



FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION



DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

HART-SCOTT-RODINO ANNUAL REPORT

FISCAL YEAR 2012

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

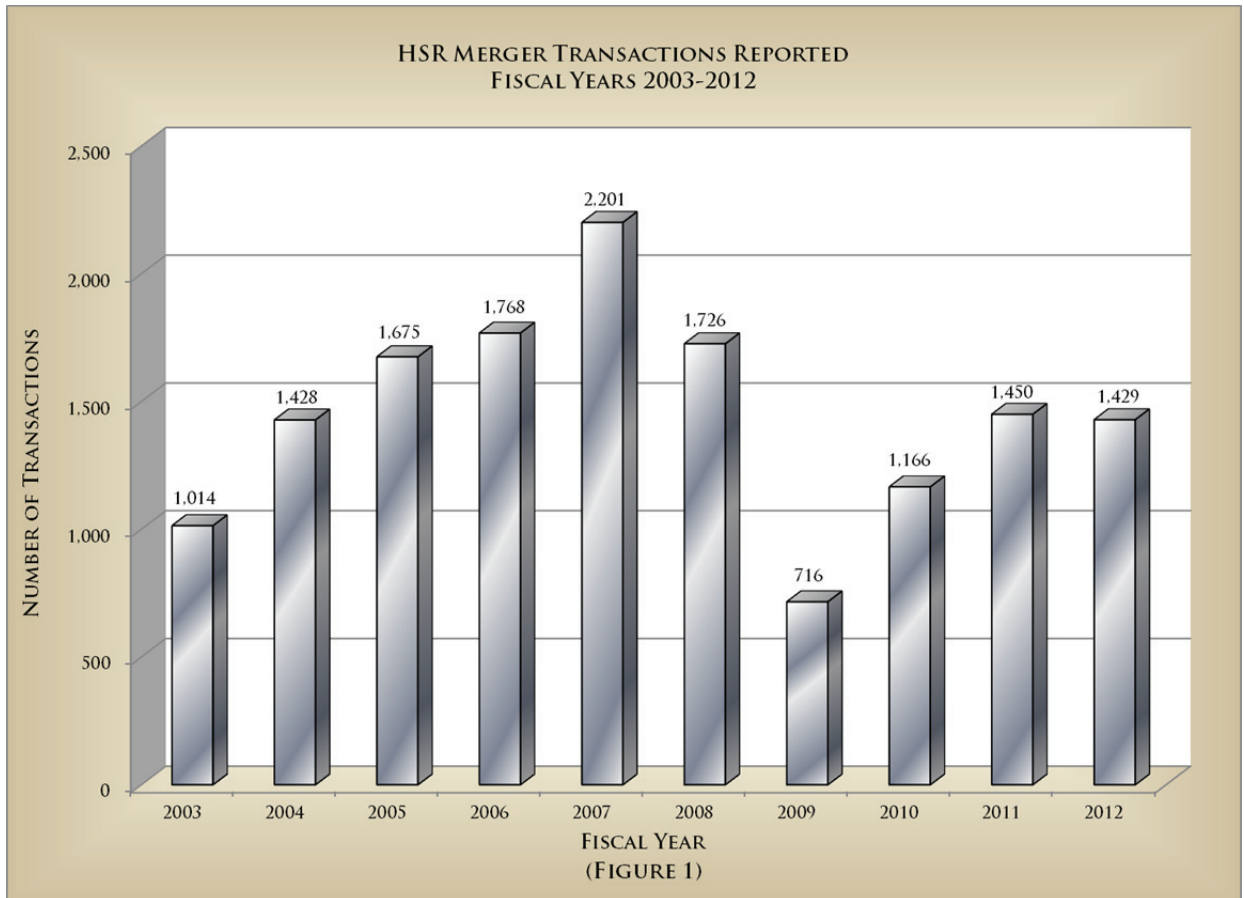
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INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act or the Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (Commission) and the Antitrust Division of the Department of Justice (Antitrust Division or Division) to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in alerting the Commission and the Division to transactions that became the subjects of the numerous enforcement actions brought in fiscal year 2012¹ to protect consumers – individual, business, and government – against anticompetitive mergers.

The Commission and the Antitrust Division continue their efforts to protect competition by identifying and investigating those mergers and acquisitions that raise potentially significant competitive concerns. In fiscal year 2012, 1,429 transactions were reported under the HSR Act, representing about a 1.4% decrease from the 1,450 transactions reported in fiscal year 2011. (See Figure 1 below.)



¹ The fiscal year covers the period of October 1, 2011 through September 30, 2012.

During fiscal year 2012, the Commission brought 25 merger enforcement actions,² including three in which the Commission initiated administrative litigation; 15 in which it accepted consent orders for public comment, 14 of which resulted in final orders (with one still pending), and seven in which the transactions were abandoned or restructured as a result of antitrust concerns raised during the investigation. These enforcement actions preserved competition in numerous sectors of the economy, including pharmaceuticals, hospital and other health care providers, industrial and high tech goods, energy, and retailing. In two of the cases in which the Commission issued administrative complaints, the Commission sought preliminary injunctions in federal district court to enjoin the acquisitions pending resolution of the Commission's administrative litigation.

One of the Commission's notable challenges was against OSF Healthcare System's proposed acquisition of rival hospital services provider, Rockford Health in Rockford, Illinois. On April 5, 2012, the U.S. District Court for the Northern District of Illinois, Western Division, granted a preliminary injunction to halt the transaction, pending the FTC's administrative proceeding and any subsequent appeals. The Commission also challenged Graco, Inc.'s acquisition of its largest and most significant competitor in the market for equipment used to apply paints and other liquid finishes to a variety of manufactured goods. While the Commission's request for a preliminary injunction was pending in federal district court, the Commission agreed to resolve the litigation with a consent order. Other enforcement matters resulted in the issuance of consent orders designed to preserve competition in the pharmaceutical sector, including challenges to acquisitions by Valeant Pharmaceuticals International and the Teva Pharmaceutical Industries/Cephalon merger. In the energy industry, the Commission challenged Kinder Morgan's acquisition of natural gas pipelines, gas processing plants, and associated storage capacity in the Rocky Mountain region. In the high technology sector, the Commission required Western Digital Corporation to divest assets before consummating its acquisition of Hitachi Global Storage, its worldwide rival in desktop hard disk drives. These merger challenges and others are summarized in the Merger Enforcement Activity section found later in this report. In fiscal year 2012, the Commission also pursued appeals on litigation begun in previous fiscal years, including cases against Polypore International/Daramic LLC, ProMedica Health System/St. Luke's Hospital, and Phoebe Putney Health System/Palmyra Park Hospital. The case against the Phoebe Putney Health System acquisition is particularly notable in that on February 19, 2013 in a unanimous opinion, the Supreme Court ruled that the state action doctrine did not immunize Phoebe Putney Health System, Inc.'s acquisition of its sole rival in Albany, Georgia, Palmyra Park Hospital, Inc., from the federal antitrust laws. The FTC alleged that the deal would create a monopoly and allow the combined Phoebe/Palmyra to raise prices for general acute-care hospital services charged to commercial health plans, harming patients and local employers and employees. The Supreme Court's decision reverses a decision of the 11th Circuit Court of Appeals and remands the case for further proceedings.

During fiscal year 2012, the Antitrust Division challenged 19 merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In eight of these challenges, the Antitrust Division filed a complaint in U.S. district court. In all

² To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2012.

eight court challenges, the parties filed settlement papers simultaneously with the complaint. Seven of these court challenges were ultimately settled by consent decree, and in the other court challenge, the parties abandoned the transaction and the Division filed a notice with the court withdrawing the complaint and proposed settlement. In the eleven challenges in which the Antitrust Division did not file a complaint during fiscal year 2012, when apprised of the Division's concerns regarding their proposed transactions, the parties in six instances abandoned the proposed transaction, in two instances restructured the proposed transaction and in three instances changed their conduct to avoid competitive problems, thus resolving the Division's concerns.

One of the notable matters handled by the Division was United Technologies Corporation's \$18.4 billion acquisition of Goodrich Corporation. The transaction was the largest merger in the history of the aircraft industry. As originally proposed, the acquisition would have resulted in higher prices, less favorable contractual terms and less innovation for several critical aircraft components. The Division challenged the merger in U.S. district court, and the subsequent settlement required UTC to divest assets used in the production of electrical power systems and aircraft engine control systems. The Division, the European Commission, and the Canadian Competition Bureau cooperated closely throughout the course of their respective investigations, with frequent contact among the agencies. The Division also had discussions with other competition agencies, including the Federal Competition Commission in Mexico and the Administrative Council for Economic Defense in Brazil. In addition to UTC, the Division challenged a number of mergers that would have had a direct effect on the pocketbooks of U.S. consumers. The Division challenged, and reached pro-competitive settlements, in mergers involving sliced bread (*United States v. Grupo Bimbo, et al.*), electricity (*United States v. Exelon Corporation, et al.*), health insurance (*United States v. Humana Inc., et al.*) and parking services (*United States v. Standard Parking Corporation, et al.*). Additionally, 3M Co. abandoned its proposed \$550 million acquisition of Avery Dennison Corp.'s Office and Consumer Products Group, its closest competitor in the sale of adhesive-backed labels and sticky notes, after the Division informed the companies that it would file a lawsuit to block the deal. The transaction would have substantially lessened competition in the sale of labels and sticky notes, resulting in higher prices and reduced innovation for products that millions of American consumers use every day.

In fiscal year 2012, the Commission's Premerger Notification Office (PNO) continued to respond to thousands of telephone calls seeking information about the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form (the filing form). The HSR website, <http://www.ftc.gov/bc/hsr/>, continued to provide improved access to information necessary to the notification process. The website includes basic resources, such as introductory guides, that provide an overview of the premerger notification program and merger review process. It is the primary source of information for HSR practitioners seeking information on the HSR form and instructions, the premerger notification statute and rules, current filing thresholds, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, contact information for PNO staff and frequently asked questions regarding the HSR filing requirements. Web users can also find up-to-date information, including speeches, press releases, summaries

and highlights, and Federal Register notices about any amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff is available to help HSR practitioners comply with HSR notification requirements.

BACKGROUND OF THE HSR ACT

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

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

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

The Commission, with the concurrence of the Assistant Attorney General for the Antitrust Division, promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form.³ The program became effective on September 5, 1978. The Commission, with

³ 43 Fed. Reg. 33450 (July 31, 1978).

the concurrence of the Assistant Attorney General, has amended the rules and the filing form on several occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules.⁴

A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for the ten-year period covering fiscal years 2003-2012, the number of transactions reported, the number of filings received, the number of merger investigations in which second requests were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted.⁵ Appendix A also shows the number of transactions in which second requests could have been issued, as well as the percentage of transactions in which second requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 2003 through 2012.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2012 decreased 1.4% from the number of transactions reported in fiscal year 2011. In fiscal year 2012, 1,429 transactions were reported, while 1,450 were reported in fiscal year 2011.⁶ The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2012 decreased 10.9% from the number of merger investigations in which second requests were issued in fiscal year 2011.⁷ Second requests were issued in 49 merger investigations in fiscal year 2012 (20 issued by the FTC and 29 issued by the

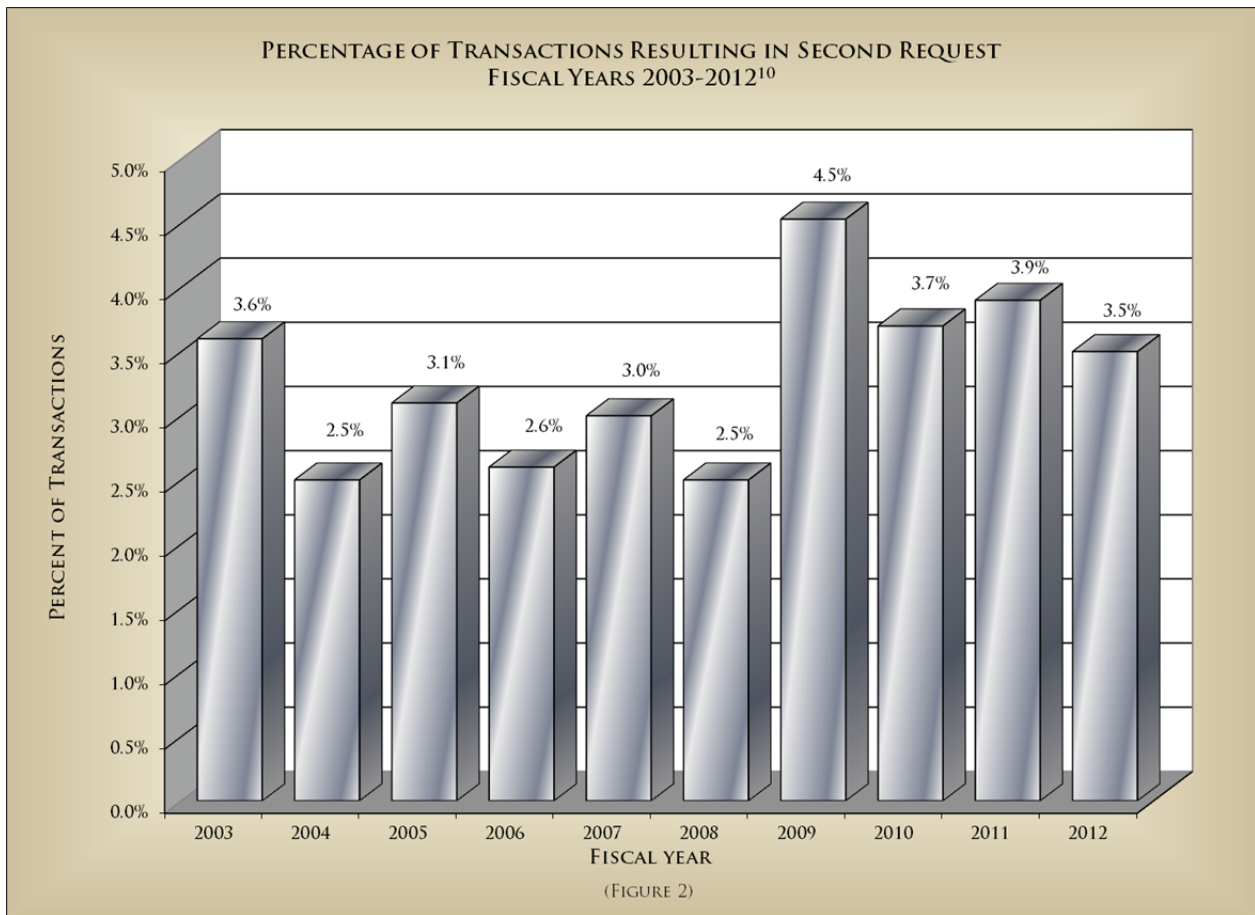
⁴ 43 Fed. Reg. 34443 (Aug. 4, 1978); 43 Fed. Reg. 36053 (Aug. 15, 1978); 44 Fed. Reg. (Nov. 21, 1979); 45 Fed. Reg. 14205 (Mar. 5, 1980); 48 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (Nov. 12, 1985); 51 Fed. Reg. 10368 (Mar. 26, 1986); 52 Fed. Reg. 7066 (Mar. 6, 1987); 52 Fed. Reg. 20058 (May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

⁵ The term "transaction," as used in Appendices A and B and Exhibit A to this report, does not refer only to individual mergers or acquisitions. A particular merger, joint venture, or acquisition may be structured such that it involves more than one filing that must be made under the HSR Act.

⁶ This Report, like previous Reports, also includes annual data on "adjusted transactions in which a second request could have been issued" ("adjusted transactions"). See Appendix A and n. 2 of Appendix A (explaining calculation of that data). There were 1,400 adjusted transactions in fiscal year 2012, and the data presented in the Tables and the percentages discussed in the text of this Report (e.g., percentage of transactions resulting in second requests) are based on this figure.

⁷ For fiscal year 2011, DOJ has corrected its previously published number of investigations in which second requests were issued from 34 to 31 investigations, resulting in the total number of investigations in which second requests were issued in fiscal year 2011 to change from 58 to 55. DOJ also corrected this number for fiscal year 2010 in Appendix A.

Division), while second requests were issued in 55⁸ merger investigations in fiscal year 2011 (24 issued by the FTC and 31 issued by the Division). The percentage of transactions in which a second request was issued decreased from 3.9% in 2011 to 3.5% in 2012.⁹ (See Figure 2 below.)



The statistics in Appendix A also show that early termination of the waiting period was requested in the majority of transactions. In fiscal year 2012, early termination was requested in 78% (1,094) of the transactions reported; in fiscal year 2011, early termination was requested in 82% (1,157) of the transactions reported. The percentage of requests granted out of the total requested increased from 77% in fiscal year 2011 to 82% in fiscal year 2012.

The tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2012. The tables provide, for

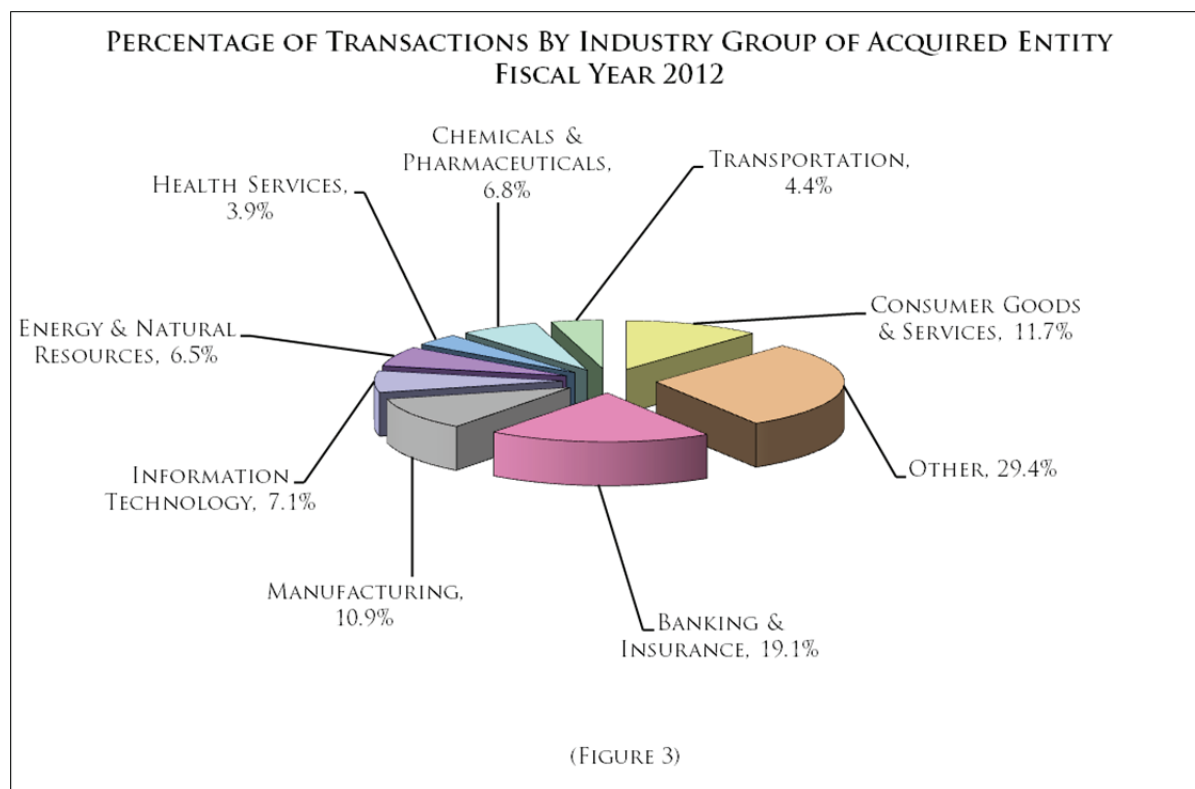
⁸ *Id.*

⁹ With the correction made by DOJ to its fiscal year 2011 data, the percentage of transactions resulting in second requests issued by DOJ changed from 2.4% to 2.2%, thus changing the total percentage of transactions resulting in second requests from either agency in fiscal year 2011 from 4.1% to 3.9%.

¹⁰ Figure 2 reflects the corrections of the previously published DOJ number of investigations in which second requests were issued from 34 to 31 investigations in fiscal year 2011 and from 26 to 22 in fiscal year 2010. Therefore, the percentage of transactions in which a second request was issued by either agency changed from 4.1% to 3.9% for fiscal year 2011 and from 4.1% to 3.7% for fiscal year 2010.

various categories of transactions, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued. Table III of Exhibit A shows that, in fiscal year 2012, clearance was granted to either of the agencies for the purpose of conducting an initial investigation in 14.7% of the total number of the transactions reported. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. In fiscal year 2012, the dollar value of reported transactions was \$921 billion.¹¹

Tables X and XI provide the number of transactions by industry group in which the acquiring person or the acquired entity derived the most revenue. Figure 3 illustrates the percentage of reportable transactions within industry groups for fiscal year 2012 based on the acquired entity's operations.¹²



¹¹ The information on the value of reported transactions for fiscal year 2012 is drawn from a database maintained by the Premerger Notification Office.

¹² The “Other” category consists of industry segments that include construction, educational services, performing arts, recreation, and non-classifiable establishments.

DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

1. *Issuance of Proposed Rules*

On August 13, 2012, the Commission issued a Notice of Proposed Rulemaking¹³ proposing changes to the premerger notification rules. The proposed rules aim to provide a framework for determining when a transaction involving the transfer of rights to a patent in the pharmaceutical (including biologics and medicine manufacturing) industry constitutes an asset acquisition and thus is potentially reportable under the HSR Act. The comment period ended on October 25, 2012.

2. *Compliance*

The Commission and the Antitrust Division continued to monitor compliance with the premerger notification program's filing and waiting period requirements and initiated a number of compliance investigations in fiscal year 2012. The agencies monitor compliance through a variety of methods, including a review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, interested members of the public, and in some cases the parties themselves, often provide the agencies with information about transactions and possible violations of the Act's requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$16,000 for each day the violation continues.¹⁴ The antitrust agencies examine the circumstances of each violation to determine whether penalties should be sought.¹⁵ During fiscal year 2012, 60 corrective filings for violations were received, and the agencies brought two enforcement actions, resulting in \$1,350,000 in civil penalties.

In *United States v. Brian L. Roberts*,¹⁶ the complaint alleged that Brian Roberts, the Chief Executive Officer of Comcast Corporation, failed to comply with the HSR Act's premerger notification requirements before acquiring Comcast voting securities as part of his compensation beginning in 2007. Although this was the first time that Roberts had been charged

¹³ <http://ftc.gov/opa/2013/02/hsr.shtm>

¹⁴ Dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134 (Apr. 26, 1996). The adjustments have included an increase in the maximum civil penalty from \$10,000 to \$11,000 for each day during which a person is in violation under Section 7A(g)(1) (61 Fed. Reg. 54548 (Oct. 21, 1996), corrected at 61 Fed. Reg. 55840 (Oct. 29, 1996)) and to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857 (Jan. 9, 2009)).

¹⁵ When the parties inadvertently fail to file, the enforcement agencies generally do not seek penalties if the parties promptly make corrective filings after discovering the failure to file, submit an acceptable explanation of their failure to file, and have not previously violated the Act.

¹⁶ *United States v. Brian L. Roberts*, No. 1:11-CV-02240 (D.D.C. filed Dec. 16, 2011).

with an HSR Act violation, he had twice previously made corrective filings for what he claimed were inadvertent failures to file. Under the terms of a consent decree filed simultaneously with the complaint and entered by the court on December 28, 2011, Roberts agreed to pay a \$500,000 civil penalty to settle the charges.

In *United States v. Biglari Holdings, Inc.*,¹⁷ the complaint alleged that Biglari Holdings, Inc. failed to comply with premerger notification requirements before acquiring voting securities of Cracker Barrel Old Country Store, Inc. in June of 2011. Although the HSR Act exempts certain acquisitions “solely for the purpose of investment,” according to the complaint, Biglari Holdings’ acquisitions did not qualify for this exemption. Under the terms of the consent decree filed simultaneously with the complaint and pending with the court, Biglari Holdings agreed to pay an \$850,000 civil penalty to settle the charges.

3. *Threshold Adjustments*

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

On January 27, 2012, the Commission published a notice¹⁸ to reflect adjustment of reporting thresholds as required by the 2000 amendments¹⁹ to Section 7A of the Clayton Act, 15 U.S.C. §18a. The revised threshold, which increased from \$66 million to \$68.2 million, became effective February 27, 2012.

MERGER ENFORCEMENT ACTIVITY²⁰

1. *The Department of Justice*

During fiscal year 2012, the Antitrust Division challenged 19 merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In eight of these challenges, the Antitrust Division filed a complaint in U.S. district court. In all eight court challenges, the parties filed settlement papers simultaneously with the complaint. Seven of these court challenges were ultimately settled by consent decree, and in the other court challenge, the parties abandoned the transaction and the Division filed a notice with the court

¹⁷ United States v. Biglari Holdings, Inc., No. 1:12-CV-01586 (D.D.C. filed Sept. 25, 2012).

¹⁸ 77 Fed. Reg. 4323 (Jan. 27, 2012).

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

²⁰ The cases listed in this section were not necessarily reportable under the premerger notification program. Given the confidentiality of information obtained pursuant to the Act, it would be inappropriate to identify the cases initiated under the program except in those instances in which that information has already been disclosed.

withdrawing the complaint and proposed settlement. In the eleven challenges where the Antitrust Division did not file a complaint during fiscal year 2012, when apprised of the Division's concerns regarding their proposed transactions, the parties in six instances abandoned the proposed transaction, in two instances restructured the proposed transaction and in three instances changed their conduct to avoid competitive problems, thus resolving the Division's concerns.²¹

In *United States v. Grupo Bimbo, S.A.B. de C.V., BBU, Inc. and Sara Lee Corporation*,²² the Division challenged the proposed acquisition of the North American fresh bakery business of Sara Lee Corporation by Grupo Bimbo S.A.B. de C.V. and BBU, Inc., (collectively "BBU"). The complaint alleged that the acquisition, as originally proposed, would eliminate substantial head-to-head competition in the sale of sliced bread sold in retail stores in eight metropolitan and surrounding areas and likely would result in millions of American consumers paying higher prices for sliced bread. The Division filed a proposed consent decree simultaneously with the complaint, requiring the divestiture of certain well-known Sara Lee and BBU sliced bread brands in San Diego, Los Angeles, San Francisco and Sacramento, California; Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Harrisburg/Scranton, Pennsylvania, as well as the associated manufacturing, distribution, and marketing assets required to compete effectively in the sale of those brands in those areas. The court entered the decree on February 15, 2012.

In *United States and State of Montana v. Blue Cross and Blue Shield of Montana, Inc., Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., New West Health Services, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital*,²³ the Division and the State of Montana challenged the proposed agreement between Blue Cross and Blue Shield of Montana ("BCBS-Montana") and five of the six hospital owners of New West Health Services, a health insurance provider, under which BCBS-Montana would pay the five hospitals in exchange for their agreeing collectively to stop purchasing health

²¹ In six instances, the Division issued a press release: November 10, 2011 - First Niagara Bank N.A. acquisition of HSBC Bank USA N.A. (banks); February 13, 2012 - Google Inc.'s acquisition of Motorola Mobility Holdings Inc. patents (mobile telecommunications); February 13, 2012 - Apple's acquisition of certain Novell Inc. patents (mobile telecommunications); February 13, 2012 - Apple Inc., Microsoft Corp. and Research in Motion Ltd. (RIM) acquisitions of certain Nortel Networks Corporation patents (mobile telecommunications); April 30, 2012 - National Express Corporation acquisition of Petermann Partners Inc. (school bus contracts); September 4, 2012 - 3M Company proposed acquisition of Avery Dennison Corp.'s Office and Consumer Products Group (office supplies). In the other five instances, the Division informed the parties of its concerns, but did not issue a press release: proposed acquisition of Veritix by Live Nation (custom computer programming services); Revere Copper Products, Inc. acquisition of Hussey Copper Ltd. (copper); Old Castle Materials, Inc. acquisition of Stavola Holding Corporation (aggregate quarries and mining and asphalt paving mixture manufacturing); Crowley Maritime Corporation proposed acquisition of Trailer Bridge, Incorporated (coastal freight transportation); and Reddy Ice Holdings proposed acquisition of Arctic Glacier Inc. (packaged ice).

²² *United States v. Grupo Bimbo, S.A.B. de C.V., BBU, Inc. and Sara Lee Corporation*, No. 1:11-CV-01857 (D.D.C. filed October 21, 2011).

²³ *United States and State of Montana v. Blue Cross and Blue Shield of Montana, Inc., Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., New West Health Services, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital*, No. 1:11-CV-00123 (D. Mont. filed November 8, 2011).

insurance for their own employees from New West and instead buy insurance for their employees from BCBS-Montana exclusively for six years. The complaint alleged that the agreement, as originally structured, would have effectively eliminated New West as a competitor to BCBS-Montana in the sale of commercial health insurance in several areas of Montana, thereby decreasing the number of significant competitors in the affected markets from three to two and allowing BCBS-Montana to increase prices and reduce the quality of service of its commercial health plans. The proposed settlement, filed simultaneously with the complaint, prevents the agreement from harming competition by, among other things, requiring New West to divest its remaining commercial health insurance business to a Division-approved acquirer with the intent and capability to be an effective competitor in the commercial health insurance markets in Montana. The court entered the decree on March 15, 2012.

In *United States v. Exelon Corporation and Constellation Energy Group, Inc.*,²⁴ the Division challenged the proposed \$7.9 billion merger of Exelon Corporation and Constellation Energy Group Inc. The complaint alleged that the transaction, as originally proposed, likely would have substantially lessened competition for wholesale electricity, ultimately increasing electricity prices for millions of consumers in the mid-Atlantic region of the country. Under the terms of the proposed consent decree filed simultaneously with the complaint and entered by the court on May 22, 2012, the merged firm is required to divest three electricity generating plants in Maryland, which in total provide more than 2,600 megawatts of generating capacity.

In *United States v. Deutsche Börse AG and NYSE Euronext*,²⁵ the Division challenged the proposed \$9 billion merger of the German company Deutsche Börse and NYSE Euronext, one of the two largest and most prestigious stock exchange operators in the United States. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition for displayed equities trading services, listing services for exchange-traded products, including exchange-traded funds, and real-time proprietary equity data products in the United States. Under the terms of the proposed consent decree filed simultaneously with the complaint on December 22, 2011, Deutsche Börse's subsidiary, International Securities Exchange Holdings, Inc., was required to divest its 31.5 percent interest in Direct Edge, the fourth largest stock exchange operator in the United States, and agree to other restrictions. On February 9, 2012, the parties abandoned the transaction, and the Division filed a notice with the U.S. District Court for the District of Columbia withdrawing the complaint and proposed settlement. The Division and the European Commission communicated extensively throughout the course of their respective investigations, with frequent contact between investigative staffs, aided by waivers provided by the merging parties.

In *United States v. International Paper Company and Temple-Inland Inc.*,²⁶ the Division challenged the proposed \$4.3 billion merger of International Paper Company and

²⁴ *United States v. Exelon Corporation and Constellation Energy Group, Inc.*, No. 1:11-CV-02276 (D.D.C. filed December 21, 2011).

²⁵ *United States v. Deutsche Börse AG and NYSE Euronext*, No. 1:11-CV-02280 (D.D.C. filed December 22, 2011).

²⁶ *United States v. International Paper Company and Temple-Inland Inc.*, No. 1:12-CV-00227 (D.D.C. filed February 10, 2012).

Temple-Inland Inc. The complaint alleged that the transaction, as originally proposed, would have substantially lessened competition in the production and sale of containerboard, the type of paper used to make corrugated boxes, in the United States. Corrugated boxes made from containerboard are used to ship more than 90 percent of all goods nationwide. The Division filed a proposed consent decree simultaneously with the complaint. The proposed consent decree requires the parties to divest a total of three containerboard mills, one located in Waverly, Tennessee, one located in Ontario, California, and either the mill located in Henderson, Kentucky, or the mill located in Oxnard, California. The decree was entered by the court on May 3, 2012.

In *United States v. Humana Inc. and Arcadian Management Services, Inc.*,²⁷ the Division challenged the proposed acquisition of Arcadian Management Services, Inc. by Humana Inc. The complaint alleged that the transaction, as originally proposed, would likely result in higher prices, fewer choices and lower quality Medicare Advantage plans purchased by Medicare beneficiaries in Arizona, Arkansas, Louisiana, Oklahoma, and Texas. Individuals eligible for Medicare, primarily senior citizens, may elect to enroll in a privately provided Medicare Advantage plan instead of traditional Medicare. Congress established the Medicare Advantage program with the intent that vigorous competition among private Medicare Advantage insurers would lead insurers to offer seniors a rich set of affordable benefits, provide a wide range of health insurance choices and be responsive to the demands of seniors. A proposed consent decree filed at the same time as the complaint requires Humana to divest Medicare Advantage plans in 51 counties and parishes in these five states. On October 22, 2012, the decree was entered by the court.

In *United States v. United Technologies Corporation and Goodrich Corporation*,²⁸ the Division challenged the proposed acquisition of Goodrich by United Technologies Corporation (“UTC”). The \$18.4 billion transaction is the largest in the history of the aircraft industry. The complaint alleged that the acquisition, as originally proposed, would lessen competition substantially in the worldwide markets for the development, manufacture and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines. Aircraft main engine generators, which are used to produce the electrical power in communication and navigation equipment, environmental control systems, interior and exterior lighting, and other aircraft systems, are complex mechanical devices that are difficult to produce, and for which no substitutes exist. The proposed acquisition would have combined the only two significant suppliers of large main engine generators for aircraft in the world. Goodrich’s engine control systems business supplied critical components to several of UTC’s leading competitors for aircraft turbine engines. In addition, as part of the proposed acquisition, UTC, one of the three leading suppliers of engine control systems for large aircraft turbine engines, would acquire Goodrich’s 50 percent share in a joint venture that forms one of the other two producers of such engine control systems. The proposed final judgment, which was filed simultaneously with the complaint and is pending with the court, requires UTC to divest Goodrich’s business that

²⁷ *United States v. Humana Inc. and Arcadian Management Services, Inc.*, No. 1:12-CV-00464 (D.D.C. filed March 27, 2012).

²⁸ *United States v. United Technologies Corporation and Goodrich Corporation*, No. 1:12-CV-01230 (D.D.C. filed July 26, 2012).

designs, develops, and manufactures large main engine generators and engine control systems. The proposed final judgment also requires UTC to divest Goodrich's shares in the joint venture that manufactures engine control systems. Close cooperation between the Division, European Commission, and Canadian Competition Bureau achieved a coordinated remedy that will preserve competition in the United States and internationally.

In *United States v. Standard Parking Corporation, KCPC Holdings, Inc. and Central Parking Corporation*,²⁹ the Division challenged the acquisition of Central Parking by Standard Parking, the two largest parking management service companies in the country. The complaint alleged that the proposed acquisition, as originally structured, would lessen competition for off-street parking services in central business districts of several cities throughout the United States. Under the terms of the proposed consent decree filed along with the complaint, Standard and Central must divest their interests in certain off-street parking facilities in 29 cities in 21 states, accounting for at least 107 parking facilities in the relevant areas. Without the divestitures, the combined firm would have gained a dominant market share of off-street parking facilities in the affected cities, resulting in higher prices and reduced service to motorists. On January 3, 2013, the decree was entered by the court.

In fiscal year 2012, the Division investigated one bank merger transaction for which divestiture was required prior to consummation. On November 10, 2011, the Division entered into a letter agreement with *First Niagara Bank and HSBC Bank USA* requiring divestiture of 26 branches with approximately \$1.6 billion in deposits in Erie, Niagara, and Orleans Counties, New York. First Niagara's acquisition of 195 HSBC branches in New York and Connecticut was subject to final approval of the Office of the Comptroller of the Currency, and the Division advised the agency that it would not challenge the transaction, provided that the parties comply with the agreement to divest the specified branch offices and associated loans and deposits.³⁰

2. *The Federal Trade Commission*

During fiscal year 2012, the Commission brought 25 merger enforcement actions,³¹ including three in which the Commission initiated administrative litigation; 15 in which it accepted consent orders for public comment, 14 of which resulted in final orders (with one still pending); and seven in which the transactions were abandoned or restructured as a result of antitrust concerns raised during the investigation. In two of the matters in which the Commission initiated administrative litigation, the Commission also sought preliminary injunctions in federal district court to enjoin the acquisitions while the Commission's administrative litigation was pending.

The three matters in which the Commission initiated administrative litigation are

²⁹ *United States v. Standard Parking Corporation, KCPC Holdings, Inc. and Central Parking Corporation*, No. 1:12-cv-01598 (D.D.C. filed September 26, 2012).

³⁰ DOJ Press Release: November 10, 2011 - First Niagara Bank N.A. acquisition of HSBC Bank USA N.A.

³¹ To avoid double counting, this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2012.

described below.

In *OSF Healthcare System/Rockford Health System*,³² the Commission challenged OSF Healthcare System's proposed acquisition of rival health care provider, Rockford Health. The Commission charged that the acquisition would have reduced competition for hospital services in the Rockford, Illinois area, causing significant harm to local businesses and patients and leaving OSF with only one remaining competitor in the market. The Commission filed a complaint in federal district court in Illinois, seeking a preliminary injunction to halt the transaction. In addition, the FTC issued an administrative complaint. On April 5, 2012, the U.S. District Court for the Northern District of Illinois, Western Division, granted a preliminary injunction to halt the transaction pending the FTC's administrative proceeding and any subsequent appeals. OSF abandoned its acquisition plans after the district court ruling, and the Commission then dismissed its administrative action.

In *Graco/Illinois Tool Works*,³³ the Commission challenged Graco, Inc.'s proposed \$650 million acquisition of ITW Finishing from Illinois Tool Works, Inc., Graco's largest competitor. The Commission alleged that the transaction would harm competition in the market for equipment used to apply paints and other liquid finishes to a variety of manufactured goods, such as cars, wood cabinets, and major appliances. The Commission issued an administrative complaint and sought a preliminary injunction in the U.S. District Court for the District of Columbia to halt the transaction pending resolution of the administrative litigation. In March 2012, the Commission withdrew the matter from litigation to consider a proposed consent agreement. The Commission resolved the matter through entry of a consent order requiring Graco to hold separate and divest the worldwide liquid finishing equipment of Illinois Tool Works, Inc. and ITW Finishing.

In *Omnicare/PharMerica*,³⁴ the Commission issued an administrative complaint challenging Omnicare, Inc.'s hostile acquisition of a rival long-term care pharmacy provider, PharMerica Corporation. The Complaint alleged that the transaction would combine the two largest U.S. long-term care pharmacies, harming competition and enabling Omnicare to raise the price of drugs for Medicare Part D consumers and others. The Commission charged that a merger combining Omnicare and PharMerica would significantly increase Omnicare's already substantial bargaining leverage by dramatically increasing the number of skilled nursing facilities, known as SNFs, that receive long-term care pharmacy services from the company. Due to its substantial market share, the Commission alleged the combined firm likely would be a "must have" for Medicare Part D prescription drug plans, which are responsible for providing subsidized prescription drug benefit coverage for most SNF residents and other Medicare beneficiaries. In February 2012, Omnicare abandoned its proposed acquisition, and the Commission dismissed its administrative challenge.

³² FTC v. OSF Healthcare System and Rockford Health, Dkt. No. 9349 (administrative complaint issued Nov. 18, 2011).

³³ FTC v. Graco, Inc., Illinois Tool Works, Inc. and ITW Finishing LLC, Dkt. No. 9350 (administrative complaint issued Dec. 15, 2011).

³⁴ In the matter of Omnicare, Inc., Dkt. No. 9352 (administrative complaint issued Jan. 27, 2012).

As previously stated, in fiscal year 2012, the Commission also accepted consent agreements and issued proposed orders for public comment in 15 merger matters. The Commission finalized 14 of them, and one remains pending.

In *Teva Pharmaceutical Industries/Cephalon*,³⁵ the Commission charged, in a Complaint accompanying the consent order, that Teva Pharmaceutical Industries, Ltd.'s proposed \$6.8 billion acquisition of Cephalon, Inc. would reduce the number of generic versions of Actiq, a cancer pain drug, from three to two, and lessen competition in the relevant market. The Commission also alleged that the acquisition would eliminate potential competition between Teva and Cephalon and reduce the number of generic competitors in the future for Amrix, a muscle relaxant. While Cephalon's version of Amrix was the only generic available, the Commission alleged that Teva was capable of entering the relevant market with a generic version of the product. To resolve these concerns, the Commission's consent order required Teva to sell its rights and assets related to the two drugs to Par Pharmaceuticals, Inc. The consent order also required Teva to enter into a supply agreement that would allow Par to sell a generic version of Cephalon's wakefulness drug Provigil in 2012 to resolve the Commission's concerns that the merger would limit generic suppliers in that market.

In *Healthcare Technology Holdings*,³⁶ the Commission challenged Healthcare Technology Holdings, Inc.'s proposed acquisition of SDI Health, LLC., a rival of Healthcare Technology's IMS Health, Inc. affiliate. The Commission charged that the acquisition of SDI by Healthcare Technology would have greatly reduced competition and increased prices in the promotional and medical audit markets. Promotional audits are market research products used by drug companies and others to estimate advertising and other promotional activities for branded drugs. Medical audits are used to estimate the actual medical diagnoses physicians make and the therapies they prescribe. The Commission alleged that the markets for both promotional and medical audits are highly concentrated and that the acquisition would eliminate IMS's only significant competitor (SDI) in both markets. To resolve these competitive concerns and restore the competition that would have been lost with the acquisition, the Commission issued a consent order requiring the sale of SDI's promotional audit and medical audit businesses to an FTC-approved buyer.

In *Laboratory Corporation of America Holdings/Orchid Cellmark*,³⁷ the Commission required laboratory testing companies Laboratory Corporation of America Holdings (LabCorp) and rival Orchid Cellmark Inc. to divest a portion of Orchid's paternity testing business to another testing company, DNA Diagnostics Center (DDC). The Commission charged that LabCorp's \$85.4 million acquisition of Orchid as originally proposed would have had an anticompetitive impact in the market for paternity testing services used by government agencies. Government agencies contract with laboratory testing companies to provide DNA testing

³⁵ In the matter of Teva Pharmaceutical Industries, Ltd. and Cephalon, Inc., Dkt. No. C-4335 (proposed order issued July 3, 2012).

³⁶ In the matter of Healthcare Technology Holdings, Inc., Dkt. No. C-4340 (proposed order issued Oct. 28, 2011).

³⁷ In the matter of Laboratory Corporation of America Holdings, and Orchid Cellmark, Inc., Dkt. No. C-4341 (proposed order issued Dec. 8, 2011).

services and use those tests to resolve paternity issues. The Commission alleged that because LabCorp and Orchid are the two most significant providers of these paternity testing services in the country and have a majority of the market, the acquisition would have reduced competition for government contracts. The divestiture of Orchid's paternity testing company to DDC, an FTC-approved buyer, resolved the agency's charges that the acquisition was anticompetitive by restoring a competitor in the market.

In *Valeant Pharmaceuticals International (Acquisition of Certain Assets from Sanofi-Aventis)*,³⁸ the Commission challenged Valeant Pharmaceutical International's \$425 million acquisition of Dermik Laboratories, Inc., the dermatological unit of Sanofi/Aventis. The Commission alleged that Valeant's acquisition of Dermik would have illegally reduced competition in the U.S. market for two topical skin-care drugs, BenzaClin and topical 5FU, by eliminating the competition that existed between Valeant and Sanofi (Dermik) for these products. The first drug, BenzaClin and its generic equivalent, is used to treat common acne. The acquisition would have eliminated competition between Dermik's branded BenzaClin and its closest competitor, Valeant's generic equivalent of BenzaClin. The second drug, 5FU, is a topical cream used to treat pre-cancerous skin lesions. The Commission charged that the acquisition would give Valeant control over three topical 5FU products (Valeant's branded Efudex, Dermik's branded Carac, and Valeant's authorized generic version of Efudex) resulting in higher prices for consumers. In the first market (the acne drug), the Commission required divestiture to Mylan Pharmaceuticals, Inc. of the manufacturing and marketing rights of Valeant's generic version of BenzaClin. In the second market (the 5FU drug), the consent order required Valeant to license to Mylan the rights to manufacture and market the authorized generic version of Efudex. The requirements in the consent order resolved the agency's concerns that the acquisition was anticompetitive by restoring the competition that would have been lost if the acquisitions had proceeded as originally proposed.

In *Valeant Pharmaceuticals International (Acquisition of Ortho Dermatologics Division from Johnson & Johnson)*,³⁹ the Commission challenged Valeant's \$345 million acquisition of the Ortho Dermatologics Division from Johnson & Johnson's Janssen Pharmaceuticals, Inc. Prior to the proposed acquisition, Valeant, under contract with Spear Pharmaceuticals, sold a branded tretinoin emollient cream called Refissa, which is used to treat fine line wrinkles, as well as a generic version of the drug. Ortho sold the only competing product, branded as Renova. The Commission charged that Valeant's acquisition of Ortho Dermatologics would reduce competition in the supply of this product from two to one, thus creating a monopoly market for tretinoin emollient cream and likely raising prices for consumers. The Commission's consent order required Valeant to return all marketing rights for Refissa and the generic tretinoin emollient cream to Spear Pharmaceuticals. The consent order thus resolved the agency's concerns that the acquisition as originally structured would have been anticompetitive.

³⁸ In the Matter of Valeant Pharmaceuticals International, Inc. (Acquisition of Certain Assets from Sanofi-Aventis), Dkt. No. C-4342 (proposed order issued Dec. 12, 2011).

³⁹ In the matter of Valeant Pharmaceuticals International, Inc. (Acquisition of Ortho Dermatologics Division from Johnson & Johnson), Dkt. No. C-4343 (proposed order issued Dec. 12, 2011).

In *AmeriGas Propane/Energy Transfer Partners*,⁴⁰ the Commission challenged AmeriGas, L.P.'s \$2.9 billion acquisition of Energy Transfer Partners, L.P.'s (ETP) Heritage Propane business. AmeriGas's ACE division and Heritage Propane were the nation's second and third largest suppliers of propane exchange cylinders, both nationally and regionally. Propane exchange cylinders are used by consumers to fuel barbecue grills and patio heaters. The Commission charged that the purchase likely would have reduced competition and raised prices in the highly concentrated market. The Commission's consent order restores the lost competition by preventing AmeriGas from buying the Heritage Propane business. The order also ensures that Heritage Propane continues to be a viable competitor by requiring ETP to maintain the viability of the business for two years unless it is sold before then.

In *Fresenius Medical Care AG & Co. KGaA*,⁴¹ the Commission challenged Fresenius Medical Care AG & Co. KGaA's \$2.1 billion acquisition of Liberty Dialysis Holdings, Inc. The Commission charged that Fresenius's acquisition of Liberty would have eliminated head-to-head competition between the two dialysis providers in 43 regional markets, leading to higher prices and reduced quality for dialysis consumers. The Commission's consent order required Fresenius to sell 60 outpatient dialysis clinics in 43 local markets. Without the consent order, the proposed acquisition would have created monopolies for outpatient dialysis services in 17 of the 43 local markets. In 24 other markets, the proposed acquisition would have reduced competition in dialysis providers from three to two providers, and in the remaining two markets, competition would have been significantly reduced. The consent order restored competition that would have been lost through the acquisition by requiring Fresenius to divest 54 clinics to Dialysis Newco, Inc., one clinic to Alaska Investment Partners LLC, and five clinics to Dallas Renal Group, and to terminate a management services agreement under which Fresenius had managed a clinic for a third party.

In *Carpenter Technology/Latrobe Specialty Metals*,⁴² the Commission challenged Carpenter Technology's \$410 million merger to monopoly with specialty metals manufacturer Latrobe. The Commission alleged that Carpenter and Latrobe were the only companies that made two highly specialized alloys used in the aerospace industry – MP159 and Aerospace MP35N. The Commission also charged that the combination of the two companies likely would be anticompetitive and increase prices for purchasers of the alloys by creating a monopoly in the market. The Commission's consent order required Carpenter to divest assets necessary for manufacturing the two alloys to another metals manufacturer, Eramet S.A., thus restoring competition in the market.

In *Western Digital*,⁴³ the Commission challenged Western Digital Corporation's \$4.5 billion acquisition of rival Hitachi Global Storage Technologies. Western Digital and Hitachi

⁴⁰ In the matter of AmeriGas Propane, L.P. and Energy Transfer Partners, L.P., Dkt. No. C-4346 (proposed order issued Jan. 11, 2012).

⁴¹ In the matter of Fresenius Medical Care AG & Co., Dkt. No. C-4348 (proposed order issued Feb. 28, 2012).

⁴² In the matter of Carpenter Technology Corporation and Latrobe Specialty Metals, Inc., Dkt. No. C-4349 (proposed order issued Feb. 29, 2012).

⁴³ In the matter of Western Digital Corporation, Dkt. No. C-4350 (proposed order issued Mar. 5, 2012).

both manufactured desktop hard drives used in personal computers. The Commission charged that the acquisition would have harmed competition in this market by leaving only two companies in control of the entire worldwide market, likely resulting in increased prices to consumers. To resolve its competitive concerns, the Commission entered a consent order requiring Western Digital Corporation to divest to Toshiba assets used to manufacture and sell desktop hard disk drives. The Commission's consent order thus replaced competition that otherwise would have been lost due to the acquisition. Throughout the course of the investigation, FTC staff cooperated with antitrust agencies in Australia, Canada, China, the European Union, Japan, Korea, Mexico, New Zealand, Singapore, and Turkey, often working closely with the staff of these agencies on the analysis of the proposed transaction and potential remedies to reach outcomes that benefit consumers in the United States.

In *CoStar Group/ Loopnet*,⁴⁴ the Commission challenged CoStar Group's \$860 million acquisition of Loopnet, charging that the acquisition likely would have been anticompetitive in the market for commercial real estate information services. CoStar actively tracks and aggregates commercial real estate listings and property-specific information nationwide, and provides subscription-based access to its comprehensive database of this information. Loopnet operates the most heavily trafficked commercial real estate database and holds ownership interest in a third competitor, Xceligent. The Commission charged that the proposed acquisition would have reduced competition in the markets for these real estate listing databases and information services. To resolve these charges, the Commission issued a consent order restoring competition that would have been lost. The order required CoStar to sell LoopNet's ownership interest in Xceligent, thus maintaining an independent third party in the market. The Commission also ordered CoStar to lift non-compete provisions and allow its customers in long-term contracts to terminate them early, allowing for competitors such as Xceligent to expand or enter more easily into the commercial real estate information services market.

In *Kinder Morgan*,⁴⁵ the Commission challenged Kinder Morgan, Inc.'s \$38 billion acquisition of El Paso Corporation. The Commission charged that the acquisition was anticompetitive, and likely would have reduced competition in several natural gas pipeline transportation and gas processing markets in the Rocky Mountains region. Kinder Morgan owns more than 38,000 miles of pipelines and 180 terminals in North America for the transportation and storage of natural gas and other energy products. El Paso also produces, processes, and transports natural gas, and owns, or has interests in, more than 43,000 miles of natural gas pipelines and gathering systems. The Commission's consent order required Kinder Morgan to sell three natural gas pipelines and two gas-processing plants and associated storage capacity in the Rocky Mountain region. The divestitures thus settled the Commission's charges that the acquisition likely would have been anticompetitive by restoring competition in the pipeline transportation and natural gas processing markets.

In *Johnson & Johnson*,⁴⁶ the Commission challenged Johnson & Johnson's \$21.3 billion

⁴⁴ In the matter of CoStar Group, Inc., Lonestar Acquisition Sub, Inc., and LoopNet, Inc., Dkt. No. C-4368 (proposed order issued Apr. 26, 2012).

⁴⁵ In the matter of Kinder Morgan, Inc., Dkt. No. C-4355 (proposed order issued May 1, 2012).

⁴⁶ In the matter of Johnson & Johnson, Dkt. No. C-4363 (proposed order issued June 15, 2012).

acquisition of rival Synthes, Inc. Johnson & Johnson and Synthes are competing manufacturers of medical devices. The Commission charged that Johnson & Johnson's acquisition of Synthes likely would be anticompetitive and reduce competition for volar distal plating systems, which are medical devices used for surgically treating serious wrist fractures. Volar distal plating systems are surgically implanted on the underside of the wrist to achieve proper alignment of the radius bone following a fracture. The Commission's consent order required Johnson & Johnson to sell its volar distal radius plating system, Distal Volar Radius, and the balance of its product line for treating traumatic injuries to Biomet, Inc. By restoring the competition that otherwise would have been eliminated, the divestitures resolved the Commission's concern that the acquisition would illegally reduce competition for these medical devices.

In *Koninklijke Ahold N.V./Safeway*,⁴⁷ the Commission challenged Koninklijke Ahold N.V.'s acquisition of Genuardi's supermarket chain from Safeway, Inc. Ahold, the parent company of Giant Food Stores, LLC, owns or has interest in 2,970 supermarkets and specialty stores with net 2010 sales of \$36.8 billion. Genuardi's is a chain of supermarkets in the Philadelphia metropolitan area acquired by Safeway in 2001. The Commission charged that Ahold's acquisition of Genuardi's would reduce the number of supermarket competitors in Newtown, Pennsylvania's local grocery market from three to two. The Commission preserved competition by requiring Ahold to sell a supermarket in Newtown, Pennsylvania, to McCaffrey's supermarkets.

In *Novartis, AG/Fougera*,⁴⁸ the Commission challenged Novartis AG's \$1.5 billion acquisition of rival pharmaceutical firm, Fougera Holdings, Inc. The Commission charged that Novartis' acquisition likely would have harmed competition in the markets for three skin care drugs: 1) generic calcipotriene topical solution, used to treat chronic, moderately severe scalp psoriasis; 2) generic lidocaine-prilocaine cream, used by hospitals as a local anesthetic to prevent pain resulting from injections and surgery; and 3) generic metronidazole topical gel, used to treat rosacea, a condition that causes chronically red facial skin. In each of the markets, the Commission alleged that the proposed acquisition would eliminate one of a limited number of suppliers and cause significant competitive harm by facilitating price increases – or eliminating price decreases – after the acquisition was completed. To resolve these charges, the Commission issued a consent order that required Novartis to end its marketing agreement with Tolmar, Inc., which allowed it to sell the three generic skin care drugs and return all of the rights to distribute, market, and sell these products to Tolmar. The Commission also charged that Novartis' acquisition would eliminate potential competition in a fourth market, the market for the sale of diclofenac sodium gel, used to treat actinic keratosis. The only version of this gel available is Solaraze, the branded drug sold by Fougera. Novartis, through its prior agreement with Tolmar, was the first to file with the FDA for an approval of a generic form of Solaraze. The consent order required Novartis to return all rights to develop, distribute, market, and sell the generic diclofenac sodium gel to Tolmar, thus resolving the Commission's concerns about the acquisition's likely impact on competition.

⁴⁷ In the matter of Koninklijke Ahold N.V. and Safeway, Inc., Dkt. No. C-4367 (proposed order issued June 15, 2012).

⁴⁸ In the matter of Novartis, AG, Dkt. No. C-4364 (proposed order issued July 16, 2012).

In *Renown Health*,⁴⁹ the Commission challenged Renown Health's acquisitions of two local cardiology groups in the Reno, NV area, Sierra Nevada Cardiology Associates (SNCA) and Reno Heart Physicians (RHP). Renown is the largest provider of acute care hospital services in northern Nevada. Prior to the acquisitions, virtually all of the cardiologists in the Reno area were affiliated with either SNCA or RHP; Renown Health did not employ any cardiologists. The FTC charged that Renown Health's acquisitions of SNCA's and RHP's medical practices created a highly concentrated market for the provision of adult cardiology services in the Reno area. The Commission's consent order required Renown to release its staff cardiologists from "non-compete" contract clauses, allowing up to 10 of them to join competing cardiology practices, thus restoring competition in the market for adult cardiology services in Reno, NV.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

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

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

⁴⁹ In the matter of Renown Health, Dkt. No. C-4366 (proposed order issued Aug. 6, 2012).

LIST OF APPENDICES

- Appendix A - Summary of Transactions, Fiscal Years 2003 - 2012
- Appendix B - Number of Transactions reported and Filings Received by Month for Fiscal Years 2003 - 2012

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal year 2012, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interests

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 2003 - 2012

APPENDIX A
SUMMARY OF TRANSACTIONS BY FISCAL YEAR

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Transactions Reported	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166	1,450	1,429
Filings Received ¹	2,001	2,825	3,287	3,510	4,378	3,455	1,411	2,318	2,882	2,829
Adjusted Transactions In Which A Second Request Could Have Been Issued ²	968	1,377	1,610	1,746	2,108	1,656	684	1,128	1,414	1,400
Investigations in Which Second Requests Were Issued	35	35	50	45	63	41	31	42	55	49
FTC ³	15	20	25	28	31	21	15	20	24	20
Percent ⁴	1.5%	1.5%	1.6%	1.6%	1.5%	1.3%	2.2%	1.8%	1.7%	1.4%
DOJ ³	20	15	25	17	32	20	16	22	31	29
Percent ⁴	2.1%	1.1%	1.6%	1.0%	1.5%	1.2%	2.3%	2.0%	2.2%	2.1%
Transactions Involving a Request For Early Termination ⁵	700	1,241	1,385	1,468	1,840	1,385	575	953	1,157	1,094
Granted ⁵	606	943	997	1,098	1,402	1,021	396	704	888	902
Not Granted ⁵	94	298	388	370	438	364	179	249	269	192

Note: The data for FY 2004 and FY 2005 "Transactions Reported" and for FY 2004 – FY 2007 "Filings Received" reflect corrections to some prior Annual reports to account for a coding error. Additionally, the data for FY 2010 and FY 2011 reflect corrections to the previously published DOJ number of investigations in which second requests were issued and the percentage of transactions in which second requests were issued by DOJ.

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

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

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

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

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

APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 2003 - 2012

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

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
October	77	93	139	130	201	158	91	66	128	122
November	104	127	160	148	189	191	85	135	217	169
December	78	143	126	137	151	172	37	84	91	95
January	93	85	138	142	143	158	42	62	97	104
February	71	109	99	124	157	119	32	61	81	90
March	74	137	121	150	194	131	42	116	97	111
April	92	127	121	125	156	128	60	92	96	96
May	83	125	171	158	250	150	58	108	142	117
June	80	117	153	172	202	146	51	108	117	142
July	86	123	118	141	219	128	62	94	120	130
August	85	134	170	186	200	126	77	120	164	133
September	91	108	159	155	139	119	79	120	100	120
TOTAL	1,014	1,428	1,675	1,768	2,201	1,726	716	1,166	1,450	1,429

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

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

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
October	148	185	277	261	401	319	185	146	252	242
November	206	254	324	311	376	380	165	242	422	332
December	150	280	238	260	294	343	79	177	193	188
January	179	161	259	279	288	316	77	126	188	203
February	146	207	201	257	317	246	63	116	157	185
March	144	277	239	309	381	242	81	232	195	215
April	182	245	242	270	312	272	119	182	190	193
May	168	258	337	300	481	294	114	216	284	231
June	158	241	297	346	403	293	99	213	231	275
July	170	234	236	255	441	259	121	187	240	269
August	164	270	328	367	396	251	149	238	329	259
September	186	213	309	295	288	240	159	243	201	237
TOTAL	2,001	2,825	3,287	3,510	4,378	3,455	1,411	2,318	2,882	2,829

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

¹ Usually, two filings are received, one from the acquiring person and one from the acquired person, when the transaction is reported. Only one filing is received when an acquiring person files for a transaction that is exempt under Sections 7A(c)(6) and (c)(8) of the Clayton Act.

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2012

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

TABLE I
FISCAL YEAR 2012¹
ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)²

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUMBER		PERCENT OF TRANSACTION RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M⁵	4	0.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50M - 100M	240	17.1%	21	5	8.8%	2.1%	10.8%	1	3	0.4%	1.3%	1.7%
100M - 150M	298	21.3%	24	9	8.1%	3.0%	11.1%	2	1	0.7%	0.3%	1.0%
150M - 200M	133	9.5%	8	7	6.0%	5.3%	11.3%	2	1	1.5%	0.8%	2.3%
200M - 300M	158	11.3%	14	7	8.9%	4.4%	13.3%	2	4	1.3%	2.5%	3.8%
300M - 500M	203	14.5%	21	12	10.3%	5.9%	16.3%	2	3	1.0%	1.5%	2.5%
500M - 1000M	208	14.9%	20	11	9.6%	5.3%	14.9%	3	7	1.4%	3.4%	4.8%
Over 1000M	156	11.1%	27	20	17.3%	12.8%	30.1%	8	10	5.1%	6.4%	11.5%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

TABLE II
FISCAL YEAR 2012¹
ACQUISITIONS BY SIZE OF TRANSACTION²(CUMULATIVE)

TRANSACTION RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER ⁴	PERCENT	NUMBER		PERCENTAGE OF TOTAL NUMBER OF CLEARANCES			NUMBER		PERCENTAGE OF TOTAL NUMBER OF SECOND REQUESTS		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50M⁵	4	0.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100M	244	17.4%	21	5	10.2%	2.4%	12.6%	1	3	2.0%	6.1%	8.2%
LESS THAN 150M	542	38.7%	45	14	21.8%	6.8%	28.6%	3	4	6.1%	8.2%	14.3%
LESS THAN 200M	675	48.2%	53	21	25.7%	10.2%	35.9%	5	5	10.2%	10.2%	20.4%
LESS THAN 300M	833	59.5%	67	28	32.5%	13.6%	46.1%	7	9	14.3%	18.4%	32.7%
LESS THAN 500M	1,036	74.0%	88	40	42.7%	19.4%	62.1%	9	12	18.4%	24.5%	42.9%
LESS THAN 1000M	1,239	88.5%	108	51	52.4%	24.8%	77.2%	12	19	24.5%	38.8%	63.3%
ALL TRANSACTIONS	1,400		135	71	65.5%	34.5%	100.0%	20	29	40.8%	59.2%	100.0%

**TABLE III
FISCAL YEAR 2012¹
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY**

TRANSACTION RANGE (\$MILLIONS)	CLEARANCES GRANTED TO AGENCY			CLEARANCE GRANTED AS A PERCENTAGE OF:								
				TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF CLEARANCES PER AGENCY			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
Below 50M ⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
50M - 100M	21	5	26	8.8%	2.1%	10.8%	15.6%	7.0%	10.2%	2.4%	12.6%	
100M - 150M	24	9	33	8.1%	3.0%	11.1%	17.8%	12.7%	11.7%	4.4%	16.0%	
150M - 200M	8	7	15	6.0%	5.3%	11.3%	5.9%	9.9%	3.9%	3.4%	7.3%	
200M - 300M	14	7	21	8.9%	4.4%	13.3%	10.4%	9.9%	6.8%	3.4%	10.2%	
300M - 500M	21	12	33	10.3%	5.9%	16.3%	15.6%	16.9%	10.2%	5.8%	16.0%	
500M - 1000M	20	11	31	9.6%	5.3%	14.9%	14.8%	15.5%	9.7%	5.3%	15.0%	
Over 1000M	27	20	47	17.3%	12.8%	30.1%	20.0%	28.2%	13.1%	9.7%	22.8%	
<i>ALL TRANSACTIONS</i>	135	71	206	9.6%	5.1%	14.7%	100.0%	100.0%	65.5%	34.5%	100.0%	

**TABLE IV
FISCAL YEAR 2012¹
TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED**

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
Below 50M ⁵	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
50M - 100M	1	3	4	0.1%	0.2%	0.3%	0.4%	1.3%	1.7%	2.0%	6.1%	8.2%
100M - 150M	2	1	3	0.1%	0.1%	0.2%	0.7%	0.3%	1.0%	4.1%	2.0%	6.1%
150M - 200M	2	1	3	0.1%	0.1%	0.2%	1.5%	0.8%	2.3%	4.1%	2.0%	6.1%
200M - 300M	2	4	6	0.1%	0.3%	0.4%	1.3%	2.5%	3.8%	4.1%	8.2%	12.2%
300M - 500M	2	3	5	0.1%	0.2%	0.4%	1.0%	1.5%	2.5%	4.1%	6.1%	10.2%
500M - 1000M	3	7	10	0.2%	0.5%	0.7%	1.4%	3.4%	4.8%	6.1%	14.3%	20.4%
Over 1000M	8	10	18	0.6%	0.7%	1.3%	5.1%	6.4%	11.5%	16.3%	20.4%	36.7%
ALL TRANSACTIONS	20	29	49	1.4%	2.1%	3.5%	1.4%	2.1%	3.5%	40.8%	59.2%	100.0%

TABLE V
FISCAL YEAR 2012¹
ACQUISITIONS BY REPORTING THRESHOLD

THRESHOLD ⁶	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF THRESHOLD GROUP			NUMBER		PERCENT OF THRESHOLD GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
\$50M (as adjusted)	95	6.8%	2	1	2.1%	1.1%	3.2%	0	0	0.0%	0.0%	0.0%
\$100M (as adjusted)	98	7.0%	1	0	1.0%	0.0%	1.0%	0	0	0.0%	0.0%	0.0%
\$500M (as adjusted)	29	2.1%	2	0	6.9%	0.0%	6.9%	0	0	0.0%	0.0%	0.0%
ASSETS ONLY	453	32.4%	45	21	9.9%	4.6%	14.6%	7	13	1.5%	2.9%	4.4%
25%	6	0.4%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	719	51.4%	85	49	11.8%	6.8%	18.6%	13	16	1.8%	2.2%	4.0%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

TABLE VI
FISCAL YEAR 2012¹
TRANSACTION BY ASSETS OF ACQUIRING PERSON

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	151	10.8%	1	1	0.7%	0.7%	1.3%	0	1	0.0%	0.7%	0.7%
50M - 100M	18	1.3%	2	2	11.1%	11.1%	22.2%	0	1	0.0%	5.6%	5.6%
100M - 150M	36	2.6%	2	1	5.6%	2.8%	8.3%	0	1	0.0%	2.8%	2.8%
150M - 200M	30	2.1%	2	1	6.7%	3.3%	10.0%	0	0	0.0%	0.0%	0.0%
200M - 300M	40	2.9%	4	2	10.0%	5.0%	15.0%	1	0	2.5%	0.0%	2.5%
300M - 500M	76	5.4%	4	3	5.3%	3.9%	9.2%	1	0	1.3%	0.0%	1.3%
500M - 1000M	133	9.5%	9	5	6.8%	3.8%	10.5%	1	2	0.8%	1.5%	2.3%
Over 1000M	916	65.4%	111	56	12.1%	6.1%	18.2%	17	24	1.9%	2.6%	4.5%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

**TABLE VII
FISCAL YEAR 2012¹
TRANSACTION BY SALES OF ACQUIRING PERSON**

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	124	8.9%	2	1	1.6%	0.8%	2.4%	1	0	0.8%	0.0%	0.8%
50M - 100M	33	2.4%	2	1	6.1%	3.0%	9.1%	0	0	0.0%	0.0%	0.0%
100M - 150M	35	2.5%	2	2	5.7%	5.7%	11.4%	0	1	0.0%	2.9%	2.9%
150M - 200M	25	1.8%	2	2	8.0%	8.0%	16.0%	1	0	4.0%	0.0%	4.0%
200M - 300M	63	4.5%	2	1	3.2%	1.6%	4.8%	0	0	0.0%	0.0%	0.0%
300M - 500M	86	6.1%	5	6	5.8%	7.0%	12.8%	0	3	0.0%	3.5%	3.5%
500M - 1000M	148	10.6%	11	5	7.4%	3.4%	10.8%	3	4	2.0%	2.7%	4.7%
Over 1000M	791	56.5%	108	53	13.7%	6.7%	20.4%	15	20	1.9%	2.5%	4.4%
Sales Not Available⁷	95	6.8%	1	0	1.1%	0.0%	1.1%	0	1	0.0%	1.1%	1.1%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

TABLE VIII
FISCAL YEAR 2012¹
TRANSACTION BY ASSETS OF ACQUIRED ENTITIES⁸

ASSET RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMBER		PERCENT OF ASSET RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	213	15.2%	19	7	8.9%	3.3%	12.2%	1	1	0.5%	0.5%	0.9%
50M - 100M	208	14.9%	21	8	10.1%	3.8%	13.9%	3	1	1.4%	0.5%	1.9%
100M - 150M	136	9.7%	21	7	15.4%	5.1%	20.6%	3	2	2.2%	1.5%	3.7%
150M - 200M	73	5.2%	6	4	8.2%	5.5%	13.7%	1	2	1.4%	2.7%	4.1%
200M - 300M	126	9.0%	10	8	7.9%	6.3%	14.3%	2	2	1.6%	1.6%	3.2%
300M - 500M	97	6.9%	6	4	6.2%	4.1%	10.3%	1	4	1.0%	4.1%	5.2%
500M - 1000M	108	7.7%	8	8	7.4%	7.4%	14.8%	0	4	0.0%	3.7%	3.7%
Over 1000M	272	19.4%	26	16	9.6%	5.9%	15.4%	5	9	1.8%	3.3%	5.1%
Assets Not Available⁸	167	11.9%	18	9	10.8%	5.4%	16.2%	4	4	2.4%	2.4%	4.8%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

TABLE IX
FISCAL YEAR 2012¹
TRANSACTION BY SALES OF ACQUIRED ENTITIES ⁹

SALES RANGE (\$MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS ³				
	NUMBER	PERCENT	NUMBER		PERCENT OF SALES RANGE GROUP			NUMBER		PERCENT OF SALES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	227	16.2%	23	8	10.1%	3.5%	13.7%	0	1	0.0%	0.4%	0.4%
50M - 100M	225	16.1%	20	10	8.9%	4.4%	13.3%	2	1	0.9%	0.4%	1.3%
100M - 150M	142	10.1%	13	2	9.2%	1.4%	10.6%	3	1	2.1%	0.7%	2.8%
150M - 200M	120	8.6%	15	3	12.5%	2.5%	15.0%	1	1	0.8%	0.8%	1.7%
200M - 300M	118	8.4%	11	5	9.3%	4.2%	13.6%	3	2	2.5%	1.7%	4.2%
300M - 500M	119	8.5%	11	10	9.2%	8.4%	17.6%	3	5	2.5%	4.2%	6.7%
500M - 1000M	130	9.3%	13	8	10.0%	6.2%	16.2%	2	2	1.5%	1.5%	3.1%
Over 1000M	248	17.7%	23	15	9.3%	6.0%	15.3%	5	6	2.0%	2.4%	4.4%
Sales not Available ¹⁰	71	5.1%	6	10	8.5%	14.1%	22.5%	1	10	1.4%	14.1%	15.5%
ALL TRANSACTIONS	1,400	100.0%	135	71	9.6%	5.1%	14.7%	20	29	1.4%	2.1%	3.5%

**TABLE X
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
000 ¹³	Not Available	100	7.1%	0.6%	1	0	1	0	1	1
112	Animal Production	1	0.1%	-0.1%	0	1	1	0	0	0
211	Oil and Gas Extraction	19	1.4%	-0.1%	0	1	1	0	0	0
212	Mining (except Oil and Gas)	7	0.5%	-0.1%	1	1	2	0	1	1
213	Support Activities for Mining	12	0.9%	-0.3%	0	0	0	0	0	0
221	Utilities	34	2.4%	0.0%	0	1	1	0	0	0
236	Construction of Buildings	3	0.2%	-0.3%	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	9	0.6%	0.1%	0	1	1	0	1	1
238	Specialty Trade Contractors	1	0.1%	-0.1%	0	0	0	0	0	0
311	Food and Kindred Products	28	2.0%	-0.4%	5	3	8	0	0	0
312	Beverage and Tobacco Product Manufacturing	10	0.7%	0.6%	1	2	3	0	2	2
313	Textile Mills	1	0.1%	N/A	0	0	0	0	0	0
315	Apparel Manufacturing	1	0.1%	N/A	0	0	0	0	0	0
316	Leather and Allied Product Manufacturing	1	0.1%	N/A	0	0	0	0	0	0
321	Wood Product Manufacturing	2	0.1%	-0.1%	0	0	0	0	0	0
322	Paper Manufacturing	12	0.9%	0.2%	0	1	1	0	1	1
323	Printing and Related Support Activities	1	0.1%	-0.3%	1	0	1	0	0	0
324	Petroleum and Coal Products Manufacturing	5	0.4%	-0.3%	2	0	2	1	0	1
325	Chemical Manufacturing	95	6.8%	1.3%	30	2	32	3	0	3
326	Plastics and Rubber Manufacturing	20	1.4%	0.0%	2	1	3	0	0	0
327	Nonmetallic Mineral Product Manufacturing	7	0.5%	0.1%	0	0	0	0	0	0

**TABLE X
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
331	Primary Metal Manufacturing	19	1.4%	0.1%	1	3	4	0	1	1
332	Fabricated Metal Product Manufacturing	17	1.2%	-0.4%	2	0	2	0	0	0
333	Machinery Manufacturing	31	2.2%	0.2%	1	5	6	0	1	1
334	Computer and Electronic Product Manufacturing	37	2.6%	-0.5%	7	4	11	1	1	2
335	Electrical Equipment, Appliance, and Component Manufacturing	6	0.4%	-0.5%	1	1	2	0	0	0
336	Transportation Equipment Manufacturing	41	2.9%	0.0%	6	2	8	1	1	2
339	Miscellaneous Manufacturing	32	2.3%	0.9%	11	0	11	0	0	0
423	Merchant Wholesalers, Durable Goods	63	4.5%	-3.6%	3	1	4	1	0	1
424	Merchant Wholesales, Nondurable Goods	73	5.2%	-0.3%	10	4	14	2	1	3
425	Wholesale Electric Markets and Agent and Brokers	2	0.1%	0.0%	0	0	0	0	0	0
441	Motor Vehicle and Parts Dealers	6	0.4%	0.1%	0	0	0	0	0	0
442	Furniture and Home Furnishing Stores	3	0.2%	0.1%	0	0	0	0	0	0
443	Miscellaneous Repair Services	1	0.1%	0.0%	0	0	0	0	0	0
444	Electronics and Appliance Stores	1	0.1%	N/A	0	0	0	0	0	0
445	Food and Beverage Stores	5	0.4%	-0.2%	3	0	3	1	0	1
446	Health and Personal Care Stores	10	0.7%	0.2%	3	1	4	0	0	0
447	Gasoline Stations	5	0.4%	-0.1%	1	0	1	0	0	0
448	Clothing and Clothing Accessories Stores	2	0.1%	-0.2%	0	0	0	0	0	0
451	Sporting Goods, Hobby, Book, and Music Stores	4	0.3%	N/A	0	0	0	0	0	0
452	General Merchandise Stores	1	0.1%	-0.1%	0	0	0	0	0	0
453	Miscellaneous Store Retailers	3	0.2%	0.1%	0	0	0	0	0	0

**TABLE X
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
454	Nonstore Retailers	12	0.9%	0.1%	3	0	3	1	0	1
481	Air Transportation	2	0.1%	-0.1%	0	0	0	0	0	0
483	Water Transportation	4	0.3%	0.1%	0	0	0	0	0	0
484	Truck Transportation	2	0.1%	0.1%	0	0	0	0	0	0
486	Pipeline Transportation	7	0.5%	-0.1%	0	0	0	0	0	0
488	Support Activities for Transportation	6	0.4%	-0.3%	0	0	0	0	0	0
492	Couriers	1	0.1%	-0.1%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	51	3.6%	0.5%	1	8	9	0	5	5
512	Motion Pictures and Sound Recording Industries	5	0.4%	0.1%	1	0	1	1	0	1
515	Broadcasting (except Internet)	12	0.9%	0.1%	0	1	1	0	1	1
517	Telecommunications	34	2.4%	-0.3%	2	5	7	0	3	3
518	Internet Service Providers, Web Search Portals, and Data Processing Services	10	0.7%	-0.8%	0	2	2	0	1	1
519	Other Information Services	19	1.4%	0.8%	2	1	3	0	0	0
522	Credit Intermediation and Related Activities	27	1.9%	-0.1%	0	0	0	0	0	0
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	147	10.5%	2.9%	1	2	3	0	0	0
524	Insurance Carriers and Related Activities	52	3.7%	-0.3%	2	9	11	1	3	4
525	Funds, Trusts, and Other Financial Vehicles	18	1.3%	-0.3%	0	0	0	0	0	0
531	Real Estate	7	0.5%	0.1%	1	0	1	1	0	1
532	Rental and Leasing Services	10	0.7%	0.1%	1	0	1	0	0	0
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	7	0.5%	0.1%	2	0	2	0	0	0
541	Professional, Scientific, and Technical Services	85	6.1%	0.0%	4	3	7	1	2	3

**TABLE X
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRING PERSON**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
551	Management Companies and Enterprises	2	0.1%	-0.1%	0	0	0	0	0	0
561	Administrative and Support Services	33	2.4%	0.4%	3	0	3	1	0	1
562	Waste Management and Remediation Services	7	0.5%	0.3%	0	2	2	0	2	2
591	All Other Support	3	0.2%	N/A	0	1	1	0	0	0
611	Educational Services	9	0.6%	0.3%	0	0	0	0	0	0
621	Ambulatory Health Care Services	16	1.1%	-1.0%	1	0	1	0	0	0
622	Hospitals	35	2.5%	0.4%	15	1	16	4	1	5
623	Nursing Care Facilities	4	0.3%	0.1%	2	0	2	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	1	0.1%	0.0%	0	0	0	0	0	0
713	Amusement, Gambling, and Recreation Industries	8	0.6%	0.4%	2	0	2	0	0	0
721	Accommodation	4	0.3%	N/A	0	0	0	0	0	0
722	Food Services and Drinking Places	19	1.4%	0.1%	0	0	0	0	0	0
811	Repairs and Maintenance	2	0.1%	-0.2%	0	0	0	0	0	0
812	Personal and Laundry Services	6	0.4%	0.2%	0	1	1	0	0	0
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	1	0.1%	-0.1%	0	0	0	0	0	0
923	Administration of Human Resource Programs	1	0.1%	N/A	0	0	0	0	0	0
		1,400	100.0%		135	71	206	20	29	49

**TABLE XI
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 ¹³	Not Available	66	4.7%	2.6%	7	11	18	0	1	1	0
112	Animal Production	2	0.1%	-0.1%	0	2	2	0	0	0	1
113	Forestry and and Logging	1	0.1%	-0.1%	0	0	0	0	0	0	0
211	Oil and Gas Extraction	25	1.8%	0.1%	0	0	0	0	0	0	15
212	Mining (except Oil and Gas)	4	0.3%	-0.3%	0	1	1	0	1	1	1
213	Support Activities for Mining	18	1.3%	-0.8%	0	0	0	0	0	0	7
221	Utilities	36	2.6%	-0.9%	0	1	1	0	0	0	17
236	Construction of Buildings	9	0.6%	0.5%	0	0	0	0	0	0	1
237	Heavy and Civil Engineering Construction	11	0.8%	0.2%	0	0	0	0	1	1	3
238	Specialty Trade Contractors	6	0.4%	-0.1%	0	0	0	0	0	0	0
311	Food and Kindred Products	27	1.9%	-0.3%	2	0	2	0	0	0	10
312	Beverage and Tobacco Product Manufacturing	11	0.8%	0.3%	2	1	3	0	2	2	4
313	Textile Mills	1	0.1%	-0.1%	0	0	0	0	0	0	0
314	Textile Products	1	0.1%	N/A	0	0	0	0	0	0	0
315	Apparel Manufacturing	2	0.1%	N/A	0	0	0	0	0	0	0
316	Leather and Allied Product Manufacturing	1	0.1%	N/A	0	0	0	0	0	0	1
321	Wood Product Manufacturing	3	0.2%	-0.2%	0	0	0	0	0	0	2
322	Paper Manufacturing	13	0.9%	0.1%	1	0	1	0	1	1	5
323	Printing and Related Support Activities	4	0.3%	0.1%	0	2	2	0	0	0	0
324	Petroleum and Coal Products Manufacturing	13	0.9%	0.3%	2	1	3	1	0	1	1
325	Chemical Manufacturing	61	4.4%	-1.0%	14	2	16	3	0	3	28

**TABLE XI
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
326	Plastics and Rubber Manufacturing	28	2.0%	0.3%	5	1	6	0	0	0	7
327	Nonmetallic Mineral Product Manufacturing	9	0.6%	0.1%	0	0	0	0	0	0	3
331	Primary Metal Manufacturing	16	1.1%	0.2%	0	4	4	0	1	1	7
332	Fabricated Metal Product Manufacturing	19	1.4%	-0.4%	2	0	2	0	0	0	2
333	Machinery Manufacturing	48	3.4%	0.6%	2	4	6	0	1	1	15
334	Computer and Electronic Product Manufacturing	60	4.3%	0.8%	9	3	12	1	1	2	12
335	Electrical Equipment, Appliance, and Component Manufacturing	13	0.9%	-0.1%	1	1	2	0	0	0	2
336	Transportation Equipment Manufacturing	42	3.0%	0.4%	5	3	8	1	1	2	11
337	Furniture and Related Product Manufacturing	2	0.1%	0.0%	0	0	0	0	0	0	0
339	Miscellaneous Manufacturing	23	1.6%	-0.4%	8	0	8	0	0	0	12
423	Merchant Wholesalers, Durable Goods	74	5.3%	-1.6%	2	1	3	1	0	1	23
424	Merchant Wholesales, Nondurable Goods	75	5.4%	0.2%	17	4	21	2	1	3	25
425	Wholesale Electric Markets and Agent and Brokers	2	0.1%	-0.2%	1	0	1	0	0	0	1
441	Motor Vehicle and Parts Dealers	7	0.5%	0.1%	0	0	0	0	0	0	3
442	Furniture and Home Furnishing Stores	1	0.1%	-0.1%	0	0	0	0	0	0	0
443	Miscellaneous Repair Services	2	0.1%	0.1%	0	0	0	0	0	0	0
444	Electronics and Appliance Stores	2	0.1%	N/A	0	0	0	0	0	0	0
445	Food and Beverage Stores	7	0.5%	0.4%	3	0	3	1	0	1	3
446	Health and Personal Care Stores	8	0.6%	0.2%	3	0	3	0	0	0	2
447	Gasoline Stations	8	0.6%	0.0%	2	0	2	0	0	0	1
448	Clothing and Clothing Accessories Stores	8	0.6%	0.1%	0	0	0	0	0	0	1

**TABLE XI
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRED ENTITIES**

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTION ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
451	Sporting Goods, Hobby, Book, and Music Stores	1	0.1%	-0.2%	0	0	0	0	0	0	0
452	General Merchandise Stores	12	0.9%	0.1%	0	0	0	0	0	0	0
453	Miscellaneous Store Retailers	5	0.4%	0.1%	0	0	0	0	0	0	0
454	Nonstore Retailers	15	1.1%	0.0%	2	0	2	1	0	1	8
482	Railroad Transportation	3	0.2%	0.1%	0	0	0	0	0	0	0
483	Water Transportation	2	0.1%	-0.1%	0	0	0	0	0	0	2
484	Truck Transportation	3	0.2%	N/A	0	0	0	0	0	0	1
486	Pipeline Transportation	16	1.1%	0.4%	2	0	2	0	0	0	5
488	Support Activities for Transportation	7	0.5%	-0.1%	0	0	0	0	0	0	1
492	Couriers	1	0.1%	-0.1%	0	0	0	0	0	0	0
493	Warehousing and Storage	1	0.1%	-0.3%	0	0	0	0	0	0	0
511	Publishing Industries (except Internet)	66	4.7%	0.5%	1	3	4	0	5	5	21
512	Motion Pictures and Sound Recording Industries	7	0.5%	0.1%	2	0	2	1	0	1	4
515	Broadcasting (except Internet)	12	0.9%	0.0%	0	0	0	0	1	1	4
516	Internet Publishing and Broadcasting	1	0.1%	-0.6%	0	0	0	0	0	0	0
517	Telecommunications	28	2.0%	0.1%	0	0	0	0	3	3	9
518	Internet Service Providers, Web Search Portals, and Data Processing Services	34	2.4%	0.0%	1	5	6	0	1	1	5
519	Other Information Services	22	1.6%	1.2%	2	0	2	0	0	0	8
522	Credit Intermediation and Related Activities	22	1.6%	-0.1%	1	0	1	0	0	0	7
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	33	2.4%	-0.6%	0	0	0	0	0	0	21
524	Insurance Carriers and Related Activities	43	3.1%	-0.5%	1	10	11	1	3	4	25

TABLE XI
FISCAL YEAR 2012¹
INDUSTRY GROUP OF ACQUIRED ENTITIES

3 DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2011 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST ³ INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSACTIONS ¹⁴
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
525	Funds, Trusts, and Other Financial Vehicles	1	0.1%	0.0%	0	0	0	0	0	0	0
531	Real Estate	5	0.4%	0.0%	0	0	0	1	0	1	0
532	Rental and Leasing Services	8	0.6%	0.1%	2	0	2	0	0	0	5
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	14	1.0%	-0.7%	2	1	3	0	0	0	3
541	Professional, Scientific, and Technical Services	111	7.9%	-1.1%	4	6	10	1	2	3	32
561	Administrative and Support Services	35	2.5%	0.3%	1	0	1	1	0	1	10
562	Waste Management and Remediation Services	9	0.6%	0.3%	0	2	2	0	2	2	5
611	Educational Services	4	0.3%	-0.1%	0	0	0	0	0	0	2
621	Ambulatory Health Care Services	22	1.6%	-1.6%	4	0	4	0	0	0	7
622	Hospitals	30	2.1%	0.1%	14	1	15	4	1	5	22
623	Nursing Care Facilities	5	0.4%	0.2%	3	0	3	0	0	0	2
711	Performing Arts, Spector Sports, and Related Industries	8	0.6%	0.1%	0	0	0	0	0	0	1
713	Amusement, Gambling, and Recreation Industries	8	0.6%	0.4%	3	0	3	0	0	0	5
721	Accommodation	5	0.4%	-0.4%	0	0	0	0	0	0	1
722	Food Services and Drinking Places	19	1.4%	0.3%	0	0	0	0	0	0	6
811	Repairs and Maintenance	7	0.5%	-0.1%	1	0	1	0	0	0	0
812	Personal and Laundry Services	5	0.4%	0.2%	1	1	2	0	0	0	3
923	Administration of Human Resource Programs	1	0.1%	N/A	0	0	0	0	0	0	1
		1,400	100.0%		135	71	206	20	29	49	452

¹ Fiscal year 2012 figures include transactions reported between October 1, 2011 and September 30, 2012.

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

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

⁴ During fiscal year 2012, 1429 transactions were reported under the HSR Premerger Notification program. The smaller number, 1400, reflects the adjustments to eliminate the following types of transactions: (1) transactions reported under Section 7A(c)(6) and (c)(8) (transactions involving certain regulated industries and financial businesses); (2) transactions deemed non-reportable; (3) incomplete transactions (only one party in each transaction filed a compliant notification); and (4) transactions withdrawn before the waiting period began. The table does not, however, exclude competing offers or multiple HSR transactions resulting from a single business transaction (where there are multiple acquiring persons or acquired persons).

⁵ The total number of filings under \$50M submitted in Fiscal Year 2012 reflects corrective filings.

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

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

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

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

¹⁰ This category includes acquisition of newly-formed entities from which no sales were generated, and acquisitions of assets which produced no sales revenues during the prior year to filing the Notification and Report Form.

¹¹ The 3-digit codes are part of the North American Industrial Classification System (NAICS) established by the United States Government North American Industrial Classification System 1997, Executive Office of the President, Office of Management and Budget. The NAICS groups used in this table were determined from responses submitted by the parties to Item 5 of the Premerger Notification and Report Form.

¹² This represents the deviation from the fiscal year 2011 percentage.

¹³ This category includes transactions by newly-formed entities.

¹⁴ The intra-industry transactions column identifies the number of acquisitions in which both the acquiring and acquired person derived revenues from the same 3-digit NAICS code.