

INTRODUCTION

Fiscal year 2001 marked both the 25th anniversary of passage of the Hart-Scott-Rodino Antitrust Improvements Act of 1976¹ (“the HSR Act” or “the Act”) and the enactment and the implementation of the most extensive HSR reform legislation since passage of the Act in 1976.² Largely as a result of the statutory changes, most notably the increase in the reporting thresholds, the number of reportable transactions decreased dramatically. (See Figure 1 below.) Although fewer transactions are now subject to the HSR Act requirements, the agencies continue to review the largest mergers in history. In fiscal year 2001, 2,376 HSR transactions were reported, representing about a 52 percent decrease from the record high number of transactions reported in fiscal year 2000, but yet a nearly 50 percent increase from the 1,589 transactions reported in fiscal year 1992.³

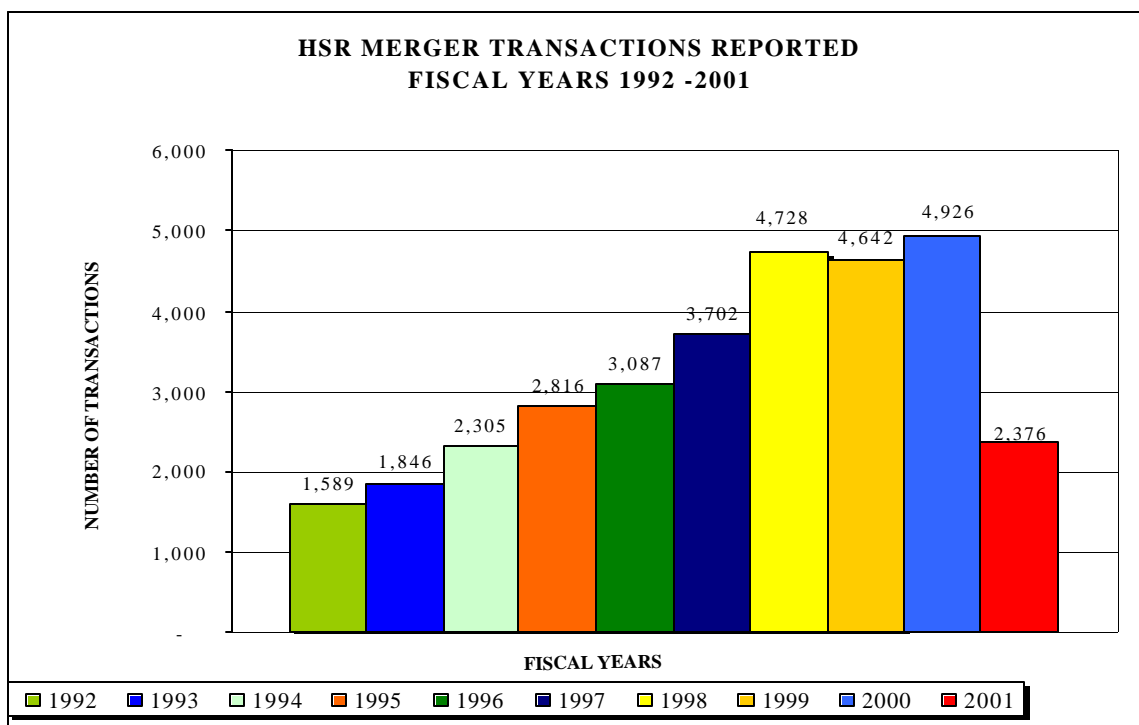


Figure 1

¹ 15 U.S.C. § 18a.

² Section 630 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 2001, Pub. L. No. 106-553, 114 Stat. 2762. The legislation raised the size-of-transaction threshold from \$15 million to \$50 million and made other changes to the filing and waiting period requirements. See *infra* at p. 7.

³ See Appendix A.

The HSR Act, together with Section 13(b) of the Federal Trade Commission Act 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 notification program was instrumental in detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 2001 to protect consumers -- individuals, businesses, and government -- against anticompetitive mergers. During the year, the Commission challenged 23 transactions, leading to 18 consent orders, 4 abandoned transactions, and 1 preliminary injunction proceeding that was filed in district court. Most notably, the Commission challenged the proposed merger of Philip Morris Companies and Nabisco Holdings Corporation,⁴ which would have created the world’s largest food company and would have further reduced competition in five highly concentrated markets. The Commission also challenged the proposed merger of two of the world’s largest integrated oil companies, Chevron Corporation and Texaco Inc.,⁵ which would have eliminated direct competition in numerous relevant markets and increased gasoline and fuel prices for consumers. The Antitrust Division challenged 32 merger transactions resulting in 8 consent decrees, including The Thomson Corporation’s acquisition of certain Harcourt General, Inc. assets that would have reduced competition for textbooks in 38 college courses,⁶ and 24 transactions that were either restructured or abandoned after the Division informed the parties that it intended to sue, such as United Airlines’ proposed acquisition of US Airways, which the Division concluded would have reduced competition, raised fares, and harmed consumers on airline routes throughout the United States.⁷

Not only did the number of merger filings decrease under implementation of the HSR Reform legislation four months after the beginning of the fiscal year, the number of transactions resulting in requests for additional information from merging parties (“second requests”) declined. However, the percentage of such transactions increased while the percentage and number of early termination requests granted declined.⁸

In fiscal year 2001, the Commission’s Premerger Notification Office (“PNO”) continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and

⁴ See *infra* p. 21.

⁵ See *infra* p. 27.

⁶ See *infra* p. 17.

⁷ See www.usdoj.gov/atr/public/press_releases/2001/8701.htm.

⁸ See Appendix A.

Report Form (“the filing form”). The HSR website⁹ continued to provide improved access to information necessary to the notification process. The website includes such information as the premerger notification filing form and instructions, the historic HSR Statement of Basis and Purpose, the PNO Sourcebook, the premerger notification rules, formal interpretations of the rules, grants of early termination, filing fee instructions, HSR events, procedures for submitting post-consummation filings, tips for completing the filing form, frequently asked questions regarding the HSR filing requirements, and other useful information. In fiscal year 2001, the website was the paramount source of information for HSR practitioners seeking information on the significant changes that took place during the fiscal year concerning HSR reform, adoption of the North American Industry Classification System (“NAICS”), and revisions to the filing form and rules.

BACKGROUND OF THE HSR ACT

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. §18a. 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 any rule promulgated pursuant thereto, and any recommendations for revisions of this section.

This is the twenty-fourth annual report to Congress pursuant to this provision. It covers fiscal year 2001 -- October 1, 2000 through September 30, 2001.

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

The primary purpose of the statutory scheme, as the legislative history makes clear, is to provide the antitrust enforcement agencies with the opportunity to review mergers and acquisitions before they occur. The premerger notification program, with its filing and waiting period

⁹ See www.ftc.gov/bc/hsr/

requirements, provides the agencies with both the time and the information necessary to conduct this antitrust review. Much of the information for a preliminary antitrust evaluation is included in the notification filed with the agencies by the parties to the proposed transactions and is immediately available for review during the waiting period.

However, 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 issue a second request. The second request extends the waiting period for a specified period¹⁰ after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may substantially lessen competition, it may seek an injunction in federal district court to prohibit consummation of the transaction.

The Commission with the concurrence of the Assistant Attorney General promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form. The program became effective on September 5, 1978. During the almost 24 years that the rules have been in effect, the Commission, with the concurrence of the Assistant Attorney General, has amended the rules and the filing form on several occasions to improve the program's effectiveness and to lessen the burden of complying with the rules.¹¹

A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported,¹² the number of filings received, the number of merger investigations in which second

¹⁰ Under the statutory changes cited in footnote 2, this waiting period extension was increased to 30 days for most transactions. The 10-day waiting period extension for cash tender offers and bankruptcies remains the same.

¹¹ 43 Fed. Reg. 3443 (August 4, 1978); 43 Fed. Reg. 36053 (August 15, 1978); 44 Fed. Reg. (November 21, 1979); 45 Fed. Reg. 14205 (March 5, 1980); 48 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (November 12, 1985); 51 Fed. Reg. 10368 (March 26, 1986); 52 Fed. Reg. 7066 (March 6, 1987); 52 Fed. Reg. 20058 (May 29, 1987); 54 Fed. Reg. 214251 (May 18, 1989); 55 Fed. Reg. 31371 (August 2, 1990); 60 Fed. Reg. 40704 (August 9, 1995); 61 Fed. Reg. 13666 (March 28, 1996); 63 Fed. Reg. 34592 (June 25, 1998); 66 Fed. Reg. 8680 (February 1, 2001); 66 Fed. Reg. 8723 (February 1, 2001); 66 Fed. Reg. 16241 (March 23, 2001); 66 Fed. Reg. 23561 (May 9, 2001); 66 Fed. Reg. 35531 (July 6, 2001); 67 Fed. Reg. 11898 (March 18, 2002).

¹² 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

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 1992 through 2001 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 1992 through 2001.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2001 decreased approximately 52 percent from the number of transactions reported in fiscal year 2000. In fiscal year 2001, 2,376 transactions were reported, while 4,926 were reported in fiscal year 2000. The statistics in Appendix A show that the number of merger investigations in which second requests were issued in fiscal year 2001 decreased approximately 28.6 percent from the number of merger investigations in which second request were issued in fiscal year 2000. Second requests were issued in 70 merger investigations in fiscal year 2001, while second requests were issued in 98 merger investigations in fiscal year 2000. (See figure 2 below regarding 10-year trend in issuance of Second Requests.)

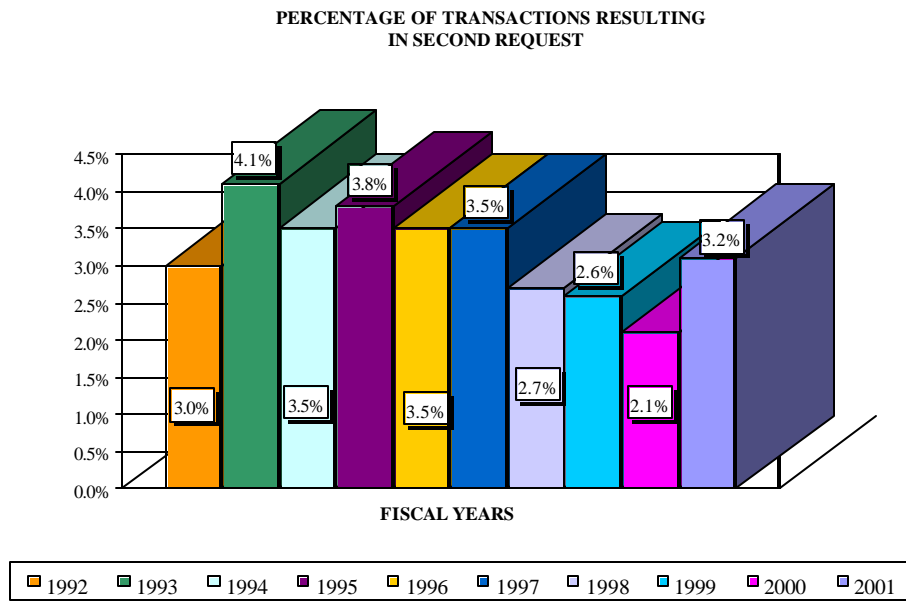


Figure 2

from the issuer, or options to acquire voting securities from someone other than the issuer, may result in multiple acquiring or acquired persons that necessitate separate HSR transaction numbers to track the filing parties and waiting periods.

The statistics in Appendix A also show that in recent years, early termination was requested in the majority of transactions. In fiscal year 2001, early termination was requested in 86.8 percent (2,063) of the transactions reported while in fiscal year 2000 it was requested in 87.8 (4,324) percent of the transactions reported. The percentage of requests granted out of the total requested decreased from 81.3 percent in fiscal year 2000 to 77.7 percent in fiscal year 2001.

Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement interest in transactions reported in fiscal year 2001. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued. Table III of Exhibit A shows that, in fiscal year 2001, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 11.4 percent of the total number of transactions in which a second request could have been issued.

The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. The total dollar value of reported transactions rose dramatically from fiscal years 1992 to 2000 from about \$222 million to about \$3 trillion. During fiscal year 2001, however, the dollar value of reported transactions fell to about \$1 trillion.

Tables X and XI provide the number of transactions in each industry group in which the acquiring person or the acquired entity derived revenue. For the sake of clarity, the industry groups are listed by both the 2-digit Standard Industrial Classification code ("SIC") and the corresponding 3 digit-NAICS code.¹³ Figure 3 illustrates the percentage of reportable transactions within industry groups for FY 2001 based on the acquired entity's operations.

¹³ See *infra* p. 12.

**PERCENTAGE OF TRANSACTIONS BY
INDUSTRY GROUP OF ACQUIRED ENTITY
FISCAL YEAR 2001**

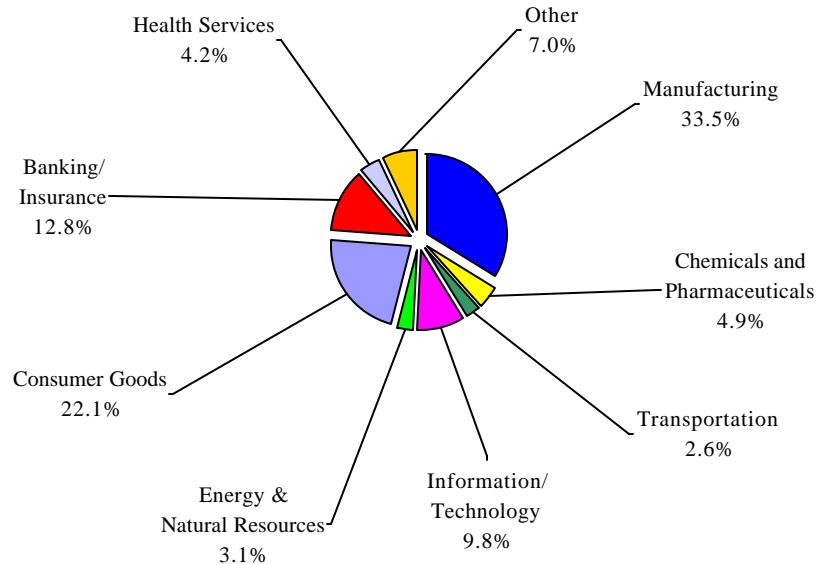


Figure 3

DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. HSR Reform Legislation

On December 21, 2000, the President signed into law certain amendments to the HSR Act that became effective February 1, 2001.¹⁴ The principal statutory changes include an increase in the size-of-transaction threshold, the elimination of a size-of-person test for larger transactions, the implementation of a new tiered fee structure, and certain changes with regard to waiting periods. These changes are summarized below.

The size-of-transaction threshold was increased from greater than \$15 million to greater than \$50 million, and the 15 percent size-of-transaction threshold was eliminated, thus making \$50 million an absolute floor. No transaction resulting in an acquiring person holding \$50 million or less of assets

¹⁴ See *supra* note 2.

or voting securities of an acquired person is reportable. Adjustment to the size-of-transaction threshold will be made each fiscal year, beginning in fiscal year 2005, to reflect the percentage change in the gross national product (“GNP”) for the previous year.

Transactions valued in excess of \$200 million are now reportable without regard to the size of the acquiring and acquired persons. The size-of-person test was not otherwise changed and remains in place for transactions greater than \$50 million and less than \$200 million.

A new three-tiered fee structure was implemented, replacing the uniform \$45,000 filing fee. The fee is now based on the aggregate total value of the voting securities and assets held as a result of the acquisition. Acquiring persons are required to pay \$45,000 for transactions valued at less than \$100 million, \$125,000 for transactions valued at \$100 million but less than \$500 million, and \$280,000 for transactions valued at \$500 million or more. The filing fee tiers will be adjusted annually, beginning in fiscal year 2005, to reflect the percentage change in the GNP for the previous fiscal year. (The filing fees are not adjusted).

The waiting period that follows compliance with a request for additional information or documentary material was extended from 20 days to 30 days for most transactions. The 10-day post-compliance period for cash tender offers and bankruptcy transactions is unchanged. The end of any waiting period that falls on a Saturday, Sunday or legal public holiday now expires on the next regular business day.

Additionally, the legislation required the Commission and the Antitrust Division to designate a senior official, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue, to resolve any disputes related to requests for additional information. The Agencies were to “conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process,” and report to Congress on its findings and any implemented reforms. These reforms are discussed further in Section 4 below.

2. *Amendments to the Rules as a Result of HSR Reform*

In order to incorporate these statutory changes into the Premerger Notification Program, the Commission, with the concurrence of the Assistant Attorney General for Antitrust, implemented a number of significant changes to its premerger notification rules. The Commission also took this opportunity to make several relatively minor, but welcomed, improvements to the rules and the filing form. All of these changes were published as Interim Rules in the Federal Register on February 1,

2001,¹⁵ with a solicitation for public comments. The principal Interim rules changes are summarized below.

Notification Thresholds

Section 801.1(h), as originally promulgated in 1978,¹⁶ contained four notification thresholds, which were greater than \$15 million, 15 percent of the outstanding voting securities of an issuer, 25 percent, and 50 percent. Enactment of the HSR reform legislation required making amendments to these thresholds. In particular, the elimination of the 15 percent size-of-transaction test, the increase in the monetary size-of-transaction test to greater than \$50 million, and the introduction of a three-tiered filing fee structure all affected this provision. The lowest notification threshold was raised, and the intermediate notification thresholds were amended to mirror the fee thresholds Congress created, while retaining two percentage thresholds that are important for the notification of acquisitions of voting securities. The thresholds are now: greater than \$50 million, \$100 million, \$500 million, 25 percent of the outstanding voting securities of an issuer if valued in excess of \$1 billion, and 50 percent of the outstanding voting securities of an issuer, if valued in excess of \$50 million. These thresholds have not been made final.

Filing Fee

An entirely new section of the rules was written to provide for the appropriate payment of filing fees under the new-tiered-fee structure. The new rule, Section 803.9, is followed by a number of examples designed to illustrate how to apply the new graduated fee schedule to various types of transactions. The rule also contains two new exemptions from the filing fee requirement, intended to prevent certain limited types of acquisitions from triggering double filing fees. These types of transactions are consolidations and acquisitions in which the acquiring entity is controlled by two ultimate parent entities with no significant business activities outside of the jointly controlled entity. Previously under the rules, these types of acquisitions required a fee from each acquiring person involved (here, two); the Commission, recognizing that in reality only one transaction is taking place in these cases, took the opportunity to ease the burden on filing persons by eliminating the anomalous second fee for these types of transactions.

Other Changes

Numerous other rules changes were necessitated by the passage of the HSR reform legislation. These include the elimination of Section 802.20 (which applied to acquisitions of 15

¹⁵ 66 Fed. Reg. 8680 (February 1, 2001).

¹⁶ 43 Fed Reg. 33450 (July 31, 1978).

percent but valued at \$15 million or less), the amendment of Section 802.21¹⁷ (which addresses acquisitions of voting securities up to the next notification threshold), and changes to the filing form. In conjunction with updating the filing form to accommodate the statutory changes to the program, the Commission made changes to aid in the processing and identification of transactions and also updated the filing form to make it more user-friendly by reorganizing it, eliminating unnecessary items and clarifying the instructions.

3. *Further Amendments to the Premerger Rules*

On February 1, 2001, the Commission, with the concurrence of the Assistant Attorney General, published an additional Federal Register notice setting forth certain proposed HSR amendments for public comment.¹⁸ These additional amendments were not necessary to implement the HSR amendments, but consisted instead of updates, corrections and other improvements to the rules, which the Commission determined were timely and appropriate. These changes, with slight modifications in response to public comments, became effective April 17, 2002.¹⁹ The amendments adopted are summarized below.

Foreign Transactions

The most noteworthy changes were those amending the foreign exemptions in Sections 802.50 and 802.51 of the rules. These rules were restructured to make them easier to follow, and were also changed in a number of substantive ways. First, the nexus with the United States that triggers a filing obligation where foreign assets or voting securities are being acquired was raised to \$50 million, essentially to mirror the new threshold for reporting of domestic acquisitions. Second, the measure of the value of U.S. assets, establishing the link to U.S. commerce, was changed from book value to fair market value, as fair market value is a more accurate reflection of an asset's potential impact on U.S. commerce. Third, the rules were amended to reflect the longstanding position of the PNO that sales or assets of multiple foreign issuers are to be aggregated where controlling interests in these issuers are being acquired. The fourth change is the extension of reportability to acquisitions of foreign assets by foreign persons. Formerly exempt across the board, these acquisitions are now subject to the same \$50 million nexus-with-the-United States test as acquisitions of foreign voting securities. Finally, the exemption for acquisitions by foreign persons who do not meet the \$110 million aggregate sales and assets test was altered to apply only where such acquisition is not valued over \$200 million (to correspond with the elimination in the HSR Act of a size-of-person test for acquisitions valued at over \$200 million).

¹⁷ This amendment became effective on March 18, 2002. 67 Fed. Reg. 11904 (March 18, 2002).

¹⁸ 66 Fed. Reg. 8723 (February 1, 2001).

¹⁹ 67 Fed. Reg. 11898 (March 18, 2002).

Other Changes

Other changes included an amendment to Section 802.2(g), which removed associated agricultural assets from the agricultural property exemption. The rule had defined associated agricultural assets as those assets that are integral to the agricultural business activities conducted on the property, such as inventory (e.g., livestock, poultry, crops, fruit, vegetables, milk, and eggs), structures that house livestock raised on the real property, and fertilizer and animal feed. These assets were removed from the exemption primarily because the general increase in the filing threshold to \$50 million already excludes acquisitions involving agricultural assets that are likely to be of little or no competitive consequence. This change also refocuses the rule on agricultural real property, which was the initial intent of the exemption when promulgated.

Section 802.6 was amended to remove the reference to the now-defunct Civil Aeronautics Board and to state a general rule regarding the reportability of mixed transactions as compared to those that are industry-specific. The amended rule defines a mixed transaction as one in which some portion that is exempt pursuant to subsection (c)(6), (c)(7), or (c)(8) of the HSR Act because that portion requires regulatory agency premerger competitive review and approval, while another portion does not require such review. While realizing that the prior version of Section 802.6 would no longer directly apply to any transactions, the agencies recognized there is value in leaving this concept in the rules because of its application to other regulated industries.

4. *Premerger Review Process Improvements*

When it published the Interim Rules, the Commission also amended its Rules of Practice²⁰ to reflect the HSR Act's requirement that, upon a petition from the recipient, a senior agency official, who does not have direct responsibility for the review of any enforcement recommendation concerning the transaction at issue, review a request for additional information to determine whether it is unreasonably cumulative, unduly burdensome, or duplicative or whether the petitioner has substantially complied with the request for additional information. To avoid undue delay of the merger review process, the procedures include reasonable deadlines for expedited review of these petitions, after reasonable negotiations with investigative staff. The Antitrust Division similarly revised its review process to comply with the HSR Act and has posted those procedures on its website.

The changes to the Act also required, within 90 days after the date of enactment, the Commission and the Antitrust Division to conduct an internal review of the merger process and implement reforms to eliminate unnecessary burden, remove costly duplication and eliminate undue delay. Within 120 days, the agencies were required to issue or amend their industry guidance,

²⁰ 66 Fed. Reg. 8721 (February 1, 2001) (codified at 16 C.F.R. § 2.20).

regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform, and within 180 days, to report to Congress on the reforms adopted and the steps taken to implement the reforms. Both agencies have conducted their internal review of the merger review process, implemented reforms as detailed in each of their reports to Congress, and amended the necessary internal and external guidance, including amending the Commission's Rules of Practice and the Division's Manual.

5. *Adoption of the North American Industrial Classification System ("NAICS")*

On July 1, 2001, the Commission updated the requirements of the filing form²¹ by requiring information in Items 5, 7 and 8 to be reported using the NAICS rather than the SIC system. The changeover also updates the base year from 1992 to 1997²² and requires that the parties report their insurance activities in the body of the filing form rather than in a separate insurance appendix.

This change follows the April 1997 Office of Management and Budget decision to require all Federal statistical agencies that collect or publish data by industry to adopt the NAICS as the industrial classification system for the United States. Subsequently, beginning with its 1997 Economic Census, the Department of Commerce began using NAICS codes to classify U.S. economic activities.²³ Although not directly required to do so, the Commission determined that requiring filing persons to report revenue data using the NAICS will further the policy of objectives of the HSR notification program.

The NAICS has several characteristics that will contribute to a more meaningful antitrust analysis. First, the NAICS was designed to describe the U.S. economy more accurately than the SIC system. With nine new service industry sectors and 358 new industries, the NAICS should provide more precise information in making a preliminary identification of competitive overlaps. Second, the Commission has traditionally relied upon the most current economic data to analyze the potential anticompetitive effects of proposed transactions.²⁴ The *1997 Economic Census* and the *1997 Numerical List of Manufactured Products* published by the Bureau of Census contain such data and use the NAICS. Third, the NAICS is erected on a production-oriented, or supply-based, conceptual framework to ensure the internal consistency of its industry classifications. This

²¹ 66 Fed. Reg. 23561 (Interim Notice, May 9, 2001); and 66 FR 35541 (Final Notice, July 6, 2001).

²² The change in the base year will continue to occur every five years.

²³ 62 Fed. Reg. 17287 (April 9, 1997).

²⁴ Periodically, the Commission has adjusted the base year when the Bureau of Census published a new "Economic Census." See 45 Fed. Reg. 14205 (March 5, 1980); 51 Fed. Reg. 10368 (March 26, 1986); 55 Fed. Reg. 31371 (August 2, 1990); and 60 Fed. Reg. 40704 (August 9, 1995).

organizational concept will be useful to the Commission and the Assistant Attorney General when they evaluate entry and industry overlap issues as part of the antitrust analysis of proposed transactions. Incorporating the NAICS into the filing form and the instructions will ensure that filing persons provide revenues in a format that can be compared to the most recent and complete economic data published by the Bureau of the Census.²⁵

6. *Compliance*

The Commission and the Department of Justice 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 2001. 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, as well as interested members of the public, 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 requirements is liable for a civil penalty of up to \$11,000 for each day the violation continues.²⁶

In *United States v. Computer Associates International, Inc. and Platinum Technology International, Inc.*,²⁷ the complaint alleged that Computer Associates obtained premature operational control of Platinum and agreed with Platinum to limit the price discounts and other terms it offered its customers during the mandatory premerger waiting period, thus violating the waiting period requirements of the Act as well as Section 1 of the Sherman Act.²⁸ On April 23, 2002, the Antitrust Division filed a proposed consent decree to settle the suit. The consent decree, which is awaiting entry by the Court, requires the payment of \$638,000 in civil penalties and prevents Computer Associates from agreeing on prices, approving or rejecting proposed customer contracts, and exchanging prospective bid information with all future merger partners. The decree allows

²⁵ A review of NAICS industry codes is slated to occur for every five years and is expected to keep NAICS current as economic sectors evolve.

²⁶ 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). 61 Fed. Reg. 54548 (October 21, 1996), corrected at 61 Fed. Reg. 55840 (October 29, 1996).

²⁷ *United States v. Computer Assocs. Int'l, Inc. and Platinum Tech. Int'l, Inc.*, Civil No. 01-02062 (D.D.C. complaint filed September 28, 2001).

²⁸ 15 U.S.C. § 1.

Computer Associates to conduct ordinary due diligence, which may include, under narrow and restricted circumstances, obtaining access to pending bids that are material to Computer Associates' understanding of the future earnings and prospects of the acquisition candidate. In no circumstances, however, may employees who are directly involved in the sale of a competing product obtain access to such information.

MERGER ENFORCEMENT ACTIVITY²⁹

1. *The Department of Justice*

During fiscal 2001, the Antitrust Division challenged 32 merger transactions that it concluded could lessen competition if allowed to proceed as proposed. In 8 of these transactions the Antitrust Division filed a complaint in U.S. District Court, of which all were settled by consent decree. In the remaining 24 challenges in fiscal year 2001, the Antitrust Division informed the parties to a proposed transaction that it would file a suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.³⁰ In 20 of these

²⁹ 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.

³⁰ In these instances, the Department of Justice issued press releases: October 18, 2000 -- Wells Fargo & Company merger with Brenton Banks Inc. -- Des Moines, Iowa area banks (business banking services); November 7, 2001 -- Varian Medical Systems Inc. proposed acquisition of IMPAC Medical Systems (radiation oncology management systems software and medical devices); January 25, 2001 -- Fleet Boston Financial Corporation's proposed acquisition of Summit Bancorp -- New Jersey area banks (business banking services); February 5, 2001 - - Firststar Corporation and U.S. Bancorp merger -- Minnesota and Iowa banks (business banking services); February 6, 2001 -- Eastman Kodak Company's proposed acquisition of Bell & Howell Company (scanner business); February 6, 2001 -- JDS Uniphase's proposed acquisition of SDL Inc. (980 nanometer pump laser chip business); February 23, 2001 -- Lesaffre et Cie's proposed acquisition through Sensient Technologies Corporation of Universal Foods Corporation Red Star Yeast Division (yeast manufacturing); March 8, 2001 -- Fifth Third Bancorp and Old Kent Financial Corporation merger -- Michigan banks (business banking services); May 2, 2001 - - General Electric Company's proposed acquisition of Honeywell International, Inc. (helicopter engines, maintenance, repair and overhaul, and auxiliary power units); June 19, 2001 -- BB&T Corporation's proposed acquisition of Wachovia Corporation -- Virginia, North Carolina, South Carolina and Georgia banks (business banking services); June 29, 2001 -- Electronic Data Systems acquisition of Sabre, Inc. (full-featured airline reservation systems); July 26, 2001 -- First Union's proposed acquisition of Wachovia Bank -- Virginia, North Carolina, South Carolina and Georgia banks (business banking services); July 27, 2001 -- United Airlines' proposed acquisition of US Airways (airlines); July 30, 2001 -- George Weston Ltd.'s proposed acquisition of Bestfoods Baking from Unilever plc/nv (fresh bread products).

In the remaining 10 challenges, the Division informed the parties of its antitrust concerns but did not issue a press release: Orica Limited's proposed acquisition of LaRoche Industries Inc. ammonium Nitrate assets (industrial organic chemicals); BAE Systems plc proposed acquisition of Sanders Electronics Division of Lockheed Martin's Aerospace Electronics system (infrared electronic warfare products); State National Bancshare's proposed acquisition of Ruidoso Bank Corporation -- New Mexico banks (business banking

proposed transactions, the parties restructured the transactions, and in 4 of these proposed transactions the parties abandoned the transactions entirely.

In *United States v. WorldCom, Inc. and Intermedia Communications, Inc.*,³¹ the Division sued to block WorldCom's proposed acquisition of Intermedia's business operations and assets. The complaint alleged that, by adding to WorldCom's leading position in the Internet backbone market, the \$6 billion acquisition, as originally proposed, would have resulted in higher prices and lower quality of services in the Internet backbone market. Internet backbone networks provide Internet service providers and other Internet users with connectivity to Internet sites throughout the United States and the world. WorldCom owned and operated the largest Internet backbone network in the world and carried more than twice the Internet traffic as its nearest rival. Intermedia also operated a nationwide Internet backbone network, and it provided integrated local and long distance voice and data telecommunications services in numerous metropolitan areas throughout the country. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. The decree required WorldCom to sell the business operations and assets of Intermedia to a qualified third-party purchaser, while allowing WorldCom to retain Intermedia's controlling stock interest in Digex Inc, a provider of managed Internet web hosting services. The Court entered the consent decree on June 27, 2001.

In *United States v. Georgia-Pacific Corp. and Fort James Corp.*,³² the Division challenged Georgia-Pacific Corporation's \$11 billion acquisition of Fort James Corporation, alleging that the acquisition, as originally proposed, would have substantially lessened competition in the production and sale of commercial tissue products by reducing the number of major competitors from three to two. Fort James and Georgia-Pacific were, respectively, the largest and second largest producers of commercial tissue products in the United States. Commercial tissue, also referred to as away-from-home tissue, includes paper towels, paper napkins, and bath tissue sold for use in public settings such as restaurants, office buildings, factories, hospitals, schools, and airports. The Division

services); F&M's proposed acquisition of Atlantic Financial Corporation -- Virginia banks (business banking services); Eure Communication's proposed acquisition of WCHV-AM and WKA V-AM from Charlottesville Broadcasting Corporation (Virginia radio stations); Comcast's proposed acquisition of Home Team Sports and Midwest Sports Channel (sports networks); joint venture between Thomson Financial Corporation and the Depository Trust Clearing Corporation (post-trade, pre-settlement electronic services for securities transactions); Xcel Energy's subsidiary NRG Energy, Inc.'s proposed acquisition of Duke Energy (Audrain electric plant); CRH plc's proposed acquisition of F.W. Whitcomb Company (aggregates); Xcel Energy's proposed acquisition of Wisvest (Connecticut electrical generation assets).

³¹ *United States v. WorldCom, Inc. and Intermedia Communications, Inc.*, C.V.No.1:00CV02789 (D.D.C. filed November 17, 2000).

³² *United States v. Georgia-Pacific Corp. and Fort James Corp.*, C.V.No.1:00CV02824 (D.D.C. filed November 21, 2000).

filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Georgia-Pacific was required to sell its commercial tissue business. The Court entered the consent decree on May 9, 2001.

In *United States v. Aktiebolaget Volvo, Volvo Trucks North America, Inc., Renault S.A., Renault V.I. S.A., and Mack Trucks, Inc.*,³³ the Division challenged Aktiebolaget Volvo's \$1.8 billion acquisition of Renault V.I. The complaint alleged that the acquisition, as originally proposed, would have reduced competition in the development, production and sale of heavy-duty low cab over engine ("LCOE") trucks in the United States, by giving Volvo the power to unilaterally increase the price and decrease the quality, level of service, and amount of product improvement of these trucks. LCOE trucks are made with the cab placed over or in front of the engine, providing superior visibility and maneuverability. Heavy-duty LCOE trucks are capable of carrying the heaviest payload capacities or gross vehicle weights and are the truck of choice for various heavy hauling applications such as trash collection, home heating oil delivery, concrete pumping, and aircraft refueling. Renault, through its Mack Trucks subsidiary, and Volvo were major producers of heavy duty trucks in the U.S., including heavy-duty LCOE trucks, and accounted for approximately 86 percent of LCOE truck sales in the U.S. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Volvo was required to divest its line of heavy-duty LCOE trucks to a suitable purchaser. The Court entered the consent decree on April 30, 2001.

In *United States v. The News Corp. Ltd., Fox Television Holdings, Inc. and Chris-Craft Indus., Inc.*,³⁴ the companies agreed to sell a television station located in Salt Lake City, Utah, in order to resolve antitrust concerns about the companies' \$5.3 billion proposed merger. The complaint alleged that the acquisition, as originally structured, would have lessened competition substantially by combining News Corporation's KSTU-TV, a FOX affiliate, with Chris-Craft's KTVX-TV, an ABC affiliate, two stations that competed head-to-head in the Salt Lake City market, resulting in higher prices for local or spot television advertising. News Corp. would have owned two of the top four broadcast television stations in the Salt Lake City market with approximately 40% of the broadcast television spot advertising revenue. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. The decree required Chris-Craft Industries to divest KTVX-TV. The consent decree was entered by the Court on August 18, 2001.

In *United States v. 3D Systems Corp. and DTM Corp.*,³⁵ the Division filed suit June 6,

³³ *United States v. Aktiebolaget Volvo, Volvo Trucks North America, Inc., Renault S.A., Renault V.I. S.A. and Mack Trucks, Inc.*, C.V. No. 1:00CV03006 (D.D.C. filed December 18, 2000).

³⁴ *United States v. The News Corp. Ltd., Fox Television Holdings, Inc. and Chris-Craft Indus., Inc.*, C.V. No. 1:01CV00771 (D.D.C. filed April 11, 2001).

³⁵ *United States v. 3D Systems Corp. and DTM Corp.*, C.V. No. 1:01CV01237 (D.D.C. filed June 6, 2001).

2001, to block 3D Systems Corporation's proposed \$45 million acquisition of DTM Corporation, alleging that the transaction, as originally structured, would have resulted in higher prices and less innovation for industrial rapid prototyping systems in the United States. Rapid prototyping ("RP") is a process by which a machine transforms a computer design into three-dimensional objects, speeding the design process for everything from cellular phones to medical equipment. The complaint alleged that 3D and DTM offered the most sophisticated systems in the industry and competed directly against each other in the development, manufacture, and sale of industrial rapid prototyping systems and materials. The acquisition would have combined the two largest manufacturers of RP systems in the United States, reduced the number of competitors in the U.S. industrial RP systems market from three to two, and resulted in the combined company having a U.S. market share, by revenue, of 80 percent. On August 16, 2001, the Division filed a proposed consent decree to settle the suit. The consent decree will permit new entry by requiring 3D and DTM to license their RP-related patents to a firm that will compete in the U.S. market. The consent decree is awaiting entry by the Court.

In *United States v. Signature Flight Support Corp., Ranger Aerospace Corp. and Aircraft Service Int'l Group, Inc.*,³⁶ the Division challenged Signature Flight Support Corporation's acquisition of Ranger Aerospace Corporation. Aircraft Service International Group, Inc. ("ASIG"), a wholly owned subsidiary of Ranger, conducted fixed base operations at the Orlando International Airport. Signature and ASIG were the only fixed base operators at the airport, competing head-to-head to provide flight support services. The complaint alleged that the acquisition, as originally proposed, would have resulted in a monopoly in the market for fixed base flight support operations at Orlando International Airport and that the loss of competition likely would have resulted in higher prices and decreased quality of service to charter, private and corporate aircraft operators who used fixed base operations. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. The decree required Signature to divest a flight support services business, including fueling and ramp/hangar rentals, at Orlando International Airport. The Court entered the consent decree on October 11, 2001.

In *United States v. The Thomson Corp., Harcourt General, Inc., and Reed Elsevier, Inc.*,³⁷ the Division challenged Thomson's \$2 billion acquisition of certain Harcourt assets from Reed Elsevier. Thomson and Harcourt were two of the world's largest textbook publishing companies and owned two of the largest providers of computer-based testing services -- Prometric Inc. and Assessment Systems, Inc. ("ASI"), respectively. Reed Elsevier, a large international publisher, had agreed to purchase Harcourt for approximately \$4.6 billion and then sell Harcourt's Higher Education and Corporate and Professional Services Groups to Thomson for approximately \$2.06

³⁶ *United States v. Signature Flight Support Corp., Ranger Aerospace Corp. and Aircraft Service Int'l Group, Inc.*, C.V. No. 1:01CV01365 (D.D.C. filed June 20, 2001).

³⁷ *United States v. The Thomson Corp., Harcourt General, Inc., and Reed Elsevier Inc.*, C.V. No. 1:01CV01419 (D.D.C. filed June 27, 2001).

billion. The complaint alleged that the deal, as originally proposed, would have been anticompetitive, resulting in higher prices and lower quality for textbooks, substantially lessening competition for textbooks in 38 college courses, covering subjects such as chemistry, communications, education, finance, foreign language, mathematics, music, philosophy and psychology. The complaint further alleged that, had the transaction gone forward as originally proposed, it would have resulted in higher prices and lower quality for computer-based testing services, substantially lessening competition in the market for the delivery and administration of high stakes computer-based tests in the United States. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, the parties were required to divest property rights to textbooks used in the 38 college courses in which the complaint alleged competitive problems. The decree also required divestiture of the national testing business of ASI or, if determined that such divestiture would not fully restore the competition eliminated by Thomson's acquisition of ASI, all of ASI, including its contracts to provide state computer-based testing for purposes of licensing and certification. The Court entered the consent decree on October 30, 2001.

In *United States v. Premdor Inc., Premdor U.S. Holdings, Inc., Int'l Paper Co. and Masonite Corp.*,³⁸ the Division challenged Premdor's acquisition of Masonite Corporation and related businesses from International Paper Company. The complaint alleged that the \$527 million acquisition would substantially lessen competition in the interior molded doorskin and interior molded door markets by restructuring the industry in a way that would have facilitated coordination among the dominant firms. A doorskin is the component that makes up the front and back of an interior molded door. Premdor was one of two major manufacturers of molded doors, selling over 40 percent of all interior molded doors purchased in the United States in 2000. It was also Masonite's largest customer and a small, but significant, competitor of Masonite in the molded doorskin market. The acquisition, as proposed, would have removed Premdor as a competitor in the interior molded doorskin market and resulted in the markets for interior molded doorskins and interior molded doors being dominated by two similarly sized vertically integrated firms. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. The decree requires the divestiture of one of Masonite's two U.S. interior molded doorskin manufacturing plants to maintain an independent molded doorskin manufacturer. The Court entered the consent decree on April 5, 2002.

During fiscal year 2001, the Division investigated eight bank merger transactions for which divestiture was required prior to or concurrently with the acquisition and three others 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

³⁸ *United States v. Premdor Inc., Premdor U.S. Holdings, Inc., Int'l Paper Co. and Masonite Corp.*, C.V. No. 1:01CV01696 (D.D.C. filed August 3, 2001).

instances.³⁹

Also during fiscal year 2001, consent decrees were entered in four merger cases previously filed by the Division.⁴⁰

2. *The Federal Trade Commission*

The Commission challenged 23 transactions that it concluded would lessen competition if allowed to proceed as proposed during fiscal year 2001, leading to 18 consent agreements for public comment, and 4 withdrawn filings. Out of the 18 consent agreements issued, 17 became final in fiscal year 2001 and 1 became final in fiscal year 2002. In one matter the Commission authorized staff to seek injunctive relief, which was filed in district court.

In *The Hearst Trust*,⁴¹ the Commission filed for a permanent injunction alleging that Hearst

³⁹ The 11 letters were: October 18, 2000 letter to the Board of Governors regarding the application by Wells Fargo & Company, San Francisco, CA to acquire Brenton Banks, Des Moines, IO; December 20, 2000 letter to the Board of Governors and the Comptroller of the Currency regarding the application for State National Bancshares, Inc., Lubbock, TX, to acquire Ruidoso Bank Corporation, Ruidoso, NM; December 21, 2000 letter to the Comptroller of the Currency regarding the application by Wells Fargo Bank, Texas, N.A., San Antonio, TX, to acquire three branches of Chase Manhattan Bank, New York, NY, and to merge with Midland Interim Trust Company, N.A., Midland, TX; January 8, 2001 letter sent to the Board of Governors regarding the application by F&M National Corporation, Winchester, VA to acquire Atlantic Financial Corporation, Newport News, VA; January 25, 2001 letter to the Board of Governors regarding the application by Fleet Boston Financial Corporation, Boston, MA to acquire Summit Bancorp, Princeton, NJ and a letter to the Comptroller of the Currency regarding the application by Fleet National Bank, Providence, RI, to acquire Summit Bank, Bethlehem, PA; February 5, 2001 letter to the Board of Governors regarding the application by Firststar Corporation, Milwaukee, WI to acquire U.S. Bancorp, Minneapolis, MN; March 8, 2001 letter to the Board of Governors regarding the application by Fifth Third Bancorp, Cincinnati, OH to acquire Old Kent Financial Corporation, Grand Rapids, MI; March 19, 2001 letter to the Comptroller of the Currency regarding the application by CNB National Bank, Lake City, FL to purchase two branches of Republic Bank, St. Petersburg, FL; March 22, 2001 letter to the Comptroller of the Currency regarding the application by First Farmers and Merchants National Bank of Columbia, Columbia, TN to acquire Peoples and Union Bank, Lewisburg, TN; June 19, 2001 letter to the Board of Governors regarding the application by BB&T Corporation, Winston-Salem, NC to acquire F&M National Corporation, Winchester, VA; July 26, 2001 letter to the Board of Governors regarding the application by First Union Corporation, Charlotte, NC, to acquire Wachovia Corporation, Winston-Salem, NC.

⁴⁰ On July 10, 2001, the District Court entered the consent decree in *United States v. Alcoa Inc. and Reynolds Metals Company* (D.D.C. filed May 3, 2000); on April 30, 2001, the consent decree was entered in *United States v. Allied Waste Industries, Inc. and Republic Services, Inc.* (D.D.C. filed June 21, 2000); on November 27, 2000, the consent decree was entered in *United States v. L'Oreal USA, Inc., L'Oreal S.A. and Carson, Inc.* (D.D.C. filed July 31, 2000); and on September 6, 2001, the consent decree was entered in *United States v. Clear Channel Communications, Inc. and AMFM Inc.* (D.D.C. filed August 29, 2000). See the FY 2000 Annual Report for a description of these cases.

⁴¹ *Federal Trade Commission v. Hearst Trust*, Civ. No. 1:01CV00734 (D.D.C.), filed April 5, 2001.

and its wholly owned subsidiary, First DataBank Inc., illegally acquired a monopoly in the market for electronic integratable drug information databases, also known as integratable drug data files. According to the complaint, Hearst's 1998 acquisition of Medi-Span, Inc., its main competitor in that market, allowed First DataBank to institute substantial price increases to its customers for use of the electronic databases which contain clinical, pricing and other information on prescription and non-prescription drugs. Pharmacists, physicians, hospital staff, and health plans use these databases to help them provide high-quality, cost-effective patient care. Most notably, integratable drug data files are needed for pharmacists to get quick, automatic warnings of any dangerous interactions between newly prescribed drugs and other drugs their patients are already taking. The complaint also charged that Hearst illegally withheld certain corporate documents about the Medi-Span acquisition that were required for premerger notification review under the HSR Act. On December 14, 2001, the Commission voted to approve a proposed settlement that required Hearst to divest the former Medi-Span business and pay \$19 million as disgorgement of unlawful profits. The settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. The funds will be distributed to injured customers as part of the settlement of a private class action suit alleging unlawful overcharges by Hearst. The district court approved the final order and stipulated permanent injunction on December 18, 2001.⁴²

In *Manheim Auctions, Inc./ADT Automotive Holdings, Inc.*,⁴³ the complaint alleged that the proposed merger of Manheim and ADT would reduce competition in the provision of major wholesale auction services in six geographic markets: the greater metropolitan area of Kansas City, Missouri; the Colorado Front Range, which includes the greater metropolitan areas of Denver and Colorado Springs, Colorado; the greater metropolitan area of Atlanta, Georgia; the greater metropolitan area of San Francisco, California; the greater metropolitan area of Seattle, Washington; and the I-4 Corridor of Florida, which includes the greater metropolitan areas of Tampa, Orlando, and Daytona Beach, Florida. In these markets the proposed acquisition would have given Manheim a monopoly over major wholesale auction services and created a substantial risk of reduced service levels or higher prices. The complaint also alleged that Manheim acquired a monopoly of major auctions in Phoenix, Arizona in 1996 when it acquired from JM Family Enterprises, Inc., a controlling interest in its only major auction competitor there. Under the terms of the order, Manheim and ADT were required to divest eight ADT auctions, along with one of Manheim's major auctions in Phoenix.

⁴² The Commission also asked the Department of Justice to file a separate complaint in U.S. District Court seeking civil penalties for Hearst's failure to comply with premerger notification filing requirements by failing to supply key documents. The Division sought civil penalties in a suit filed on October 11, 2001 (C.V. No. 1:01CV02119), and under the terms of the final judgment, Hearst agreed to pay \$4 million in civil penalties to settle the charges.

⁴³ *Manheim Auctions, Inc./ADT Automotive Holdings, Inc.*, Docket No. C-3982 (issued November 13, 2000).

In *Tyco Int'l, Ltd./Mallinckrodt, Inc.*,⁴⁴ the complaint alleged that the proposed \$4.2 billion acquisition by Tyco of Mallinckrodt would lessen competition and could create a monopoly in the U.S. market for endotracheal tubes – the principal means by which anesthesia and oxygen are administered to patients in operating and emergency room settings. According to the complaint, both Tyco and Mallinckrodt are leading suppliers of disposable medical supplies and are head-to-head competitors in the highly concentrated U.S. market for endotracheal tubes. The proposed acquisition would have provided Tyco with over 86 percent of the market share. In addition, new entry into the U.S. endotracheal tube market requires the development of a full line of products in a number of sizes and configurations, procurement of manufacturing equipment, and the establishment of production practices in conformity with U.S. Food and Drug Administration regulations, as well as development of a track record and customer base. Because of the high costs and significant risks associated with accomplishing these tasks, new entry into the U.S. endotracheal tube market would have been unlikely to deter or counteract the anticompetitive effects that would have resulted from the proposed merger. Under the order, Tyco was required to divest its endotracheal tube business to Hudson RCI, a company with significant presence in other respiratory care markets.

In *Novartis AG/AstraZeneca PLC*,⁴⁵ the complaint alleged that the proposed merger between Novartis and AstraZeneca would lessen competition in the already highly concentrated markets for corn herbicides for pre-emergent control of grasses and foliar fungicides for use on cereals, peanuts, potatoes, rice, turf and vegetables. The proposed merger would have also significantly increased the level of concentration in the relevant markets, increased the barriers to entry in these markets, allowed the merged firm to unilaterally raise prices and increased the likelihood of coordinated interaction between the remaining competitors. According to the complaint, Novartis is the leading developer, producer, manufacturer and seller of corn herbicides for pre-emergent control of grasses in the United States, with about 50 percent of the market, followed by AstraZeneca. Similarly, Novartis and AstraZeneca are leading sellers of foliar fungicides for use on cereals, peanuts, potatoes, rice, turf and vegetables in the United States, and account for about 40 percent of all fungicides sales. To remedy the potential anticompetitive effects of the proposed merger, the parties were required to divest AstraZeneca's worldwide acetochlor corn herbicide business to Dow Agro, a wholly-owned subsidiary of Dow Chemical, and Novartis' worldwide strobilurin fungicide business to Bayer AG.

In *Philip Morris Cos./Nabisco Holdings Corp.*,⁴⁶ the complaint alleged the proposed \$19.4 billion merger of Philip Morris and Nabisco would create the world's largest food company

⁴⁴ *Tyco Int'l, Ltd./Mallinckrodt, Inc.*, Docket No. C-3985 (issued December 5, 2000).

⁴⁵ *Novartis AG/AstraZeneca PLC*, Docket No. C-3979 (issued December 19, 2000).

⁴⁶ *Philip Morris Cos., Inc./Nabisco Holdings Corp.*, Docket No. C-3987 (issued February 27, 2001).

and would lessen competition in five already highly concentrated food product markets: 1) dry-mix gelatin desserts, 2) dry-mix pudding, 3) no-bake desserts, 4) baking powder, and 5) intense mints. According to the complaint, Philip Morris and Nabisco are the only two significant sellers of branded dry-mix gelatin desserts, branded dry-mix pudding, and no-bake desserts in the United States, and two of only three significant sellers of baking powder and intense mints in the United States. Philip Morris, through its Kraft Foods Inc. subsidiary, produces and sells Jell-O brand dry-mix gelatin desserts, dry-mix pudding, and no-bake desserts, the Calumet brand of baking powder, and the Altoids brand of intense mints. Nabisco sells Royal and My-T-Fine brands of dry-mix gelatin desserts, dry-mix pudding, and the Royal brand of no-bake desserts. Nabisco also sells the Davis and Fleischmann's brands of baking powder and the Ice Breakers and Cool Blast brands of intense mints. Under the order, Nabisco was required to divest all of its dry-mix gelatin, dry-mix pudding, no-baking dessert, and baking powder assets to The Jel Sert Company, and to sell Nabisco's intense mints assets to Hershey Foods Corporation.

In *AOL Online, Inc./Time Warner Inc.*,⁴⁷ the complaint alleged that the proposed merger between AOL and Time Warner would lessen competition in broadband Internet access service, broadband Internet transport service, and the provision of Interactive TV ("ITV") service in the United States. According to the complaint, AOL is the nation's largest Internet service provider ("ISP") and Time Warner is a media conglomerate comprising cable television system servicing about 20 percent of U.S. cable households, and various cable-programming networks, publishing and records interests and film libraries. The order required that the merged company, AOL Time Warner, open its cable system to competitor ISPs and prohibited the company from interfering with content passed along the bandwidth contracted for by non-affiliated ISPs, or from discriminating on the basis of affiliation in the transmission of content that AOL Time Warner has contracted to deliver to subscribers over their cable system, including the transmission of interactive triggers or other content in conjunction with ITV services. The order also required AOL Time Warner to market and offer AOL's digital subscriber line ("DSL") services to subscribers in Time Warner cable areas where affiliated cable broadband service is available in the same manner and at the same retail pricing as they do in those areas where affiliated cable broadband ISP service is not available.

In *SmithKline plc/Glaxo Wellcome plc*,⁴⁸ the complaint alleged that the proposed \$182 billion merger of SmithKline and Glaxo would lessen competition in the markets for the research, development, manufacture, and sale of: 1) 5HT-3 antiemetic drugs, which are administered to cancer patients undergoing chemotherapy and radiation treatments; 2) ceftazidime, an antibiotic used to treat hospitalized patients who are at risk of contracting strains of potentially life-threatening pseudomona infections; 3) oral and intravenous antiviral drugs to treat herpes, chicken pox, and

⁴⁷ *AOL Online, Inc./Time Warner Inc.*, Docket No. C-3989 (issued April 18, 2001).

⁴⁸ *SmithKline plc/Glaxo Wellcome plc*, Docket No. C-3990 (issued January 26, 2001).

shingles; 4) topical antiviral herpes drugs for the treatment of cold sores (herpes); 5) prophylactic genital herpes vaccines; 6) over-the-counter H-2 blocker acid relief products; 7) topoisomerase I inhibitor drugs, which are used to treat solid-tumor cancers; 8) migraine treatment drugs; and 9) irritable bowel syndrome drugs. According to the complaint, Glaxo and SmithKline are the two leading suppliers in several of these markets, and, in some instances, the only two suppliers. In several of these markets the proposed merger would have reduced the number of competitors to two, created a monopoly, and eliminated any research and development efforts underway. Under the order, the companies were required to divest: all of SmithKline's worldwide rights relating to its antiemetic drug Kytril; SmithKline's U.S. rights to manufacture and market ceftazidime; SmithKline's worldwide rights relating to its antiviral drugs Famvir and Denavir; and Glaxo Wellcome's U.S. and Canadian Zantac trademark rights. The companies' were also required to assign all of Glaxo Wellcome's relevant intellectual property rights and relinquish its reversionary rights to the topoisomerase I inhibitor being developed by Gilead Sciences, Inc., return to Cantab Pharmaceuticals all rights to use Cantab's DISC technology to develop a prophylactic herpes vaccine, and assign all of SmithKline's relevant intellectual property rights and relinquish all options to the irritable bowel syndrome drug renzapride to Alizyme plc.

In *Valspar Corp./Lilly Indus., Inc.*,⁴⁹ the complaint alleged that Valspar's proposed merger with Lilly would lessen competition in the market for the research, development, manufacture and sale of silver, tin, and copper solutions ("mirror solutions") and mirror backing paint. According to the complaint, Valspar and Lilly are the two leading suppliers of mirror solutions and are two of the suppliers of mirror backing paint in the United States. As a result, they are frequent competitors to win contracts with mirror manufacturers. The proposed merger would have created a firm controlling more than 90 percent in each of the mirror solutions markets and more than 60 percent of the mirror backing paint market. As significant impediments to new entry exist in these markets, a new entrant would need to undertake the difficult, expensive and time-consuming process of developing a competitive product, establishing reliable U.S. distribution and technical support, and developing a reputation among mirror manufacturers for consistently producing a high quality product. Under the terms of the order, Valspar was required to divest its mirror coatings business to Spraylat Corporation.

In *Computer Sciences Corp./Mynd Corp.*,⁵⁰ the complaint alleged that CSC's proposed acquisition of Mynd would lessen competition in the U.S. market for claims assessment systems. Comprised of computer software and other intellectual property, claims assessment systems are used by insurance companies and others to evaluate appropriate payments for claims of bodily injury and to evaluate return-to-work plans in workers compensation matters. According to the complaint, the

⁴⁹ *Valspar Corp./Lilly Indus., Inc.*, Docket No. C-3995 (issued January 26, 2001).

⁵⁰ *Computer Sciences Corp./Mynd Corp.*, Docket No. C-3991 (issued January 26, 2001).

market for claims assessment systems in the United States is highly concentrated and CSC and Mynd are the only significant competitors for the provision of such services. Under the order, CSC was required to divest Mynd's claims assessments system, known as Claims Outcome Advisor ("COA"), to Insurance Services Office, Inc.

In *El Paso Energy Corp./PG&E Gas Transmission Teco, Inc. and PG&E Gas Transmission Texas Corp.*,⁵¹ the complaint alleged that the proposed acquisition by El Paso of PG&E Gas Transmission Teco and PG&E Gas Transmission Texas would lessen competition in three natural gas transportation markets: 1) the prolific gas supply area of western Texas and southeastern New Mexico ("the Permian Basin"); 2) the natural gas consuming areas of the San Antonio-Austin area ("Central Texas"); and 3) the Matagorda Island offshore production area. According to the Complaint, the Permian Basin is among the largest natural gas producing areas in the United States. If the merger were to proceed as proposed, El Paso would have owned more natural gas transportation capacity out of the Permian Basin than any other company and would have been the owner of almost all of the natural gas transportation capacity from the Permian Basin to Central Texas. The proposed merger would therefore have resulted in highly concentrated markets and would have allowed El Paso to raise prices unilaterally. To remedy the effects of the proposed merger, the parties were required to divest all of El Paso's interest in the Oasis Pine Line Company, all of PG&E's share in the "Teco Pipeline" and all of PG&E's pipeline assets in Matagorda.

In *Winn-Dixie Stores, Inc./Jitney Jungle Stores of America, Inc.*,⁵² the complaint alleged that the proposed acquisition by Winn-Dixie of Jitney-Jungle would lessen supermarket competition in Florida and Mississippi, resulting in higher prices and reduced services for consumers. According to the complaint each of the post-merger markets would be highly concentrated, with the two firms controlling market shares between 34 and 100 percent in the relevant geographic area. Under the order, Winn-Dixie was allowed to acquire 68 supermarkets and other assets as opposed to the originally proposed 72 supermarkets from the bankrupt Jitney-Jungle.

In *El Paso Energy Corp./The Coastal Corp.*,⁵³ the complaint alleged that the \$16 billion proposed merger of El Paso and Coastal would lessen competition in the transportation of natural gas via pipeline and in the provision of tailored services, which allow users of natural gas to balance their changes in natural gas demand with their supply of natural gas and transportation. According to the complaint, the proposed merger would have eliminated actual and direct competition between the

⁵¹ *El Paso Energy Corp./PG&E Gas Transmission Teco, Inc. and PG&E Gas Transmission Texas Corp.*, Docket No. C-3997 (issued January 30, 2001).

⁵² *Winn-Dixie Stores, Inc./Jitney Jungle Stores of America, Inc.*, Docket No. C-4001 (issued February 16, 2001).

⁵³ *El Paso Energy Corp./The Coastal Corp.*, Docket No. C-3996 (issued March 23, 2001).

two companies in the following markets: 1) Central Florida; 2) the metropolitan areas of Buffalo, Rochester, Syracuse and Albany, New York; 3) the metropolitan area of Milwaukee, Wisconsin; 4) the metropolitan area of Evansville, Indiana; and 5) 13 areas in the Gulf of Mexico. The market for natural gas and natural gas transportation in these areas is highly concentrated and the proposed transaction would have substantially increased that concentration. In some instances, El Paso and Coastal were the only two options available to customers, and in other instances, they represented two of three options. The proposed merger not only would have eliminated existing competition between El Paso and Coastal, but also would have threatened to forestall potential new competition as well as lead to increased transportation prices and a decrease in overall output, thereby increasing the cost of electricity and natural gas. Under the terms of the order, El Paso and Coastal were required to divest their interests in 11 natural gas pipelines systems totaling more than 2,500 miles of pipe.

In *Koch Indus., Inc./Entergy Corp./Entergy-Koch, L.P. (“EKLP”)*,⁵⁴ the complaint alleged that the proposed acquisition by EKLP, a limited partnership owned equally by Entergy and Koch, of a 50 percent interest in the Gulf South Pipeline Company, L.P. (“Gulf South”), a major natural gas pipeline serving Entergy’s regulated utilities in Louisiana and Mississippi, from Koch would lessen competition in two markets: 1) the sale of electricity to consumers in areas of Louisiana and Mississippi where Entergy subsidiaries are the regulated electric utilities; and 2) the distribution of natural gas to consumers in New Orleans and Baton Rouge, where Entergy subsidiaries are the regulated natural gas distribution utilities. According to the complaint, after the proposed acquisition, Entergy would have benefited from paying Gulf South an inflated price for gas supplies because it would have retained half of the profit and, if undetected, passed the increased costs to ratepayers. Entergy’s added incentive to accept inflated costs would have made it more difficult for regulators to review and challenge an imprudent purchase of natural gas transportation by Entergy. Under the order, Entergy was required to implement an open, transparent process to buy natural gas and natural gas transportation that will assist state regulators in determining whether Entergy purchased gas supplies from EKLP at inflated prices.

In *The Dow Chemical Co./Union Carbide Corp.*,⁵⁵ the complaint alleged that the proposed merger would lessen competition in the worldwide markets for linear low density polyethylene (“LLDPE”) and related technology, ethyleneamines, ethanolamines, and branded methyldiethanolamine (“MDEA”) in the United States. According to the complaint, Dow and Carbide are the leading producers of LLDPE, a key ingredient in premium plastic products such as trash bags, stretch film and sealable food pouches, throughout the world and are among the few LLDPE producers that have succeeded in developing specialty, high-performance polymers

⁵⁴ Koch Indus., Inc./Entergy Corp., Docket No.C-3998 (issued January 31, 2001)

⁵⁵ The Dow Chem. Co./Union Carbide Corp., Docket No. C-3999 (issued March 16, 2001).

demanded by significant users of LLDPE. The companies are also the leading developers of polyethylene reactor process technology, of which Carbide's reactor technology, Unipol, is the world's most widely licensed polyethylene process technology. Carbide and Dow are the only producers of ethyleneamines and are the largest and third largest producers, respectively, of ethanolamines in the United States and Canada. These chemicals are used in a broad variety of applications, including lubricating oil additives, chelating agents, wet-strength resins, surfactants, personal care products, pulp and paper products, fungicides, herbicides, oil and gas refining applications, pharmaceuticals and fabric softeners. Dow and Carbide are the two largest sellers of MDEA-based gas treating products in the United States and Canada, and as a result of the proposed merger, the combined company would have had 60 percent of the relevant market. Under the order, Dow was required to divest and license intellectual property that is critical to the production of LLDPE to BP Amoco plc, its former partner in developing the technology. Dow was also required to divest its ethyleneamines, ethanolamines and MDEA-based gas treating products businesses.

In *DTE Energy Co./MCN Energy Group, Inc.*,⁵⁶ the complaint alleged that the proposed \$4.6 billion merger of DTE and MCN would lessen competition in the local distribution of electricity and the local distribution of natural gas in the Overlap Area, consisting of the city of Detroit and all or parts of Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties in Michigan. According to the complaint, Michigan Consolidated Gas Company ("MichCon"), a subsidiary of MCN, is the only distributor of natural gas within the Overlap Area. Similarly, except for the cities of Detroit and Wyandotte, which operate their own municipal electric utilities, the Detroit Edison Company ("Edison"), a subsidiary of DTE, is the only distributor of electricity in the Overlap Area. Entry into the distribution of electricity and the distribution of natural gas within the Overlap Area is effectively blocked by regulatory constraints, and would not be timely, likely or sufficient to prevent anticompetitive effects that would have resulted from the proposed merger. Under the terms of the order, DTE/MCN was required to divest certain assets to Exelon Company, one of the largest suppliers of electricity and natural gas in the nation.

In *Siemens AG/Atecs Mannesmann/Vodafone Group PLC*,⁵⁷ the complaint alleged that the proposed \$9 billion acquisition by Siemens of Atecs from Vodafone would lessen competition in the research, development, manufacture, integration, sale and service of postal automation systems. According to the complaint, Siemens and Vodafone, through its Atecs Dematic subsidiary, are the two leading suppliers of postal automation systems in the world and the proposed acquisition would have allowed Siemens, the largest supplier of these systems, to purchase its closest competitor. Under the order, Siemens and Vodafone were required to divest Vodafone's Mannesmann Dematic

⁵⁶ DTE Energy Co./MCN Energy Group, Inc., Docket No. C-4008 (issued May 18, 2001).

⁵⁷ Siemens AG/Atecs Mannesmann, Docket No. C-4011 (issued May 18, 2001).

postal automation business to Northrop Grunman Corporation.

In *Lafarge S.A./Blue Circle Indus. PLC*,⁵⁸ the complaint alleged that the proposed merger of Lafarge and Blue Circle would lessen competition in the manufacturing, marketing and selling of cement and lime in the United States. According to the complaint, the markets for cement in the Great Lakes Region and Syracuse Region, as well as the market for lime in the Southeast Region, are highly concentrated, and the proposed merger would have substantially increased this concentration. Under the order, the companies were required to divest Blue Circle's cement business serving the Great Lakes Region and the Syracuse, New York area, and Blue Circle's lime business in the southeast United States.

In *Chevron Corp./Texaco Inc.*,⁵⁹ the complaint alleged that the proposed \$45 billion merger of Chevron and Texaco would lessen competition in each of the following markets: 1) gasoline marketing in the western United States, the southern United States, Alaska, Hawaii and several smaller localities; 2) the marketing of California Air Resources Board ("CARB") gasoline in California; 3) the refining and bulk supply of CARB gasoline for sale in California; 4) the refining and bulk supply of gasoline and jet fuel in the Pacific Northwest; 5) the bulk supply of Phase II Reformulated Gasoline ("RFG II") in metropolitan St. Louis, Missouri; 6) the terminaling of gasoline and other light petroleum products in Arizona, California, Mississippi, Texas, and Hawaii; 7) the pipeline transportation of crude oil from California's San Joaquin Valley; 8) the pipeline transportation of crude oil to shore from portions of the Eastern Gulf of Mexico; 9) the pipeline transportation of offshore natural gas to shore from locations in the Central Gulf of Mexico; 10) the fractionation of raw mix into natural gas liquids products at Mont Belvieu, Texas; and 11) the marketing and distribution of aviation fuel to customers in the western and southeastern United States. According to the complaint, Chevron and Texaco are two of the world's largest integrated oil companies and if the proposed merger were allowed to proceed either unilateral behavior by the combined Chevron/Texaco, or coordinated behavior among Chevron/Texaco and other remaining competitors, would have lead to higher consumer prices in the relevant markets. Under the terms of the order, the combined company was required to divest all of Texaco's interests in two joint ventures, Equilon Enterprises, LLC, which is owned by Texaco and Shell Oil Company, and Motiva Enterprises, LLC, which is owned by Shell, Texaco, and Saudi Refining, Inc. Texaco also was required to divest its interest in the Discovery natural gas pipeline system in the Gulf of Mexico, its interests in the Enterprise fractionating plant in Mont Belvieu, Texas, and its general aviation businesses in fourteen states.

⁵⁸ *Lafarge S.A./Blue Circle Indus. PLC*, Docket No. C-4014 (issued August 10, 2001).

⁵⁹ *Chevron Corp./Texaco Inc.*, Docket No. C-4023 (September 7, 2001).

In *Metso Oyi/Svedala Industri AB*,⁶⁰ the complaint alleged that the proposed \$1.6 billion acquisition by Metso of Svedala would lessen competition globally in the research, development, manufacture, and sale of four separate rock processing equipment markets: cone crushers, jaw crushers, primary gyratory crushers and grinding mills. According to the complaint, Metso and Svedala are the two largest suppliers of rock processing equipment in the world. Under the order, Metso was required to divest its global primary gyratory crusher and grinding mill businesses and Svedala was required to divest its global jaw crusher and cone crusher businesses.

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. As a result, the HSR Act is doing what Congress intended, giving the government the opportunity to investigate and challenge mergers that are likely to harm consumers *before* injury can arise. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions that raised significant antitrust concerns before the antitrust agencies had the opportunity to 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 historically prompted expressions of concern from the business and legal communities that the program may be overreaching, that the reporting thresholds (which had not been adjusted since enactment of the HSR Act in 1976) may be too low, and that the process may cause delay. The enactment and the implementation of HSR Reform legislation during fiscal year 2001 has significantly lessened the burden on business by increasing the reporting thresholds substantially.

In addition, the enforcement agencies continue to seek ways to speed up the review process and reduce burdens for companies. This year, the agencies continued to implement new procedures and initiatives to improve the handling of second requests. The agencies are continuing their ongoing

⁶⁰ *Metso Oyi/Svedala Industri AB*, Docket No. C-4024 (issued October 23, 2001).

review of the HSR program in order to make it as minimally burdensome as possible without compromising the agencies' ability to investigate and interdict proposed transactions that may substantially lessen competition.

List of Appendices

- Appendix A - Summary of Transactions, Fiscal Years 1992 - 2001
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1992 - 2001.

List of Exhibits

- Exhibit A - Statistical Tables for Fiscal Year 2001, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest

Appendix A

Summary of Transactions

Fiscal Years 1992 - 2001

Appendix A
Summary of Transaction by Year

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Transactions Reported	1,589	1,846	2,305	2,816	3,087	3,702	4,728	4,642	4,926	2,376
Filings Received ¹	3,030	3,559	4,403	5,439	6,001	7,199	9,264	9,151	9,941	4,800
Adjusted Transactions In Which A Second Request Could Have Been Issued²	1,451	1,745	2,128	2,612	2,864	3,438	4,575	4,340	4,749	2,237
Investigations in Which Second Requests Were Issued	44	71	73	101	99	122	125	111	98	70
FTC ³	26	40	46	58	36	45	46	45	43	27
Percent ⁴	1.8%	2.3%	2.2%	2.2%	1.3%	1.3%	1.0%	1.0%	0.9%	1.2%
DOJ ³	18	31	27	43	63	77	79	68	55	43
Percent ⁴	1.2%	1.8%	1.3%	1.6%	2.2%	2.2%	1.7%	1.6%	1.2%	1.9%
Transactions Involving a Request For Early Termination⁵	1,403	1,689	2,081	2,471	2,861	3,363	4,323	4,110	4,324	2,063
Granted ⁵	1,020	1,201	1,508	1,869	2,044	2,513	3,234	3,103	3,515	1,603
Not Granted ⁵	383	448	573	602	817	850	1,089	1,007	809	460

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

2 These figures omit from the total number of transactions reported all transactions for which the agencies were not authorized to request additional information. These include (1) incomplete transactions (only one party filed a complete notification); (2) transactions reported pursuant to the exemption provisions of sections 7A(c) (6) and 7A(c)(8) of the Act; and (3) transactions which were found to be non-reportable. In addition, where a party filed more than one notification in the same year to acquire voting securities of the same corporation, e.g., filing for one threshold and later filing for the 25 % threshold, only a single consolidated transaction has been counted because, 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 of transactions reported secondary acquisitions filed pursuant to 801.4 of the premerger notification rules. Secondary acquisitions have been deducted in order to be consistent with the statistics presented in most of the prior annual reports.

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

4 Second Requests investigations are a percentage of the total number of adjusted transactions.

5 These statistics are based on the date of the H-S-R filing and not the date action was taken on request.

Appendix B

Number of Transactions Reported

And

Filings Received by Month

for

Fiscal Years 1992 – 2001

Appendix B**Table 1. Number of Transactions Reported by Months for the Fiscal Years 1992 - 2001**

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
October	140	163	184	273	238	296	424	333	376	360
November	180	184	221	309	273	332	387	359	428	451
December	155	160	222	216	249	267	426	394	468	345
January	97	100	156	180	238	263	306	282	335	245
February	87	110	149	170	231	250	336	330	440	66
March	135	149	167	229	277	315	392	427	455	120
April	129	131	167	177	252	302	384	364	343	94
May	142	155	220	281	304	328	401	438	398	153
June	116	151	182	252	253	319	442	445	494	190
July	154	172	208	225	265	389	435	444	351	94
August	124	204	226	237	264	318	427	434	446	163
September	130	167	203	267	243	323	368	392	392	95
TOTAL	1,589	1,846	2,305	2,816	3,087	3,702	4,728	4,642	4,926	2,376

Appendix B
Table 2. Number of Filings Received¹ by Month for Fiscal Years 1992 - 2001

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
October	253	297	332	505	450	561	818	662	777	751
November	326	341	428	614	520	636	749	686	839	920
December	316	325	427	419	474	521	836	785	922	686
January	194	188	293	360	445	514	614	548	677	499
February	165	239	295	326	480	483	650	658	867	144
March	255	263	326	432	528	614	766	828	959	243
April	244	251	321	350	498	599	763	719	695	188
May	268	301	421	534	584	640	787	851	859	296
June	233	311	362	496	502	620	862	884	1,004	378
July	286	327	380	439	515	759	851	887	718	182
August	227	393	431	455	515	617	844	885	886	332
September	263	323	387	509	490	635	724	758	738	181
TOTAL	3,030	3,559	4,403	5,439	6,001	7,199	9,264	9,151	9,941	4,800

¹ Usually, two filings are received, one from the acquiring person and one from the acquired person when the transaction is reported, unless notification for a joint venture where more than one acquiring person is required to submit a filing. Only one filing is received when an acquiring person files for a transaction that is exempt under Sections 7(A)(c)(6) and (c)(8) of the Clayton Act.

Exhibit A

Statistical Tables

for

Fiscal Year 2001

Data Profiling Hart-Scott-Rodino Premerger

Notification Filings and Enforcement Interest

TABLE I
FISCAL YEAR 2001¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS ³					
	NUMBER ⁴	PERCENT ⁵	NUMBER		PERCENT ⁶		NUMBER			PERCENT		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Less Than 15	29	1.3%	1	0	3.4%	0.0%	3.4%	0	0	0.0%	0.0%	0.0%
15 UP to 25	223	10.0%	4	4	1.8%	1.8%	3.6%	1	0	0.4%	0.0%	0.4%
25 UP to 50	270	12.1%	15	2	5.6%	0.7%	6.3%	1	0	0.4%	0.0%	0.4%
50 UP to 100	607	27.1%	32	19	5.3%	3.1%	8.4%	5	3	0.8%	0.5%	1.3%
100 UP to 150	257	11.5%	13	8	5.1%	3.1%	8.2%	2	3	0.8%	1.2%	2.0%
150 UP to 200	135	6.0%	9	10	6.7%	7.4%	14.1%	2	5	1.5%	3.7%	5.2%
200 UP to 300	170	7.6%	15	13	8.8%	7.6%	16.4%	5	4	2.9%	2.4%	5.3%
300 UP to 500	193	8.6%	12	13	6.2%	6.7%	12.9%	2	5	1.0%	2.6%	3.6%
500 UP to 1000	157	7.0%	14	16	8.9%	10.2%	19.1%	2	6	1.3%	3.8%	5.1%
1000 AND UP	196	8.8%	16	38	8.2%	19.4%	27.6%	7	17	3.6%	8.7%	12.3%
ALL TRANSACTIONS	2,237	100.0%	131	123	5.9%	5.5%	11.4%	27	43	1.2%	1.9%	3.1%

TABLE II
FISCAL YEAR 2001¹
ACQUISITIONS BY SIZE OF TRANSACTION² (CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT ⁵	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES GRANTED			NUMBER		PERCENT		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	29	1.3%	1	0	0.3%	0.0%	0.3%	0	0	0.0%	0.0%	0.0%
LESS THAN 25	252	11.3%	4	4	1.2%	1.2%	2.4%	1	0	1.0%	0.0%	1.0%
LESS THAN 50	522	23.3%	20	6	5.9%	1.8%	7.7%	2	0	2.0%	0.0%	2.0%
LESS THAN 100	1,129	50.5%	52	25	15.3%	7.4%	22.7%	7	3	7.1%	3.1%	10.2%
LESS THAN 150	1,386	62.0%	65	33	19.2%	9.7%	28.9%	9	6	9.2%	6.1%	15.3%
LESS THAN 200	1,521	68.0%	74	43	21.8%	12.7%	34.5%	11	11	11.2%	11.2%	22.4%
LESS THAN 300	1,691	75.6%	89	56	26.3%	16.5%	42.8%	16	15	16.3%	15.3%	31.6%
LESS THAN 500	1,884	84.2%	101	69	29.8%	20.4%	50.1%	18	20	18.4%	20.4%	38.8%
LESS THAN 1000	2,041	91.2%	115	85	33.9%	25.1%	59.0%	20	26	20.4%	26.5%	46.9%
ALL TRANSACTIONS	2,237		131	123	51.6%	48.4%	100.0%	27	43	38.6%	61.4%	100.0%

TABLE III
FISCAL YEAR 2001¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

TRANSACTION RANGE (\$MILLIONS)	CLEARANCE GRANTED AS A PERCENTAGE OF										
	CLEARANCE GRANTED TO AGENCY			TOTAL NUMBER OF TRANSACTIONS			TOTAL NUMBER OF CLEARANCES PER AGENCY		TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	1	0	1	0.1%	0.0%	0.1%	0.8%	0.0%	0.4%	0.0%	0.4%
15 UP to 25	4	4	8	0.2%	0.4%	0.6%	3.1%	3.3%	1.6%	1.6%	3.2%
25 to 50	15	2	17	0.7%	0.8%	1.5%	11.5%	1.6%	5.9%	0.8%	6.7%
50 UP to 100	32	19	51	1.4%	2.3%	3.7%	24.4%	15.4%	12.6%	7.5%	20.1%
100 UP to 150	13	8	21	0.6%	0.9%	1.5%	9.9%	6.5%	5.1%	3.1%	8.2%
150 UP to 200	9	10	19	0.4%	0.8%	1.3%	6.9%	8.1%	3.5%	3.9%	7.4%
200 UP to 300	15	13	28	0.7%	1.3%	1.9%	11.5%	10.6%	5.9%	5.1%	11.0%
300 UP to 500	12	13	25	0.5%	1.1%	1.7%	9.2%	10.6%	4.7%	5.1%	9.8%
500 UP to 1000	14	16	30	0.6%	1.3%	2.0%	10.7%	13.0%	5.5%	6.3%	11.8%
1000 AND UP	16	38	54	0.7%	2.4%	3.1%	12.2%	30.9%	6.3%	15.0%	21.3%
ALL CLEARANCES	131	123	254	5.9%	5.5%	11.4%	100.0%	100.0%	51.6%	48.4%	100.0%

**TABLE IV
FISCAL YEAR 2001¹
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE (\$MILLIONS)	SECOND REQUESTS ISSUED AS A PERCENTAGE OF:											
	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			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
LESS THAN 15	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
15 UP to 25	1	0	1	0.0%	0.0%	0.0%	0.4%	0.0%	0.4%	1.4%	0.0%	1.4%
25 to 50	1	0	1	0.0%	0.0%	0.0%	0.2%	0.0%	0.2%	1.4%	0.0%	1.4%
50 UP to 100	5	3	8	0.2%	0.1%	0.4%	3.9%	2.4%	6.3%	7.1%	4.3%	11.4%
100 UP to 150	2	3	5	0.1%	0.1%	0.2%	0.1%	0.2%	0.4%	2.9%	4.3%	7.2%
150 UP to 200	2	5	7	0.1%	0.2%	0.3%	0.1%	7.1%	7.3%	2.9%	7.1%	10.0%
200 UP to 300	5	4	9	0.2%	0.2%	0.4%	7.1%	0.3%	7.4%	7.1%	5.7%	12.8%
300 UP to 500	2	5	7	0.1%	0.2%	0.3%	0.1%	0.3%	0.4%	2.9%	7.1%	10.0%
500 UP to 1000	2	6	8	0.1%	0.3%	0.4%	0.1%	0.3%	0.4%	2.9%	8.6%	11.5%
1000 AND UP	7	17	24	0.3%	0.8%	1.1%	0.3%	0.8%	1.2%	10.0%	24.3%	34.3%
ALL TRANSACTIONS	27	43	70	1.2%	1.9%	3.1%	1.2%	1.9%	3.1%	38.6%	61.4%	100.0%

TABLE VI
FISCAL YEAR 2001¹
TRANSACTIONS BY ASSETS OF ACQUIRING PERSON

ASSET RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF ASSET RANGE GROUP			NUMBER		PERCENTAGE OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	98	4.4%	2	1	2.0%	1.0%	3.0%	1	1	1.0%	1.0%	2.0%
15 UP to 25	24	1.1%	1	0	4.2%	0.0%	4.2%	0	0	0.0%	0.0%	0.0%
25 to 50	44	2.0%	3	4	6.8%	9.1%	15.9%	0	0	0.0%	0.0%	0.0%
50 UP to 100	79	3.5%	3	1	3.8%	1.3%	5.1%	0	0	0.0%	0.0%	0.0%
100 UP to 150	101	4.5%	3	1	3.0%	1.0%	4.0%	0	0	0.0%	0.0%	0.0%
150 UP to 200	45	2.0%	2	3	4.4%	6.7%	11.1%	0	1	0.0%	2.2%	2.2%
200 UP to 300	88	3.9%	4	3	4.5%	3.4%	7.9%	1	2	1.1%	2.3%	3.4%
300 UP to 500	168	7.5%	8	9	4.8%	5.4%	10.2%	4	2	2.4%	1.2%	3.6%
500 UP to 1000	222	9.9%	19	10	8.6%	4.5%	13.1%	0	4	0.0%	1.8%	1.8%
1000 AND UP	1368	61.2%	86	91	6.3%	6.7%	13.0%	21	33	1.5%	2.4%	3.9%
ALL TRANSACTIONS	2,237	100.0%	131	123	5.9%	5.5%	11.4%	27	43	1.2%	1.9%	3.1%

**TABLE VII
FISCAL YEAR 2001¹
TRANSACTIONS BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
			NUMBER		PERCENTAGE OF SALES RANGE GROUP			NUMBER		PERCENTAGE OF SALES RANGE GROUP		
	NUMBER	PERCENT	FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	216	9.7%	4	5	1.9%	2.3%	4.2%	0	3	0.0%	1.4%	1.4%
15 UP to 25	36	1.6%	2	0	5.6%	0.0%	5.6%	0	0	0.0%	0.0%	0.0%
25 to 50	70	3.1%	3	4	4.3%	5.7%	10.0%	0	1	0.0%	1.4%	1.4%
50 UP to 100	89	4.0%	3	5	3.4%	5.6%	9.0%	1	1	1.1%	1.1%	2.2%
100 UP to 150	82	3.7%	7	2	8.5%	2.4%	10.9%	3	1	3.7%	1.2%	4.9%
150 UP to 200	54	2.4%	2	1	3.7%	1.9%	5.6%	0	0	0.0%	0.0%	0.0%
200 UP to 300	107	4.8%	1	5	0.9%	4.7%	5.6%	0	0	0.0%	0.0%	0.0%
300 UP to 500	137	6.1%	9	4	6.6%	2.9%	9.5%	3	1	2.2%	0.7%	2.9%
500 UP to 1000	201	9.0%	12	13	6.0%	6.5%	12.5%	0	3	0.0%	1.5%	1.5%
1000 AND UP	1245	55.7%	88	84	7.1%	6.7%	13.8%	20	33	1.6%	2.7%	4.3%
ALL TRANSACTIONS	2,237	100.0%	131	123	5.9%	5.5%	11.4%	27	43	1.2%	1.9%	3.1%

**TABLE VIII
FISCAL YEAR 2001
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES⁸**

ASSET RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF ASSET RANGE GROUP			NUMBER		PERCENTAGE OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	342	15.3%	27	27	7.9%	7.9%	15.8%	7	12	2.0%	3.5%	5.5%
15 UP to 25	209	9.3%	9	5	4.3%	2.4%	6.7%	1	0	0.5%	0.0%	0.5%
25 to 50	274	12.2%	9	4	3.3%	1.5%	4.8%	2	2	0.7%	0.7%	1.4%
50 UP to 100	355	15.9%	21	9	5.9%	2.5%	8.4%	2	2	0.6%	0.6%	1.2%
100 UP to 150	145	6.5%	8	5	5.5%	3.4%	8.9%	1	2	0.7%	1.4%	2.1%
150 UP to 200	96	4.3%	7	8	7.3%	8.3%	15.6%	3	1	3.1%	1.0%	4.1%
200 UP to 300	107	4.8%	10	9	9.3%	8.4%	17.7%	1	2	0.9%	1.9%	2.8%
300 UP to 500	130	5.8%	14	12	10.8%	9.2%	20.0%	2	3	1.5%	2.3%	3.8%
500 UP to 1000	120	5.4%	8	7	6.7%	5.8%	12.5%	1	3	0.8%	2.5%	3.3%
1000 AND UP	309	13.8%	16	37	5.2%	12.0%	17.2%	5	16	1.6%	5.2%	6.8%
<i>ASSETS UNAVAILABLE⁹</i>	150	6.7%	2	0	1.3%	0.0%	1.3%	2	0	1.3%	0.0%	1.3%
<i>ALL TRANSACTIONS</i>	2,237	100.0%	131	123	5.9%	5.5%	11.4%	27	43	1.2%	1.9%	3.1%

**TABLE IX
FISCAL YEAR 2001
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES¹⁰**

SALES RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF SALES RANGE GROUP			NUMBER		PERCENTAGE OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 15	398	17.7%	8	8	2.0%	2.0%	4.0%	6	8	1.5%	2.0%	3.5%
15 UP to 25	149	6.7%	9	2	6.0%	1.3%	7.3%	0	0	0.0%	0.0%	0.0%
25 to 50	326	14.6%	16	3	4.9%	0.9%	5.8%	3	1	0.9%	0.3%	1.2%
50 UP to 100	337	15.1%	22	13	6.5%	3.9%	10.4%	5	1	1.5%	0.3%	1.8%
100 UP to 150	170	7.6%	8	12	4.7%	7.1%	11.8%	0	4	0.0%	2.4%	2.4%
150 UP to 200	119	5.3%	10	9	8.4%	7.6%	16.0%	2	2	1.7%	1.7%	3.4%
200 UP to 300	153	6.8%	14	8	9.2%	5.2%	14.4%	3	4	2.0%	2.6%	4.6%
300 UP to 500	147	6.6%	8	6	5.4%	4.1%	9.5%	1	3	0.7%	2.0%	2.7%
500 UP to 1000	160	7.2%	10	21	6.3%	13.1%	19.4%	2	7	1.3%	4.4%	5.7%
1000 AND UP	243	10.9%	26	39	10.7%	16.0%	26.7%	5	13	2.1%	5.3%	7.4%
SALES NOT AVAILABLE¹¹	35	1.6%	0	2	0.0%	5.7%	5.7%	0	0	0.0%	0.0%	0.0%
ALL TRANSACTIONS	2,237	100.0%	131	123	5.9%	5.5%	11.4%	27	43	1.2%	1.9%	3.1%

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
01	111	Agricultural Production - Crops	0	0.0%	-0.2%	0	0	0	0	0	0
	112	Agricultural Production - Livestock and Animal Specialties				0	0	0	0	0	0
08	113	Forestry	5	0.2%	0.1%	0	0	0	0	0	0
09	114	Fishing, Hunting and Trapping	0	0.0%	-0.1%	0	0	0	0	0	0
10	212	Metal Mining	3	0.1%	NC	0	0	0	0	0	0
12		Coal Mining									0
13	211	Oil and Gas Extraction	23	1.0%	0.2%	1	1	2	0	1	1
	454	Heating Oil Dealers and Liquefied Petroleum Gas				0	0	0	0	0	0
14	212	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	3	0.1%	NC	0	0	0	0	0	0
15	233	Building Construction – General Contractors and Operative Builders	6	0.3%	NC	0	0	0	0	0	0
16	234	Heavy Construction Other Than Building Construction - Contractors	13	0.6%	NC	0	0	0	0	0	0
17	235	Construction - Special Grade Contractors	11	0.5%	0.1%	0	0	0	0	0	0
20	311	Food and Kindred Products	65	2.9%	0.9%	3	9	12	3	5	8

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
21	312	Bottled and Canned Soft Drinks and Carbonated Drinks; and Cigarette Manufacturing	2	0.1%	NC	0	0	0	0	0	0
22	313	Textile Mill Products	7	0.3%	-0.4%	2	0	2	0	0	0
23	315	Apparel and Other Finished Products Made From Fabrics and Similar Materials	1	0.0%	-0.1%	0	0	0	0	0	0
24	113	Lumber and Wood Products, Except Furniture	3	0.1%	-0.1%	0	1	1	0	1	1
25	337	Furniture and Fixtures	8	0.4%	-0.1%	1	0	1	0	0	0
26	322	Paper and Allied Products	15	0.7%	0.5%	1	3	4	0	1	1
	453	Stationery and Office Supplies				0	0	0	0	0	0
27	511	Printing, Publishing and Allied Industries	54	2.4%	0.6%	1	2	3	1	1	2
28	325	Chemicals and Allied Products	109	4.9%	1.3%	23	5	28	5	1	6
29	324	Petroleum Refining and Related Industries	7	0.3%	NC	2	0	2	2	0	2
30	326	Rubber and Misc. Plastics Products	23	1.0%	-0.4%	4	0	4	0	0	0
31	316	Leather and Leather Products	4	0.2%	0.2%	0	0	0	0	0	0
32	327	Stone, Clay, Glass and Concrete Products	8	0.4%	-0.4%	3	0	3	2	0	2
33	324	Primary Metal Industries	13	0.6%	-0.5%	0	1	1	1	0	1
34	332	Fabricated Metal Products, Except Machinery and Transportation Equipment	31	1.4%	0.3%	5	1	6	0	0	0

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
35	333	Industrial and Commercial Machinery and Computer Equipment	70	3.1%	0.3%	7	9	16	0	2	2
36	335	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	118	5.3%	1.0%	2	12	14	0	2	2
37	336	Transportation Equipment	45	2.0%	0.6%	4	5	9	0	2	2
38	334	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	96	4.3%	2.7%	18	12	30	3	2	5
39	339	Miscellaneous Manufacturing Industries	11	0.5%	NC	3	0	3	1	0	1
40	482	Railroad Transportation	0	0.0%	-0.1%	0	0	0	0	0	0
41	485	Local and Suburban Transit and Interurban Highway Passenger Transportation	1	0.0%	-0.1%	0	0	0	0	0	0
42	484	Motor Freight Transportation and Warehousing	13	0.6%	-0.2%	1	0	1	0	0	0
44	483	Water Transportation	14	0.6%	0.1%	1	0	1	0	2	2
45	481	Transportation by Air	8	0.4%	NC	0	4	4	0	2	2
46	486	Pipelines, Except Natural Gas	67	3.0%	2.8%	14	9	23	0	2	2
47	561	Transportation Services	22	1.0%	0.2%	1	0	1	0	0	0
48	513	Communications	149	6.7%	-2.7%	1	6	7	1	2	3

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
49	221	Electric, Gas and Sanitary Services	11	0.5%	-2.8%	0	1	1	0	1	1
50	421	Wholesale Trade - Durable Goods	89	4.0%	-0.5%	2	1	3	0	0	0
51	422	Wholesale Trade - Nondurable Goods	74	3.3%	NC	2	1	3	0	0	0
52	444	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	7	0.3%	0.2%	0	0	0	0	0	0
53	452	General Merchandise Stores	6	0.3%	0.1%	0	0	0	0	0	0
54	447	Food Stores	15	0.7%	0.2%	7	0	7	2	0	2
55	441	Automotive Dealers and Gasoline Service Stations	29	1.3%	0.3%	1	0	1	1	0	1
56	448	Apparel and Accessory Stores	3	0.1%	-0.2%	1	0	1	0	0	0
57	337	Home Furniture, Furnishings and Equipment Stores	9	0.4%	0.1%	0	0	0	0	0	0
58	722	Eating and Drinking Places	16	0.7%	-0.2%	0	1	1	0	0	0
59	446	Miscellaneous Retail	15	0.7%	-0.8%	1	0	1	0	0	0
60	521	Depository Institutions	34	1.5%	-0.4%	0	3	3	0	0	0
61	522	Nondepository Credit Institutions	34	1.5%	0.3%	0	0	0	0	0	0
62	523	Security and Commodity Brokers, Dealers, Exchanges and Services	74	3.3%	0.8%	1	1	2	1	1	2
63	524	Insurance Carriers	44	2.0%	0.2%	1	2	3	0	1	1
64	525	Insurance Agents, Brokers and Service	15	0.7%	NC	0	1	1	0	1	1

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
65	711	Real Estate	12	0.5%	0.1%	0	0	0	0	0	0
67	551	Holding and Other Investment Offices	107	4.8%	3.5%	1	0	1	0	0	0
70	721	Hotels, Rooming Houses, Camps, and Other Lodging Places	6	0.3%	-0.1%	0	0	0	0	0	0
72	812	Personal Services	3	0.1%	NC	0	0	0	0	0	0
73	541	Business Services	76	3.4%	-10.0%	6	10	16	1	3	4
75	532	Automotive Repair, Services and Parking	10	0.4%	0.1%	0	0	0	0	0	0
76	443	Miscellaneous Repair Services	2	0.1%	NC	0	2	2	0	0	0
78	512	Motion Pictures	9	0.4%	-0.1%	0	1	1	0	0	0
79	713	Amusement and Recreation Services	79	3.5%	2.7%	1	0	1	1	0	1
80	621 622	Health Services General Medical and Surgical; Psychiatric and Substance Abuse Hospitals	14	0.6%	-1.8%	2	1	3	0	0	0
81	541	Legal Services	17	0.8%	0.8%	1	1	2	1	1	2
82	611	Educational Services	227	10.0%	10.0%	5	9	14	0	3	3
83	624	Social Services	0	0.0%	NC	0	0	0	0	0	0
86	813	Membership Organizations	2	0.1%	NC	0	0	0	0	0	0
87	541	Engineering, Accounting, Research, Management and Related Services	55	2.5%	0.2%	1	1	2	1	1	2

TABLE X
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
89	711	Miscellaneous Services	2	0.1%	0.1%	0	0	0	0	0	0
94	923	Administration of Human Resource Programs	2	0.1%	0.1%	0	2	2	0	0	0
95	924	Administration of Environmental Quality and Housing Programs	1	0.0%	NC	0	1	1	0	0	0
99	999	Nonclassificable Establishments	1	0.0%	NC	0	1	1	0	1	1
00	000	Not Available ¹⁵	109	4.9%	0.4%	0	3	3	0	4	4
		<i>ALL TRANSACTIONS</i>	2,237	100.0%		131	123	254	27	43	70

TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
01	111	Agricultural Production - Crops	0	0.0%	-0.1%	0	0	0	0	0	0	0
02	112	Agricultural Production – Livestock and Animal Specialties	2	0.1%	NC	0	0	0	0	0	0	2
07	115	Agricultural Services	0	0.0%	-0.1%	0	0	0	0	0	0	0
08	113	Forestry	5	0.2%	0.1%	0	0	0	0	0	0	0
09	114	Fishing, Hunting & Trapping	0	0.0%	-0.1%	0	0	0	0	0	0	0
10	212	Metal Mining	4	0.2%	0.2%	0	0	0	0	0	0	0
12	212	Coal Mining	1	0.0%	NC	0	0	0	0	0	0	0
13	211	Oil and Gas Extraction	23	1.0%	0.2%	1	3	4	0	1	1	2
14	212	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	11	0.5%	0.3%	2	1	3	0	0	0	0
15	233	Building Construction - General Contractors and Operative Builders	5	0.2%	0.1%	0	0	0	0	0	0	2
16	234	Heavy Construction other than Building Construction - Contractors	13	0.6%	-0.1%	0	0	0	0	0	0	3
17	235	Construction - Special Grade Contractors	9	0.4%	0.7%	0	0	0	0	0	0	1
20	311	Food and Kindred Products	59	2.6%	0.4%	3	10	13	2	8	10	9
21	312	Tobacco Products	4	0.2%	0.1%	0	0	0	0	0	0	0

**TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
22	313	Textile Mill Products	8	0.4%	0.1%	2	0	2	0	0	0	3
23	315	Apparel and Other Finished Products Made from Fabrics and Similar Materials	3	0.1%	-0.1%	0	0	0	0	0	0	0
24	113	Lumber and Wood Products, Except Furniture	9	0.4%	NC	0	1	1	0	1	1	1
25	337	Furniture and Fixtures	3	0.1%	-0.3%	1	0	1	0	0	0	0
26	322	Paper and Allied Products	20	0.9%	-0.3%	1	4	5	0	1	1	7
27	511	Printing, Publishing and Allied Industries	62	2.8%	NC	1	3	4	0	1	1	5
28	325	Chemicals and Allied Products	96	4.3%	-0.1%	20	3	23	5	1	6	13
29	324	Petroleum Refining and Related Industries	8	0.4%	-0.2%	2	0	2	1	0	1	1
30	326	Rubber and Misc. Plastics Products	29	1.3%	-0.3%	6	0	6	0	0	0	4
31	316	Leather and Leather Products	1	0.0%	-0.1%	0	0	0	0	0	0	0
32	327	Stone, Clay, Glass and Concrete Products	8	0.4%	-0.6%	2	0	2	2	0	2	2
33	324	Primary Metal Industries	42	1.9%	1.0%	5	1	6	0	0	0	1
34	332	Fabricated Metal Products, Except Machinery and Transportation Equipment	42	1.9%	NC	5	1	6	0	0	0	2

**TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
35	333	Industrial and Commercial Machinery and Computer Equipment	68	3.0%	-0.2%	7	9	16	0	2	2	7
36	335	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	108	4.8%	-0.1%	4	11	15	0	2	2	12
47	336	Transportation Equipment	37	1.7%	-0.1%	3	5	8	0	2	2	2
38	334	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	97	4.3%	2.6%	21	12	33	5	2	7	13
39	339	Miscellaneous Manufacturing Industries	13	0.6%	0.1%	2	0	2	1	0	1	0
40	482	Railroad Transportation	3	0.1%	0.1%	0	0	0	0	0	0	0
41	485	Local and Suburban Transit and Interurban Highway Passenger Transportation	0	0.0%	-0.1%	0	0	0	0	0	0	0
42	484	Motor Freight Transportation and Warehousing	12	0.5%	-0.2%	2	0	2	0	0	0	0
44	483	Water Transportation	15	0.7%	0.5%	1	0	1	0	0	0	2
45	481	Transportation by Air	7	0.3%	0.1%	0	4	4	0	2	2	1
46	486	Pipelines, Except Natural Gas	8	0.4%	0.3%	1	0	1	1	0	1	0

TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
47	561	Transportation Services	22	1.0%	0.3%	1	0	1	1	2	3	3
48	513	Communications	170	7.6%	-2.7%	1	6	7	1	4	5	19
49	221	Electric, Gas and Sanitary Goods	82	3.7%	0.7%	0	7	7	0	4	4	5
50	421	Wholesale Trade-Durable Goods	97	4.3%	-0.3%	3	4	7	0	0	0	11
51	422	Wholesale Trade- Nondurable Goods	62	2.8%	-0.1%	5	2	7	1	0	1	5
52	444	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	1	0.0%	-0.1%	0	0	0	0	0	0	0
53	452	General Merchandise Stores	4	0.2%	-0.1%	0	0	0	0	0	0	0
54	447	Food Stores	14	0.6%	-0.1%	8	0	8	2	0	2	2
55	441	Automotive Dealers and Gasoline Service Stations	34	1.5%	-0.2%	1	0	1	1	0	1	1
56	448	Apparel and Accessory Stores	4	0.2%	-0.1%	1	0	1	0	0	0	0
57	337	Home Furniture, Furnishings and Equipment Stores	11	0.5%	0.1%	0	0	0	0	0	0	2
58	722	Eating and Drinking Places	21	0.9%	0.2%	0	1	1	0	0	0	2
59	446	Miscellaneous Retail	18	0.8%	-1.1%	1	0	1	0	0	0	0
60	521	Depository Institutions	29	1.3%	-0.7%	0	3	3	0	0	0	1
61	522	Nondepository Credit	37	1.7%	0.5%	0	0	0	0	0	0	6

TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
		Institutions										
62	523	Security and Commodity Brokers, Dealers, Exchanges and Services	73	3.3%	1.7%	0	3	3	0	2	2	10
63	524	Insurance Carriers	51	2.3%	0.5%	2	2	4	0	1	1	8
64	524	Insurance Agents, Brokers and Service	22	1.0%	0.3%	0	2	2	0	1	1	2
65	711	Real Estate	5	0.2%	-0.1%	0	0	0	0	0	0	0
67	551	Holding and Other Investment Offices	27	1.2%	0.6%	0	0	0	0	0	0	0
70	721	Hotels, Rooming Houses, Camps, and Other Lodging Places	5	0.2%	-0.1%	0	0	0	0	0	0	0
72	812	Personal Services	2	0.1%	NC	0	0	0	0	0	0	26
73	541	Business Services	285	12.7%	-3.2%	4	11	15	1	3	4	0
75	532	Automotive Repair, Services and Parking	10	0.4%	0.2%	0	0	0	0	0	0	0
76	443	Miscellaneous Repair Services	2	0.1%	NC	0	2	2	0	0	0	0
78	512	Motion Pictures	10	0.4%	NC	0	1	1	0	0	0	0
79	713	Amusement and Recreation Services	14	0.6%	-0.3%	1	0	1	1	0	1	0
80	621	Health Services	52	2.3%	0.3%	2	3	5	0	0	0	8
82	541	Educational Services	28	1.3%	1.1%	1	1	2	1	1	2	0
83	611	Social Services	4	0.2%	0.2%	0	0	0	0	0	0	0

TABLE XI
FISCAL YEAR 2001¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

2-DIGIT SIC CODE ¹²	3-DIGIT NAICS CODE ¹³	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2000 ¹⁴	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 2-DIGIT OR 3-DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁶
						FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
86	624	Membership Organizations	2	0.1%	0.1%	0	0	0	0	1	1	0
87	813	Engineering, Accounting, Research, Management and Related Services	57	2.5%	-0.3%	4	0	4	0	0	0	4
89	541	Miscellaneous Services	26	1.2%	1.1%	1	1	2	1	1	2	0
94	711	Administration of Human Resource Programs	0	0.0%	NC	0	0	0	0	0	0	0
99	923	Nonclassifiable Establishments	1	0.0%	NC	0	0	0	0	0	0	0
00	924	Not Available	120	5.4%	-2.0%	3	6	9	0	0	0	3
		ALL TRANSACTIONS	2,237	100.00%	--	131	123	254	27	43	70	213

¹ Fiscal Year 2001 figures include transactions reported between October 1, 2000 and September 30, 2001.

² The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to Item 3(b)(ii) and 3(c) of the notification form.

³ These statistics are based on the date that the second request was issued.

⁴ During fiscal year 2001, 2376 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number 2,237 reflects adjustments to eliminate the following types of transactions: (1) transactions reported under Section (c)(6) and Section (c)(8), (transactions involving certain regulated industries and financial businesses); (2) transactions found to be 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 party transactions (transactions involving two or more acquiring persons).

⁵ Percentage of total transactions

⁶ Percentage of transaction range group.

⁷ Pursuant to HSR reform, on February 1, 2001, the size-of-transaction threshold was increased from \$15 million to \$50 million, and the 15 percent size-of-transaction threshold was eliminated.

⁸ The assets of the acquired entity were taken from response to Item 3(b)(i) (Assets to be acquired) or from Items 4(a) or (b) (SEC documents and annual reports required by the premerger notification and report form).

⁹ The assets were not available primarily because the acquired entity's financial data was consolidated within its ultimate parent.

¹⁰ The sales of the acquired entity were taken from Items 4(a) and (b) (SEC documents and annual reports) or responses to Item 5 (dollar revenues) of the premerger notification and report form.

¹¹ Transactions in this category include acquisitions of newly formed corporations or corporate joint ventures from which no sales were generated, and acquisitions of assets, which had produced no sales or revenues during the prior year to filing the notification and report form.

¹² The 2-digit SIC codes are part of the system of Standard Industrial Classification established by the United States Government Standard Classification Manual, 1987, Executive Office of the President – Office of Management and Budget. The SIC groupings used in this table were determined from responses submitted by filing parties to Item 5 of the premerger notification and report form.

¹³ The 3-digit NAICS codes are part of the North American Industrial Classification System 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 effective July 1, 2001.

¹⁴ This number represents a deviate in percentage from the FY 2000 percentage.

¹⁵ This category includes transactions by newly formed entities.

¹⁶ The intra-industry transaction column identifies the number of acquisitions in which both the acquiring and acquired persons derived revenues in the same industry.