss of head-to-head competition in wireless mobile telephone services in 17 markets in which Ameritech owned one of the cellular systems and SBC or Comcast (which SBC was also acquiring) owned the other. The decree required the divestiture of one of the two cellular telephone systems in each of these 17 markets in Illinois, Indiana and Missouri, including the major metropolitan areas of Chicago and St. Louis. The decree will also help ensure that a purchaser of the divested Ameritech cellular systems in the St. Louis area would have the ability to pursue a local exchange entry strategy in SBC's local service area, such as Ameritech had planned before the merger. The court entered the decree on August 2, 1999.

In *United States and States of Illinois and Missouri v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc.*,[28] the Division challenged the $210 million asset swap between Allied Waste Industries and Browning Ferris Industries (BFI) and simultaneously filed a proposed consent decree settling the suit. The decree required the parties to sell certain waste collection routes in the St. Louis metropolitan area. Without this divestiture, the proposed acquisition allegedly would have substantially lessened competition for commercial solid waste hauling services in the St. Louis market. The court entered the consent decree on July 29, 1999. The asset swap proposal was separate from the acquisition by Allied of BFI, which the Division also challenged. *See, infra* at 18.

[27] United States v. SBC Communications Inc. and Ameritech Corporation, C.V. No. 1:99 CV00715 (D.D.C. filed 3/23/99) (also resolving antitrust concerns about SBC's acquisition of Comcast Cellular Corporation that arose because of competition between Ameritech and Comcast).

[28] United States, State of Illinois and State of Missouri v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., C.V. No. 1:99 CV00894 (D.D.C. filed 4/8/99).

In *United States v. Capstar Broadcasting Corp. and Triathlon Broadcasting Co.*,[29] the Division challenged Capstar's $190 million acquisition of Triathlon. The transaction, as originally structured, allegedly would have allowed Capstar to control more than 45% of the Wichita, Kansas, radio advertising market and would likely have raised prices for advertising on radio stations in the Wichita metropolitan area. A proposed consent decree was filed simultaneously, settling the suit. The decree requires Capstar to sell five radio stations--KEYN-FM, KWSJ-FM, KNSS-AM, KFN-AM, and KQAM-AM -- in Wichita. The court entered a consent decree on August 24, 1999.

In *United States v. Imetal, DBK Minerals, Inc., English China Clays, Plc and English China Clays, Inc.*,[30] the Division challenged Imetal's $1.24 billion acquisition of English China Clays. The complaint alleged that the acquisition, as originally structured, would have substantially lessened competition in four markets--water-washed kaolin, calcined kaolin, ground calcium carbonate and fused silica. Imetal, a French company with a U.S. subsidiary, and English China Clays, a British company with a U.S. subsidiary, were two of only five producers of water-washed kaolin and calcined kaolin and were the dominant producers of fused silica in the United States. Water-washed kaolin is a type of clay used as a pigment for coating paper and as filler in the body of paper. Calcined kaolin is used in paper-making when the paper requires a greater opacity. Ground calcium carbonate is a mineral used as a pigment in paper-making. Fused silica is used in applications such as investment castings, high-grade glass, and refractory applications such as the preparation of ceramics. A proposed consent decree was filed simultaneously settling the suit. The decree requires that Imetal divest assets and operations in each of the four product areas. The court entered a consent decree on May 26, 2000.

In *United States v. Citadel Communications Corp., Triathlon Broadcasting Co. and Capstar Broadcasting Corporation*,[31] the Division challenged Triathlon's acquisition of three radio stations in Spokane, Washington and a joint sales agreement between Citadel and Triathlon that allegedly eliminated competition in the sale of radio advertising time on certain radio stations in Colorado Springs, Colorado and Spokane. Capstar had announced plans to acquire Triathlon. A proposed consent decree was filed simultaneously settling the suit. The decree required the termination of the joint sales agreement, the exchange of certain radio stations between Capstar and Citadel in Colorado Springs and Spokane, and divestiture by Capstar of KEYF-FM in Spokane. The court entered the consent decree on August 26, 1999.

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[29] United States v. Capstar Broadcasting Corporation and Triathlon Broadcasting Company, C.V. No. 1:99CV001043 (D.D.C. filed 4/21/99).

[30] United States v. Imetal, DBK Materials Inc., English China Clays, PLC and English China Clays, Inc., C.V. No. 1:99CV01018 (D.D.C. filed 4/26/99).

[31] United States v. Citadel Communications Corporation, Triathlon Broadcasting Company and Capstar Broadcasting Corporation, C.V. No. 1:99CV01043 (D.D.C. filed 4/28/99).

In *United States v. Bell Atlantic Corp. and GTE Corp.*,[32] the Division challenged Bell Atlantic's merger with GTE and simultaneously filed a proposed consent decree that would settle the suit. The merger, as originally structured, allegedly would have led to a loss of head-to-head competition in wireless mobile telephone services in 65 markets in nine states. In four of the markets, Bell Atlantic had an ownership interest in one cellular system and GTE in the other; in 46 of the markets, GTE had an ownership interest in one of the cellular systems and PrimeCo -- a firm 50 percent owned by Bell Atlantic--owned one of the personal communications services (PCS) wireless businesses; and in 15 markets, GTE was acquiring cellular systems from Ameritech and PrimeCo owned the PCS wireless business. Under the decree, the parties have agreed to sell one of their two interests in each of these overlapping wireless telephone systems. The divestitures include the major metropolitan areas of Chicago, Houston, Tampa and Richmond. This is one of the largest divestiture packages ever required by the Antitrust Division. The court entered a consent decree on April 18, 2000.

In *United States v. Florida Rock Industries, Inc., Harper Bros., Inc., Commercial Testing Inc. and Daniel R. Harper*,[33] the Division challenged Florida Rock Industries' merger with Harper Bros. and Commercial Testing. The complaint alleged that the acquisition, as originally structured, would substantially lessen competition in the aggregate and silica sand markets in Southwest Florida. Aggregate is used to manufacture asphalt concrete and ready mix concrete. Silica sand is used to manufacture specific types of ready mix concrete. A proposed consent decree was filed simultaneously settling the suit. Under the terms of the decree, Florida Rock was required to divest the Alico Road Quarry in Fort Myers, Florida and the Palmdale Sand Mine in Palmdale, Florida. The court entered the consent decree on October 13, 1999, and Florida Rock divested the assets to Rinker Materials on December 3, 1999.

In *United States v. Computer Associates International, Inc. and Platinum Technology International, Inc.*,[34] the Division challenged the acquisition of Platinum Technology International by Computer Associates International. Computer Associates was the world's largest independent vendor of computer software for IBM and IBM-compatible mainframe computers and the dominant competitor in several mainframe systems management software markets for IBM's OS/390 (formerly MVS) and VSE operating systems. Platinum was a major competitor in mainframe systems management products and had been one of the few substantial competitors to Computer Associates in a number of these markets. The complaint alleged that the proposed transaction, as originally structured, would have reduced competition

[32] United States v. Bell Atlantic Corporation and GTE Corporation, C.V. No. 1:99CV0119 (D.D.C. filed 5/7/99).

[33] United States v. Computer Associates International, Inc. and Platinum Technology International, Inc., C.V. No. 1:99CV01318 (D.D.C. filed 5/25/99).

[34] United States v. Florida Rock Industries, Inc., Harper Bros. Inc., Commercial Testing, Inc. and Daniel R. Harper, C.V. No. 99-516-CIV-J-20A (M.D. FL filed 5/26/99).

in five mainframe systems management product markets--MVS and OS/390 tape management software, MVS and OS/390 job scheduling and rerun software, VSE job scheduling and rerun software, MVS and OS/390 change management software and VSE automated operations software. A proposed consent decree was filed simultaneously, settling the suit. Under the decree, Computer Associates must sell six Platinum mainframe systems management software products and related assets. The court entered the consent decree on October 12, 1999.

In *United States and The State of Texas v. Aetna, Inc. and The Prudential Insurance Co. of America,*[35] the Division challenged the $1 billion acquisition of Prudential's health care business by Aetna. The complaint alleged that the proposed transaction would have made Aetna the dominant provider of health maintenance organization (HMO) and HMO-based point-of-service plans in Houston and Dallas, Texas, and would have also resulted in increased prices or reduced quality of those health care plans. The complaint also alleged that Aetna would have had control over a large share of the physicians' businesses, enabling Aetna to depress physicians' reimbursement rates in Houston and Dallas, which would likely have resulted in a reduction in the quantity or quality of physician services provided to patients. A proposed consent decree was filed simultaneously, settling the suit. The decree required Aetna to divest its NYLCare businesses in Houston and Dallas-Fort Worth. The court entered the consent decree on December 7, 1999.

In *United States v. Cargill Incorporated and Continental Grain Co.,*[36] the Division challenged the acquisition of Continental Grain Company's Commodity Marketing Group by Cargill. The transaction, as originally structured, allegedly would have eliminated an important competitor for the purchase of crops from U.S. farmers and others suppliers such as independent elevator operators. Cargill and Continental operated nationwide distribution networks that annually move millions of tons of grain and soybeans to customers throughout the United States and around the world. Competitive harm in this case allegedly flowed from the ability of the combining firms to depress artificially the price paid to suppliers. A proposed consent decree was filed simultaneously, settling the suit. The decree requires Cargill to divest grain and soybean facilities in various states. The court entered a consent decree on June 30, 2000. The U.S. Department of Agriculture, the Commodities Futures Trading Commission, and several state attorneys general assisted in the Division's investigation.

In *United States v. Allied Waste Industries, Inc., and Browning-Ferris Industries, Inc.,*[37] the Division challenged the $9.4 billion acquisition of Browning-Ferris Industries (BFI)

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[35] United States and State of Texas v. Aetna Inc. and The Prudential Insurance Company of America, C.V. No. 3-99CV1398 (N.D. TX filed 6/21/99).

[36] United States v. Cargill, Incorporated and Continental Grain Company, C.V. No. 1:99CV01875 (D.D.C. filed 7/8/99).

[37] United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc., C.V. No. 1:99CV01962 (D.D.C. filed 7/20/99).

by Allied Waste Industries. The complaint alleged that the merger would have substantially lessened competition for waste collection and disposal services in 18 markets. A proposed consent decree that settled the case was filed simultaneously. The decree requires divestiture of waste collection and disposal operations in 13 states, covering 18 metropolitan areas: Akron/Canton, Ohio; Atlanta, Georgia; Boston, Massachusetts; Charlotte, North Carolina; Chicago, Moline, Rock Falls, Dixon and Rockford, Illinois; Dallas, Texas; Davenport, Iowa; Denver, Colorado; Detroit, Michigan; Evansville, Indiana; Joplin, Lamar and Springfield, Missouri; Kalamazoo and Battle Creek, Michigan; Oakland, California; and Oklahoma City, Oklahoma. The court entered the consent decree on May 19, 2000.

During fiscal year 1999, the Division investigated seven bank merger transactions for which divestiture was required prior to or concurrently with the acquisition and one other in which conditions were imposed. A "not significantly adverse" letter conditioned upon a letter agreement between the parties and the Division was sent to the appropriate bank regulatory agency in all instances.[38] In one other bank merger transaction, the Division concluded that the merger would have a significantly adverse effect and the parties withdrew their application.[39]

Additionally, the Division in two instances moved to have parties held in contempt for violating final judgments in merger cases. On July 27, 1999, in *United States v. Smith International, Inc. and Schlumberger, Ltd.* (D.D.C.), the Division petitioned the Court to find Smith International and Schlumberger in criminal and civil contempt in violation of a 1994 final judgment, which prevented Smith from selling the divested drilling fluid business to, or combining that business with, the drilling fluid operations of certain companies, including Schlumberger. On December 23, 1993, the Division had filed suit challenging the merger of Dresser Industries, Inc. and Baroid Corporation. At that time, M-I Drilling Fluids, a company

[38] October 9, 1998 letter to the Board of Governors regarding the application by U. S. Bancorp ("USBC"), Minneapolis, Minnesota to acquire 86.83 percent of Northwest Bankshares, Inc., Vancouver, WA; October 13, 1998 letter to the Board of Governors regarding the application by Norwest Corporation, Minneapolis, Minnesota to acquire Wells Fargo & Company, San Francisco, California; November 20, 1998 letter to the Board of Governors regarding the application by City Holding Company, Charleston, West Virginia to acquire Horizon Bancorp, Inc., Beckley, West Virginia; May 11, 1999 letter to the Board of Governors regarding the application by Chittenden Corporation, Burlington, Vermont, to acquire Vermont Financial Services ("VFS") Corporation, Brattleboro, Vermont, and May 12, 1999 letter to the Boston Regional Director, Federal Deposit Insurance Corporation, regarding the application by The Bank of Western Massachusetts, Springfield, Massachusetts, a subsidiary of Chittenden, to acquire United Bank, Conway, Massachusetts, a subsidiary of VFS; June 24, 1999 letter to the Office of the Comptroller of the Currency regarding the application by National Bank of Commerce, Starkville, Mississippi to acquire First Federal Bank for Savings, Columbus, Mississippi; August 13, 1999 letter to the Board of Governors regarding the application by Firstar Corporation, Chicago, Illinois, to acquire Mercantile Bancorporation, St. Louis, Missouri; September 2, 1999 letter to the Board of Governors regarding the application by Fleet Financial Group, Boston, Massachusetts, to acquire BankBoston Corporation; September 17, 1999 letter to the Board of Governors regarding the application by AmSouth Corporation, Birmingham, Alabama, to acquire First American Corporation, Nashville, Tennessee.

[39] September 15, 1999 letter to the Federal Reserve Board regarding the application by Central Savings Bank, Sault Ste. Marie, Michigan, to acquire four branches of The Huntington National Bank, Columbus, Ohio.

in which Dresser had a 64 percent interest, and Baroid were the two largest producers of drilling fluids in the United States. The final judgment required Dresser to sell either its interest in M-I or Baroid's drilling fluids subsidiary. To comply with the court's order, Dresser sold its M-I interest to Smith, and Smith agreed to be bound by the final judgment. The contempt petitions alleged, and the court ruled, that despite the clear language of the consent decree prohibiting it, Smith and Schlumberger formed a joint venture. The court found that Smith's actions were in willful violation of the final judgment and that Schlumberger willfully acted in concert with Smith. On December 9, 1999, the court found the defendants in criminal contempt and ordered them to pay $1.5 million in criminal fines ($750,000 each). The companies also agreed to pay $13.1 million to settle the civil contempt case. The civil settlement represented a full disgorgement of the joint venture's profits during the time the companies were in contempt. This marks the first time that a full disgorgement of profits has been obtained by the Department in an antitrust contempt action and is the first criminal antitrust merger contempt case in more than 15 years.

On April 13, 1999, in *United States v. Interstate Bakeries Corporation and Continental Baking Company* (N. D. IL), the Division petitioned the Court to find Interstate Bakeries Corporation (IBC) in civil contempt for violating a 1996 final judgment. Pursuant to that final judgment, settling the Division's challenge of the merger between IBC and Continental Bakeries Company, IBC licensed its Weber's label to Four-S Baking Company for production and sale of Weber's brand bread in the Southern California area. On March 29, 1999, Four-S was purchased by Bimbo Bakeries USA, Inc. The final judgment required IBC to grant "a *perpetual*, royalty-free, *assignable, transferable*, exclusive license" to use the Weber's label. Despite the clear language of the court's order, IBC had demanded that Four-S return the formulas and production processes for the baking of Weber's bread. In addition, IBC had threatened to sue Four-S and its new owner if they continued to use the assets that were ordered divested by the court. After the Division petitioned the court to find IBC in contempt, IBC agreed to transfer the know-how in question and the Division withdrew its petition.

Also, during FY 1999, consent decrees were entered in two merger cases previously filed by the *Division*. [40]

[40] On September 20, 1999, the district court entered the consent decree in United States and States of Ohio, Arizona, California, Colorado, Florida, Commonwealth of Kentucky, States of Maryland, Michigan, New York, Commonwealth of Pennsylvania, States of Texas, Washington and Wisconsin v. U.S.A. Waste Services, Inc., Dome Merger Subsidiary and Waste Management, Inc. (N.D. Ohio filed 7/16/98); and on February 22, 1999, the district court entered the consent decree in United States v. Halliburton Company and Dresser Industries, Inc. (D.D.C. filed 9/29/98). See the FY 1998 Annual Report for a description of these cases.

2. Federal Trade Commission

The Commission challenged 30 transactions that it concluded would lessen competition if allowed to proceed as proposed during fiscal year 1999, leading to 18 consent agreements for public comment and 12 filings withdrawn. Of the 18 consent agreements, a complaint, decision and order were issued in 13 of those matters in FY 1999, with four of the consent agreements becoming final in FY2000. One consent agreement has been accepted for public comment but is not yet final.

In *Koninklijke Ahold nv/Giant Food Inc.*,[41] the complaint alleged that the proposed acquisition by Koninklijke Ahold of Giant Food Inc., would lessen competition, raise prices or reduce quality and selection at supermarkets in eight communities in Maryland and Pennsylvania. According to the complaint, Ahold and Giant are direct competitors in and near Bel Air, Eldersburg, Frederick, and Westminster, Maryland, and Norristown, Warminster, Hilltown and Yardley, Pennsylvania. Under the order, Ahold was required to divest 10 supermarkets in the affected markets. Ahold agreed to divest the supermarkets to five different upfront buyers.

In *LaFarge Corp./Holnam, Inc.*,[42] the complaint alleged that the proposed acquisition by LaFarge Corporation of Holnam, Inc.'s Seattle cement plant and related assets in the state of Washington would substantially lessen competition in the Puget Sound cement market. According to the complaint, LaFarge and Holnam are two of five competitors in the Portland cement market in the Puget Sound area. A provision of the sales agreement between LaFarge and Holnam would have imposed a penalty on LaFarge if it produced quantities of cement in excess of 85 percent of the Holnam plant's capacity, thus allegedly encouraging LaFarge to restrict the output of cement at the Seattle plant to avoid the production penalty and preventing an increase in supply and a reduction in price for cement in the Puget Sound area. Under the order, the parties were required to restructure their agreement to drop the production penalty clause. In addition, they agreed not to enter into any agreement relating to the purchase of Holnam's Seattle cement plant and related assets where payment will be effected by, or dependent on, the quantity of cement produced or sold at the Seattle cement plant.

In *The British Petroleum Co. p.l.c./Amoco Corp.*,[43] the complaint alleged that the proposed $48.2 billion merger between British Petroleum and Amoco Corporation would lessen competition in the wholesale market for gasoline in 30 cities or metropolitan areas in the eastern United States and in the terminaling of gasoline and other light petroleum products in nine specified geographic markets. The order required British Petroleum and Amoco to divest

[41] Koninklijke Ahold nv/Giant Food, Inc., Docket No. C-3861 (issued April 5, 1999).

[42] LaFarge Corporation/Holnam, Inc., Docket No. C-3852 (issued February 12, 1999).

[43] The British Petroleum Company p.l.c., Docket No. C-3868 (issued April 19, 1999).

134 gasoline stations in eight markets in which the companies' ownership overlaps. Amoco was required to divest its retail gasoline stations in Tallahassee, Florida and Pittsburgh, Pennsylvania. British Petroleum was required to divest its stations in Charleston, and Columbia, South Carolina; Charlotte, North Carolina; Jackson and Memphis, Tennessee; and Savannah, Georgia. The order also required the divestiture of nine petroleum products terminals to an acquirer approved by the Commission.

In *ABB/Elsag Bailey Process Automation N.V.*,[44] the complaint alleged that ABB's proposed $1.1 billion acquisition of Elsag Bailey Process Automation N.V., would substantially increase concentration in the process gas chromatography market. According to the complaint, the proposed acquisition would combine the two leading firms marketing process gas chromatographs worldwide. By eliminating competition between the top two competitors in this highly concentrated market, the proposed acquisition would allow ABB to unilaterally exercise market power, thereby increasing the likelihood that process gas chromatography customers would be forced to pay higher prices and innovation in the market would decrease. Under the order, ABB was required to divest the Analytical Division of Elsag's Applied Automation, Inc. subsidiary, which is involved in the manufacture and sale of process gas chromatographs and the research and development of a process mass spectrometer, to a Commission-approved buyer.

In *Service Corp. International/Equity Corp. International*,[45] the complaint alleged that Service Corporation International's proposed acquisition of Equity Corporation International would substantially lessen competition among funeral home or cemetery establishments in 14 local markets: Phoenix City, Alabama/Columbus, Georgia; Evansville, Indiana; Jacksonville Beach, Florida; Roseville, California; Ruskin/Sun City, Florida; West Pasco County and Tarpon Springs, Florida. According to the complaint, the acquisition would eliminate substantial existing competition between Service Corporation International and Equity Corporation International and lead to higher prices or reduced services to consumers. Under the order, Service Corporation International was permitted to acquire Equity Corporation International, but was required to divest significant funeral service and cemetery properties to Carriage Services, Inc., in each of the 14 local markets.

In *Medtronic, Inc./Avecor Cardiovascular, Inc.*,[46] the complaint alleged that the proposed acquisition by Medtronic, Inc. of Avecor Cardiovascular, Inc., would lessen competition for the research, development, manufacture and sale of non-occlusive arterial pumps in the United States. Under the order, Medtronic was required to divest Avecor's non-occlusive arterial pump assets to Baxter Healthcare Corporation, a major producer of medical devices used in cardiac surgery and a major provider of perfusion services.

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[44] ABB/Elsag Bailey Process Automation N.V, Docket No. C-3867 (issued April 14, 1999).

[45] Service Corp. Int'l/Equity Corp, Docket No. C-3869 (issued April 22, 1999).

[46] Medtronic, Inc./Avecor Cardiovascular, Docket No. C-3879 (issued June 3, 1999).

In *Zeneca Group PLC/Astra AB*,[47] the complaint alleged that Zeneca Group PLC's proposed $30.5 billion acquisition of Astra AB would lessen competition in the U.S. market for long-acting local anesthetics. According to the complaint, the proposed merger was likely to lead to anticompetitive effects by eliminating Zeneca as the only source of new competition in the long-acting local anesthetics market. Under the order, Zeneca was required to transfer and surrender all of its rights and assets relating to levobupivacaine to Chiroscience Group plc, the developer of levobupivacaine. The order also required that Zeneca divest its approximately three percent investment interest in Chiroscience.

In *CMS Energy Corp./Panhandle Eastern Pipeline/Trunkline Pipeline*,[48] the complaint alleged that the proposed $1.9 billion acquisition by CMS Energy Corporation of Panhandle Eastern Pipeline and Trunkline Pipeline from Duke Energy Company would lessen competition and drive up consumer prices for natural gas and electricity in several counties in Michigan. According to the complaint, Consumers Energy, a subsidiary of CMS, provides natural gas to residential and industrial consumers in 54 counties in the lower peninsula of Michigan. It also owns and operates the only intra-state natural gas transmission system through which consumers can buy natural gas from other suppliers, including the two pipelines CMS filed to acquire. After the acquisition, CMS allegedly would have an incentive to restrict the other pipelines' access to the Consumer Energy system to support increases on Panhandle and Trunkline, which would increase the price of natural gas and electricity for consumers and industrial users. The order prevented CMS from restricting or eliminating interconnection capacity available to the pipelines that compete with Panhandle and Trunkline. It also required that CMS give shippers the choice of two options if the interconnection capacity with competing pipelines falls below historical levels.

In *Rohm & Haas Co./Morton International, Inc.*,[49] the complaint alleged that Rohm & Haas Company's proposed $4.5 billion acquisition of Morton International, Inc., would lessen competition in the North American market for the production and sale of acrylic water-based polymers for use in the formation of floor care products. According to the complaint, the water-based floor care polymers market in North America is highly concentrated, with Rohm & Haas and Morton each controlling a significant share of the market. Under the order, Rohm & Haas was required to divest Morton's worldwide water-based floor care polymers business to GenCorp, Inc., which produces water-based polymers in the graphics arts industry, a technology and production area closely related to water-based floor care polymers.

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[47] Zeneca Group PLC/Astra AB, Docket No. C-3880 (issued June 7, 1999).

[48] CMS Energy Corp., Docket No. C-3877 (issued June 2, 1999).

[49] Rohm & Haas Company/Morton International, Inc., Docket No. C-3883 (issued July 13, 1999).

In *Quexco Inc./Pacific Dunlop*,[50] the complaint alleged that the proposed acquisition by Quexco Inc., of Pacific Dunlop GNB Corporation from Pacific Dunlop Limited, would lessen competition and increase prices in the market for lead smelting, refining and recycling services in California. According to the complaint, Quexco and GNB are the only two lead smelter operators and lead recyclers in California. Because of lead's toxicity and the difficulty in obtaining permits to operate a smelter operation, new entry into the California market allegedly would not be timely, likely or sufficient to deter Quexco from exercising market power. The order required Quexco to divest GNB's secondary smelter to Gopher Resources, Inc., or to another Commission-approved buyer. The transaction was abandoned and the consent order was subsequently withdrawn.

In *SNIA S.p.A/COBE Cardiovascular, Inc.*,[51] the complaint alleged that the proposed $260 million acquisition by SNIA S.p.A. of COBE Cardiovascular, Inc., and other assets from Gambro AB would lessen competition in the market for the research, development, manufacture and sale of heart-lung machines. According to the complaint, there are only four suppliers of heart-lung machines in the United States, with COBE and SNIA being the largest and third largest suppliers. Moreover, because of the time required to design and develop a new machine, gain customer acceptance, obtain US Food and Drug Administration approval, and develop a nationwide sales and service market, no new entry into the market is alleged to be likely in the foreseeable future. Under the order, SNIA was required to divest COBE's heart-lung machine business to Baxter Healthcare Corporation.

In *Provident Co., Inc./UNUM Corp.*,[52] the complaint alleged that the proposed $6.7 billion merger of Provident Companies, Inc., and UNUM Corporation would lessen competition in the market for disability insurance sold to individuals by eliminating direct competition between the companies and by increasing the likelihood of collusion in the relevant market, and would lessen the incentive for the combined firm to continue to submit data to independent entities that disseminate industry-wide actuarial information. According to the complaint, Provident and UNUM are two of the leading providers of disability insurance sold to individuals, and the merger of UNUM and Provident will control a large percentage of all industry data used to make actuarial predictions on probable future claims in order to select risks and price policies. The order required that the companies continue to submit individual disability insurance data to an independent entity responsible for aggregating and disseminating industry-wide actuarial information.

In *Kroger Co./Fred Meyer Stores, Inc.*,[53] the complaint alleged that the proposed $12.5 billion acquisition by Kroger Co., of Fred Myer Stores, Inc., would lessen supermarket

[50] Quexco Inc./Pacific Dunlop (consent order withdrawn and the transaction abandoned on July 14, 1999).

[51] SNIA S.p.A./COBE Cardiovascular, Docket No. C-3889 (issued July 28, 1999).

[52] UNUM Corp./Provident Companies, Docket No. C-3894 (issued September 3, 1999).

[53] Kroger Co./Fred Meyer Stores, Inc., C-3917 (issued November 8, 1999).

competition in Arizona, Wyoming, and Utah and could result in higher prices or reduced quality and selection for consumers. According to the complaint, Kroger and Fred Meyer compete against each other in and near Prescott, Sierra Vista, and Yuma, Arizona; Green River and Rock Springs, Wyoming; and Price, Utah. In Cheyenne, Wyoming, the complaint alleges that Kroger is an actual potential competitor against Fred Meyer. Under the order, Kroger and Fred Meyer were required to divest eight supermarkets in the seven communities.

In *Albertson's Inc./American Stores Co.*,[54] the complaint alleged that the proposed acquisition by Albertson's Inc., of American Stores Company would substantially lessen supermarket competition in California, Nevada and New Mexico resulting in higher prices and reduced services for consumers. According to the complaint, Albertson's is the nation's fourth largest supermarket chain and American Stores is the second largest supermarket chain in the US. Under the order, the companies were required to sell 104 Albertson's supermarkets, 40 American Stores' supermarkets, three Albertson's sites, and two American Stores' sites in 57 local markets in the three states.

In *Shaw's Supermarkets, Inc./Star Markets, Inc.*,[55] the complaint alleged that the proposed acquisition by Shaw's Supermarkets, Inc., of Star Markets, Inc., would substantially lessen supermarket competition in the Greater Boston metropolitan area and could result in higher prices or reduced quality and selection for consumers. According to the complaint, Shaw's and Star are direct competitors and compete against each other in and near the areas of Waltham, Quincy-Dorchester, Norwood, Milford, Salem-Lynn, Norwell, Hudson-Stow, and Saugus-Melrose-Stoneham. The order permitted the acquisition, but required Shaw's to divest 10 supermarkets in eight communities.

In *Kroger Co./John C. Groub Co.*,[56] the complaint alleged that the proposed acquisition by Kroger Co., of John C. Groub would substantially lessen supermarket competition in Indiana and could result in higher prices or reduced quality and selection for consumers. According to the complaint, two Kroger supermarkets directly compete with four Groub stores in Columbus and Madison, Indiana. In these markets, the acquisition allegedly would increase concentration, and, as a result, decrease competition. Under the order, Kroger and Groub were required to divest three supermarkets in Columbus and Madison, Indiana, to Roundy's, Inc., one of the largest food wholesalers in the US and an operator of company-owned supermarkets.

In *Associated Octel Co. Limited/Oboadler Co. Limited*,[57] the complaint alleged that the proposed acquisition by Associated Octel Company Limited of Oboadler Company Limited

[54] Albertson's/American Stores, File No. 981 0339 (accepted for comment June 21, 1999).

[55] Shaw's Supermarkets, Inc./Star Markets, Inc., Docket No. C-3934 (issued April 7, 2000).

[56] Kroger Co./John C. Groub Company, Docket No.C- 3905 (issued November 8, 1999).

[57] Associated Octel/Oboadler Company, Docket No. C-3913 (issued December 22, 1999).

could lessen competition and raise the price of lead antiknock compounds. According to the complaint, the market for the manufacture and sale of lead antiknock compounds is highly concentrated, and Octel and Oboadler are two of only three firms in the world that manufacture them. Under the order, Octel was required to enter a long-term supply agreement with Allchem Industries Inc. ("Allchem"), Oboadler's US distributor, to provide Allchem's requirements for lead antiknock compounds for resale in the US. Octel was required to supply the product to Allchem for 15 years.

In *Ceridian Corp./NTS Corporation/Trendar Corp.*,[58] the complaint alleged that Ceridian Corporation's acquisitions of NTS Corporation and Trendar Corporation gave Comdata Holdings Corporation, a Ceridian subsidiary, the power to control entry into, and expansion by existing providers in, both the market to provide trucking fleet cards and the systems used to read them at truck stops throughout the United States. According to the complaint, at the time that they were acquired, NTS was Comdata's most significant competitor in the fleet card market and Trendar owned the dominant point-of-sale system by which truck stops accept fleet card transactions. With a dominant market share in both markets, Comdata allegedly would be able to control whether new firms can enter and succeed in either the fuel purchase desk automation system business or the trucking fleet card business. Similarly, because Comdata controls the dominant means by which fleet cards are processed, a new firm seeking to provide fleet card services allegedly would have to gain access to the Trendar system in order to be successful. To prevent Comdata from using its dominant position to limit existing and new competition for trucking fleet cards and fuel desk automation systems under the order, the order required Ceridian to grant licenses to other providers of these systems to process transactions using its fleet cards and also grant licenses to other fleet card issuers that want to process their cards through the company's Trendar system.

[58] Ceridian Corp./NTS/Trendar, Docket No. C-3944 (issued April 6, 2000).

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

The Commission continually reviews the impact of the premerger notification program on the business community and antitrust enforcement. Although a complete assessment is not possible in this limited report, a few observations can be made.

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

Although highly effective, the HSR program has periodically prompted expressions of concern from the business and legal communities that the program maybe overreaching, that the reporting thresholds may be too low, or that the process may cause delay. Cognizant of these concerns, the enforcement agencies continue to seek ways to speed up the review process and reduce burdens for companies. The agencies are continuing their ongoing review of the HSR program in order to make it as minimally burdensome as possible without compromising the prompt and effective relief intended to result from the HSR program.

List of Appendices

List of Exhibits

Appendix A

Summary of Transactions

Fiscal Years 1990 - 1999

Appendix B

Number of Transactions Reported

And

Filings Received by Month

for

Fiscal Years 1990 - 1999

Exhibit A

Statistical Tables

for

Fiscal Year 1999

Data Profiling Hart-Scott-Rodino Premerger

Notification Filings and Enforcement Interest