



BUREAU OF COMPETITION

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Program code: AS

MEMORANDUM

To: Commission

From: Mary Lou Steptoe  
Acting Director

Subject: The Fifteenth Annual Report to Congress  
pursuant to Section 201 of the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

I recommend that the Commission approve the attached  
Fifteenth Annual Report to Congress regarding the Hart-Scott-  
Rodino premerger notification program. The report covers fiscal  
year 1992.

Attachment



BUREAU OF COMPETITION

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Program code: AS

MEMORANDUM

To: Commission

From: Nancy M. Ovuka, Compliance Specialist  
Premerger Notification Office

Subject: The Fifteenth Annual Report to Congress  
Pursuant to Section 201 of the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

Attached is the Fifteenth Annual Report to Congress regarding the operation of the Hart-Scott-Rodino premerger notification program. The report covers fiscal year 1992.

I request that the Commission approve the annual report and authorize the Secretary to transmit a copy of the report to the Assistant Attorney General for Antitrust for her concurrence. The report has been reviewed by staff at the Antitrust Division and their comments are included. I also request that the Commission authorize the Secretary to transmit the annual report to Congress upon receipt of the Assistant Attorney General's concurrence.

Respectfully submitted,

*Nancy M. Ovuka*

Nancy M. Ovuka

Approved:

John M. Sipple, Jr.  
Assistant Director for Premerger Notification

Barbara A. Clark  
Director for Litigation



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

The Honorable Albert Gore, Jr.  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas S. Foley  
Speaker  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the Fifteenth Annual Report to Congress pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435. The report provides statistics on the operation of the premerger notification program, discusses recent developments and describes the Commission's and the Antitrust Division's merger enforcement activities during fiscal year 1992. The Assistant Attorney General for Antitrust has concurred in the report.

By direction of the Commission.

Donald S. Clark  
Secretary

Enclosure



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

The Honorable Anne K. Bingaman  
Assistant Attorney General for Antitrust  
Department of Justice  
Washington, D.C. 20530

Dear Ms. Bingaman:

In accordance with subsection (j) of Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Commission requests your concurrence with the enclosed Fifteenth Annual Report to Congress regarding the premerger notification program. The report covers fiscal year 1992.

By direction of the Commission.

Donald S. Clark  
Secretary

Enclosure

To:

Director's Office  
Bureau of Competition (Room 372)

From:

Date Forwarded:  
Staff Attorney(s): Nancy Ovuka, Compliance Specialist  
Approved By: John M. Sipple, Jr., Asst. Director for Premerger  
Notification & Barbara Clark, Director for Litigation

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Subject: Fifteenth Annual Report to Congress - Pursuant to  
Section 201 of the Hart-Scott-Rodino Antitrust Improvements  
Act of 1976 (Fiscal Year 1992)

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# DOCUMENT CODING FORM

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Federal Trade Commission

Please complete and submit this form with every document filed with, or submitted to, the Office of the Secretary.  
Instructions are on the reverse of this form.

1. NAME OF PERSON SUBMITTING DOCUMENT Nancy Ovuka		2. TELEPHONE NUMBER (INCLUDE AREA CODE) (202)-326-2609	
3. SOURCE ORGANIZATION (COMPANY NAME, LAW FIRM NAME OR FTC ORGANIZATION CODE) Premerger Notification Office 1093			
4. DOCUMENT TITLE Fifteenth Annual Report to Congress -- Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (FY 1992)			
5. DOCUMENT DATE	6. NUMBER OF COPIES SUBMITTED	7. MATTER NUMBER P110014	
8. MATTER NAME HSR Premerger Notification			
9. BRIEF SUMMARY			

Fifteenth Annual Report to Congress regarding the Hart-Scott-Rodino premerger notification program. The report covers fiscal year 1992.

### TO BE COMPLETED BY FTC STAFF

#### 10. LEGAL RESEARCH SYSTEM INDEX TERMS (OPTIONAL)

FILE	HEADING	SUBHEADING (IF ANY)
	Hart-Scott-Rodino Fifteenth Annual Report to Congress	

#### 11. DOCUMENTS SUBMITTED

RECOMMENDATIONS

ACTION DOCUMENTS

### TO BE COMPLETED BY THE OFFICE OF THE SECRETARY

DOCUMENT TYPE	CONFIDENTIALITY CODE	OK FOR ENTRY	ENTRY INITIALS	DOCUMENT NUMBER	DOCUMENT LOCATION
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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

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Premerger Notification Office

Subject: The Fifteenth Annual Report to Congress  
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Respectfully submitted,

Nancy M. Ovuka

Approved:

John M. Sipple, Jr.  
Assistant Director for Premerger Notification

Barbara A. Clark  
Director for Litigation



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OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

The Honorable John W. Clark  
Acting Assistant Attorney General for Antitrust  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Clark:

In accordance with subsection (j) of Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Commission requests your concurrence with the enclosed Fifteenth Annual Report to Congress regarding the premerger notification program. The report covers fiscal year 1992.

By direction of the Commission.

Donald S. Clark  
Secretary

Enclosure



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
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It is a pleasure to transmit the Fifteenth Annual Report to Congress pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435. The report provides statistics on the operation of the premerger notification program, discusses recent developments and describes the Commission's and the Antitrust Division's merger enforcement activities during fiscal year 1992. The Acting Assistant Attorney General for Antitrust has concurred in the report.

By direction of the Commission.

Donald S. Clark  
Secretary

Enclosure

## INTRODUCTION

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. Section 18a ("the Act"). Subsection (j) of Section 7A provides as follows:

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

This is the fifteenth annual report to Congress pursuant to this provision. It covers fiscal year 1992.

In general, Section 7A requires that certain proposed acquisitions of stock or assets must be reported to the Federal Trade Commission and the Department of Justice prior to consummation. The parties must then wait a specified period, usually thirty days (fifteen days in the case of a cash tender offer and ten days in the case of a bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Small acquisitions, acquisitions involving small parties and other classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

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

If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) to request additional information or documentary materials from either or both of the parties to a reported transaction. Such a request extends the waiting period for a specified period, usually twenty days (ten days in the case of a cash tender offer), after the parties have complied with the request (or in

the case of a tender offer, after the acquiring person complies). This additional time provides the agencies with the opportunity to review the information and to take appropriate action before the transaction is consummated. If either agency believes that a proposed transaction may violate the antitrust laws, the agency may seek an injunction in federal district court to prohibit consummation of the transaction.

Final rules implementing the premerger notification program were promulgated by the Commission, with the concurrence of the Assistant Attorney General, on July 31, 1978.<sup>1</sup> At that time, a comprehensive Statement of Basis and Purpose was also published containing a section-by-section analysis of the rules and an item-by-item analysis of the Premerger Notification and Report Form. The program became effective on September 5, 1978. In 1983, the Commission, with the concurrence of the Assistant Attorney General, made several changes in the premerger notification rules. Those amendments became effective on August 29, 1983.<sup>2</sup> Additional amendments were published in the Federal Register on March 6, 1987,<sup>3</sup> and May 29, 1987.<sup>4</sup>

#### 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 each fiscal year in which the program has been in operation, the number of transactions reported,<sup>5</sup> the number of

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<sup>1</sup> 43 Fed. Reg. 33,450 (1978). The rules also appear in 16 C.F.R. Parts 801 through 803. For more information concerning the development of the rules and operating procedures of the premerger notification program, see the second, third and seventh annual reports covering the years 1978, 1979 and 1983, respectively.

<sup>2</sup> 48 Fed. Reg. 34,427 (1983) (codified at 16 C.F.R. Parts 801 through 803).

<sup>3</sup> 52 Fed. Reg. 7,066 (1987) (codified at 16 C.F.R. Parts 801 through 803).

<sup>4</sup> 52 Fed. Reg. 20,058 (1987) (codified at 16 C.F.R. Parts 801 through 803).

<sup>5</sup> The term "transactions", as used in Appendices A, B, and C, and Exhibit A to this report, does not refer to separate mergers or deals; rather, it refers to types of structures such as cash tender offers, options to acquire voting securities from the issuer, options to acquire voting securities from someone

(continued...)

filings received, the number of merger investigations in which requests for additional information or documentary material (hereinafter referred to as "second requests") were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted. Appendix A also shows for calendar years 1981 through 1984 and fiscal years 1985 through 1992 the number of transactions in which second requests could have been issued. (This information appears in Appendix C and is explained in footnote 1 of that appendix.) Appendix B provides a month-by-month comparison of the number of transactions reported (Table 1) and the number of filings received (Table 2) for fiscal years 1979 through 1992. Appendix C shows, for calendar years 1981 through 1984 and fiscal years 1985 through 1992, the number of transactions in which the agencies could have issued second requests, the number of merger investigations in which second requests were issued, and the percentage of transactions in which second requests were issued. As we explained in the Eighth Annual Report, we believe that Appendix C provides a more meaningful measure of the second request rate than Appendix A because Appendix C eliminates from the total number of transactions certain transactions in which the agencies could not, or as a practical matter would not, issue second requests.<sup>6</sup>

The statistics set out in these appendices show that the number of transactions reported in 1992 increased approximately 3.9 percent from the number of transactions reported in 1991 (1,589 transactions were reported in 1992 while 1,529 were reported in 1991). The statistics in Appendix A also show that

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<sup>5</sup>(...continued)

other than the issuer, and multiple acquiring or acquired persons that necessitate separate HSR identification numbers to track the filing parties and waiting periods. A particular merger or deal may involve more than one transaction. Indeed, some have involved as many as four or five transactions.

<sup>6</sup> See Appendix C, note 1. As we explained in previous annual reports, the information regarding second requests in Appendices A and C differs from that reported in those appendices in the annual reports for fiscal years 1979-1987. Appendix A and C in prior reports identified the number of transactions in which a second request was issued, while Appendices A and C in the present report show the number of merger investigations in which second requests were issued. A merger investigation may include several transactions. We believe that reporting the number of merger investigations in which second requests were issued better reflects the agencies' enforcement activities because it represents the number of mergers or acquisitions that were investigated to this extent under the Act by the agencies.

the number of merger investigations in which second requests were issued in 1992 decreased approximately 31.3 percent over the number of merger investigations in which second requests were issued in 1991 (second requests were issued in 44 merger investigations in 1992 while second requests were issued in 64 merger investigations in 1991). These numbers indicate a decrease in the number of second requests issued as a percentage of reported transactions from 1991 to 1992 (from 4.2 percent in 1991 to 2.8 percent in 1992 based on Appendix A, and from 4.7 percent in 1991 to 3.0 percent in 1992, based on Appendix C).

The statistics also show that in recent years, early termination was requested for most transactions. In 1992, early termination was requested in 88.3 percent (1,403) of the transactions reported while in 1991 it was requested in 86.4 percent (1,321) of the transactions reported. The number of requests granted increased in 1992 compared to 1991 (from 907 in 1991 to 1,020 in 1992). In addition, the percentage of requests granted increased (from 68.7 percent in 1991 to 72.7 percent in 1992).

We have also included in the report, as Exhibit A, statistical tables (Tables I - XI) containing information about the agencies' enforcement interest in transactions reported in fiscal year 1992. The tables provide, for various statistical break downs, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued; the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification; the number of transactions based on the sales or assets of the acquiring person or the sales or assets of the acquired entity; and the number of transactions based on the industry group (2-digit SIC code) in which the acquiring person or the acquired entity derived most of their revenues. These statistics have been included in prior annual reports for the calendar years 1981-1984, and for fiscal years 1985-1991 (excluding 1986).<sup>7</sup>

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<sup>7</sup> Due to resource constraints, statistics for fiscal 1986 transactions were not prepared.

DEVELOPMENTS IN FISCAL YEAR 1992 RELATING TO PREMERGER  
NOTIFICATION RULES AND PROCEDURES

1. Program for Federal-State Cooperation in Merger  
Enforcement

On March 6, 1992, and May 22, 1992, respectively, the Department of Justice and the Commission announced the implementation of new procedures to facilitate cooperation between federal and state authorities investigating proposed mergers or acquisitions.<sup>8</sup> To implement the Department of Justice and Commission programs, parties to a transaction are required to supply states with material furnished to the antitrust agencies pursuant to the Act.<sup>9</sup> The parties also must consent to a waiver of certain confidentiality provisions provided under federal law.

Under these conditions, the Department of Justice and the Commission will provide state regulators with copies of all requests for additional information, as well as copies of civil investigative demands or third-party subpoenas with the identities of recipients redacted. In addition, the federal antitrust agencies will identify the expiration dates of all applicable waiting periods, and provide limited assistance to the states in analyzing the transactions.

2. Clarification to the Statement on Filing Fees

On July 14, 1992, the Commission published a Clarification to the Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees Issued November 21, 1989 ("clarification").<sup>10</sup>

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<sup>8</sup> See attached Department of Justice Press Release issued March 6, 1992, and Commission Notice appearing in 57 Fed. Reg. 21,795 (1992) for specific information (Exhibit B).

<sup>9</sup> The programs only apply to states participating in the National Association of Attorneys General Voluntary Pre-Merger Disclosure Compact.

<sup>10</sup> 57 Fed. Reg. 31,205 (1992). On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for fiscal 1990. Section 605 of that statute, as enacted, requires the payment of a filing fee by each person acquiring voting securities or assets who is required to file a premerger notification by the Act. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies appropriations Act, 1990, Pub. L. No. 101-162, § 605, 103 Stat. 1031 (1989).

The clarification is intended to alleviate any misunderstanding by filing persons concerning the refunding of filing fees.<sup>11</sup>

### 3. Compliance

The Commission and the Department of Justice continue to monitor compliance with the premerger notification program's filing requirements and initiated a number of investigations to assure compliance in fiscal year 1992. The agencies monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. Industry sources, such as competitors, customers and suppliers, and interested members of the public often provide the agencies with information about transactions and possible violations of the filing requirements.

As a result of the agencies' efforts to assure compliance, the Department of Justice filed three complaints at the Commission's request in fiscal year 1992. The complaints alleged violations of the Act and sought civil penalties under Section 7A(g)(1) of the Act.<sup>12</sup>

In *United States v. Atlantic Richfield Company and UF Genetics*,<sup>13</sup> the complaint alleged that Atlantic Richfield ("ARCO") and UF Genetics ("Genetics") had violated the Act when Genetics acquired 100 percent of the voting securities of ARCO Seed Company ("Seed"), a subsidiary of ARCO, in 1986. According to the complaint, beneficial ownership of Seed transferred to Genetics on December 29, 1986. However, the parties failed to file premerger notification and report forms until December 30, 1986. Under the terms of the final judgment, ARCO agreed to pay

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<sup>11</sup> The Commission issued an amended statement on October 7, 1992, in connection with advising the public about an increase in the filing fee to \$25,000. 57 Fed. Reg. 47,466 (1992).

<sup>12</sup> Under Section 7A(g)(1) of the Act, any person or company that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$10,000 for each day the violation continues.

<sup>13</sup> *United States v. Atlantic Richfield Company and UF Genetics*, Cv. No. 91-3267 (D.D.C. complaint filed December 20, 1991).



a civil penalty of \$290,000<sup>14</sup> and Genetics agreed to pay a civil penalty of \$150,000<sup>15</sup> to settle the charges.

In *United States v. William F. Farley*,<sup>16</sup> the complaint alleged that Farley had violated the Act when he acquired certain voting securities of West Point-Pepperell, Inc. ("WPP"). According to the complaint, Farley was in violation from March 24, 1988, when his holdings of WPP's stock exceeded the \$15 million threshold, until June 22, 1988. The complaint alleges that Farley's acquisitions of WPP's stock were not made solely for the purpose of investment as he asserted. The Northern District of Illinois dismissed the case with prejudice on February 12, 1992. The Antitrust Division is appealing the judge's order on behalf of the Commission.

In *United States v. Beazer, PLC*,<sup>17</sup> the complaint alleged that Beazer had violated the Act when it acquired certain voting securities of Koppers Company, Inc. The complaint alleged that Beazer began acquiring Koppers' stock in September 1987, and exceeded the \$15 million HSR threshold on October 19, 1987. According to the complaint, Beazer created a partnership acquisition vehicle for the purpose of avoiding the notification and waiting period requirements of the Act. Under the terms of the final judgment, Beazer agreed to pay a civil penalty of \$760,000 to settle the charges.

The Department of Justice, at the Commission's request, filed a stipulation in one case in fiscal year 1992 involving a complaint filed in fiscal year 1991.

In *United States v. General Cinema Corporation*,<sup>18</sup> the complaint alleged that General Cinema had violated the Act when it acquired certain voting securities of Cadbury Schweppes PLC. According to the complaint, General Cinema was in violation from

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<sup>14</sup> *United States v. Atlantic Richfield Company*, 1992-1 Trade Cas. ¶ 69,695 (D.D.C. January 27, 1992).

<sup>15</sup> *United States v. UF Genetics*, 1992-1 Trade Cas. ¶ 69,803 (D.D.C. April 23, 1992).

<sup>16</sup> *United States v. William F. Farley*, Cv. No. 92-1071 (N.D. Ill. complaint filed February 12, 1992; dismissed with prejudice February 12, 1992).

<sup>17</sup> *United States v. Beazer, PLC*, 1992-2 Trade Cas. ¶ 69,923 (D.D.C. August 14, 1992).

<sup>18</sup> *United States v. General Cinema Corporation*, 1991-2 Trade Cas. ¶ 69,681 (January 8, 1992).

September 11, 1986, when its holdings of Cadbury Schweppes' stock exceeded the \$15 million threshold, until February 25, 1987. The complaint alleged that General Cinema's acquisitions of Cadbury Schweppes' stock were not made solely for the purpose of investment as General Cinema contended. Under the terms of the stipulation, General Cinema agreed to pay a civil penalty of \$950,000 to settle the case.

## MERGER ENFORCEMENT ACTIVITY DURING FISCAL YEAR 1992<sup>19</sup>

### 1. Department of Justice

The Antitrust Division filed four complaints in merger cases during fiscal year 1992.<sup>20</sup> All of these cases have been settled by the entry of consent decrees.

In *United States v. Borland International, Inc. and Ashton-Tate Corporation*, the Division challenged the proposed acquisition of Ashton-Tate Corporation by Borland International, Inc. Simultaneously, a consent decree was filed. The complaint alleged that the proposed acquisition would lessen competition substantially in the sale of relational database management system software for personal computers in the United States. Borland International and Ashton-Tate were the two leading sellers of relational database management system software for personal computers in the United States. Total sales in 1990 of relational database management system software in the United States were approximately \$200 million. The consent decree enjoined Borland from suing competitors for copyright infringement based on Ashton-Tate's dBase programming language, a widely-used standard in relational database system software. The consent decree further directed Borland to attempt to resolve Ashton-Tate's suit against Fox Software, and to dismiss its claim

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<sup>19</sup> The cases mentioned in this report were not necessarily reportable under the premerger notification program. Because of the Act's provisions regarding the confidentiality of the information obtained pursuant to this program, it would be inappropriate to identify which cases were initiated under the premerger notification program.

<sup>20</sup> *United States v. Borland International, Inc. and Ashton-Tate Corporation*, Cv. No. C 91 3666MHP (N.D. Cal. filed October 17, 1991); *United States v. Tidewater, Inc. and Zapata Gulf Marine Corporation*, Cv. No. 92-0106 (D.D.C. filed January 13, 1992); *United States v. Society Corporation and Ameritrust Corporation*, Cv. No. 1:92CV0525 (N.D. Ohio filed March 13, 1992); and *United States v. Cookson Group plc, Electrovert Ltd., and Electrovert U.S.A. Corp.*, Cv. No. 92 2206 (D.D.C. filed September 29, 1992).

against Fox, if Fox dismissed its counterclaims against Ashton-Tate. Thereafter, Fox and Borland/Ashton-Tate moved for dismissal and the court granted the motions.

In *United States V. Tidewater, Inc. and Zapata Gulf Marine Corporation*, the Division challenged the proposed \$30 million acquisition of Zapata Gulf Marine Corporation by Tidewater, Inc. Simultaneously, a consent decree was filed. The complaint alleged that the acquisition would lessen competition substantially in the anchor-handling services market in the U.S. Gulf of Mexico. Tidewater and Zapata were two of only six firms that provided anchor-handling services in the U.S. Gulf of Mexico and both firms operated several vessels in areas outside the Gulf. The consent decree directed Tidewater to divest two anchor-handling/towing supply vessels which provide anchor-handling services to semi-submersible drilling rigs.

In *United States v. Society Corporation and Ameritrust Corporation*, the Division challenged the proposed merger of Society Corporation and Ameritrust Corporation, two Cleveland, Ohio, bank holding companies. Simultaneously, a consent decree was filed. The complaint alleged that the proposed merger would lessen competition substantially in business banking services, including business checking accounts and commercial loans, for small business customers in Cuyahoga and Lake counties. Society was the third largest depository institution in Cuyahoga County, where Cleveland is located, and the fourth largest depository institution in adjacent Lake County. The holding company, with subsidiaries in three states, had total assets of \$15.3 billion and total deposits of \$11.6 billion. Ameritrust was the largest depository institution in Cuyahoga County and the second largest depository institution in Lake County. The holding company, with subsidiaries in three states had total assets of \$10.6 billion and total deposits of \$8.7 billion. The consent decree directed the parties to divest 26 branch offices in Cuyahoga County and two branch offices in Lake County, as well as more than \$1 billion in deposits and more than \$40 million in loans to small businesses in those counties.

In *United States v. Cookson Group plc, Electrovert Ltd., and Electrovert U.S.A. Corp.*, the Division challenged the acquisition of Hollis Automation Co. by Electrovert U.S.A. Corp. Simultaneously, a consent decree was filed. The complaint alleged that the acquisition would lessen competition substantially in the United States high performance and mid-range wave soldering machines markets. Wave soldering machines are used to attach electronic components to printed circuit boards. Electrovert was the largest North American producer of mid-range wave soldering machines and the second largest North American producer of high performance wave soldering machines. Hollis was the second largest North American producer of mid-range wave soldering machines and the largest North American producer of

high performance wave soldering machines. The consent decree required Electrovert to grant North American rights to all of Hollis' wave soldering technology to two other firms presently selling wave soldering machines in the United States. The technology licensed included Hollis' patented "hot air knife," a device that improves the quality of soldering. About 75 percent of the wave soldering machines sold by Hollis in 1991 contained a hot air knife.

The Division also filed a brief before the Interstate Commerce Commission ("ICC") on September 25, 1992, stating its objection to the Wisconsin Central Railroad's proposed acquisition of Green Bay and Western Railroad and Fox River Valley Railroad. That application is still pending.

Additionally, the litigation in *United States v. Archer-Daniels-Midland Company and Nabisco Brands, Inc.*,<sup>21</sup> filed December 14, 1982, in the Southern District of Iowa and described in previous annual reports, was concluded in fiscal year 1992 when the court, after trial, entered judgment in favor of the defendants. The United States did not appeal. Previously, the district court had in 1987 granted summary judgment for the defendants and the Eighth Circuit had in 1988 reversed and remanded for a full trial.

Two consent decrees were entered in cases brought in fiscal year 1991.<sup>22</sup>

During fiscal year 1992, the Division investigated three bank merger transactions for which divestiture was required prior to or concurrently with the acquisition. A conditionally "not significantly adverse" letter was sent to the appropriate bank regulatory agency in all instances. On March 3, 1992, a conditionally "not significantly adverse" letter was sent to the Federal Reserve Board regarding the BankAmerica Corporation, San Francisco, California, merger with Security Pacific Corporation, Los Angeles, California. BankAmerica was required to divest 211 branches in five states (California, Washington, Oregon, Arizona and Nevada) together with deposits, loans and other assets. On

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<sup>21</sup> *United States v. Archer-Daniels-Midland Company and Nabisco Brands, Inc.*, 695 F. Supp. 1000 (S.D. Iowa 1987), rev'd and remanded for trial, 866 F.2d 242 (8th Cir. 1988), 781 F. Supp. 1400 (S.D. Iowa 1991).

<sup>22</sup> *United States v. General Binding Corporation, et al.*, Cv. No. 91-1822 (D.D.C. consent decree filed July 24, 1991, and entered October 31, 1991); *United States v. Fleet/Norstar Financial Group, Inc.*, Cv. No. 91-0221-P (D. Me. consent decree filed July 5, 1991, and entered November 27, 1991). These cases are discussed in the Fourteenth Annual Report.

March 25, 1992, a conditionally "not significantly adverse" letter was sent to the Federal Reserve Bank of St. Louis, Missouri, regarding the acquisition by Mercantile Bancorporation, Inc., St. Louis, Missouri, of Ameribanc, Inc., St. Joseph, Missouri. Mercantile Bancorporation, Inc. was required to divest Ameribanc's subsidiary bank, American Bank of North Central Missouri, Trenton, Missouri. On April 9, 1992, a conditionally "not significantly adverse" letter was sent to the Federal Deposit Insurance Corporation regarding the merger between Marine Bank, Warren, Pennsylvania, and The First National Bank of Pennsylvania, Meadville, Pennsylvania. Marine Bank was required to divest 13 branches plus the name of First National Bank of Pennsylvania.

Finally, on three other occasions during fiscal year 1992, the Antitrust Division informed the parties to a proposed transaction that it would file suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.<sup>23</sup> In each instance, the parties restructured the proposed transaction.

## 2. Federal Trade Commission

During fiscal year 1992, the Commission accepted consent agreements for public comment in five merger matters. The Commission issued a complaint and decision and order in all five of those cases during the fiscal year.

In *Service Corporation International*,<sup>24</sup> the complaint alleged that Service Corporation International's ("SCI") acquisition of Pierce Brothers would lessen competition substantially in the funeral home industry in the California counties of San Bernardino and Riverside. According to the complaint, the proposed acquisition would increase the likelihood

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<sup>23</sup> Department of Justice Press Release issued February 3, 1992, involving the proposed joint venture by Ingersoll-Rand Co. and Dresser Industries, Inc., to combine virtually all of the worldwide pump manufacturing and sales operations of the two companies; Department of Justice Press Releases issued July 1, 1992, and September 28, 1992, involving the proposed merger of SABH, Inc., and Mor-Flo Industries, Inc., two manufacturers of residential water heaters; Department of Justice Press Release issued August 20, 1992, involving Page Avjet Airport Services, Inc.'s, proposed acquisition of Butler Aviation International, Inc., in which the Department announced it would not oppose the acquisition after the parties eliminated competitive concerns at Boston's Logan International Airport.

<sup>24</sup> *Service Corporation International*, Docket No. C3372 (issued February 25, 1992).

that funeral establishments in those markets would raise prices and restrict services in the near future and in the long term. Under the order, SCI was allowed to acquire Pierce Brothers, but was ordered to divest four Pierce Brothers funeral homes located in the San Bernardino/Riverside areas.<sup>25</sup>

In *Hanson PLC/H B Acquisitions*,<sup>26</sup> the complaint alleged that Hanson's acquisition of Beazer would lessen competition substantially in the manufacture and sale of cement in a 48 county area of northern California. Beazer is a 50 percent owner of the Cencal Cement Company ("Cencal"), which owns a deep sea cement import terminal in Port of Stockton, California. Under the order, Hanson was permitted to acquire Beazer, but was required to either sell the 50 percent share of Cencal to Ssangyong Cement, Inc., Cencal's other 50 percent holder, or acquire Ssangyong's interest and then divest the entire Cencal company to a Commission approved buyer within twelve months. In addition, Hanson is prohibited from acquiring any assets or voting securities of more than 3 percent of any company that manufactures, sells, ships, or distributes cement in the northern California market for the next ten years without Commission approval.

In *Mannesmann AG*,<sup>27</sup> the complaint alleged that Mannesmann's acquisition of the Rapistan Corporation from Lear Siegler Holdings would lessen competition substantially in the United States market for high-speed, light-to-medium duty conveyor systems. Both Rapistan and Mannesmann's Cincinnati-based subsidiary, The Buschman Company, manufacture and sell conveyor systems which are used to transport and sort cartons weighing up to 75 pounds. Under the order, Mannesmann was permitted to acquire Rapistan, but was required to sell Buschman to a Commission approved buyer.

In *Rohm and Haas Company/Union Oil Company of California*,<sup>28</sup> the complaint alleged that Rohm and Haas' acquisition of Union Oil Company's ("Unocal") emulsion polymers business would reduce

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<sup>25</sup> The four funeral homes in California to be divested include Cortner-Pierce Brothers Chapel in Redland, Pierce Brothers Ingold Chapel in Fontana, Mark B. Shaw in San Bernardino and Rubidoux Mortuary in Riverside.

<sup>26</sup> *Hanson PLC/H B Acquisitions PLC*, Docket No. C3374 (issued March 9, 1992).

<sup>27</sup> *Mannesmann AG*, Docket No. C3378 (issued March 24, 1992).

<sup>28</sup> *Rohm and Haas Company/Union Oil Company of California*, Docket No. C3387 (issued July 31, 1992).

competition substantially in the straight acrylics emulsion polymers market in the United States. Straight acrylics, a special type of emulsion polymer, are a primary ingredient in exterior latex house paints. Under the order, Rohm and Haas was permitted to acquire Unocal's emulsion polymer assets, but was required to sell Unocal's straight acrylics polymer business, including all acrylics paint-related product inventories, technology, customer information, licenses to applicable patents, copyrights and trademarks, to Union Carbide or another Commission-approved buyer. Rohm and Haas, and Unocal also were required to assist the buyer in making the transition to full production in order to ensure market competitiveness.

In *The Vons Companies, Inc.*,<sup>29</sup> the complaint alleged that Vons' acquisition of three Williams Brothers' ("Williams") supermarkets would lessen competition substantially in the San Luis Obispo, California, market area. The complaint alleged that Vons' acquired the Williams stores, and sold its existing supermarket in San Luis Obispo to a drugstore chain that did not intend to operate the facility as a grocery store. According to the complaint, Vons rejected a higher offer for the store from another supermarket operator in order to reduce market capacity and increase its market share. Under the order, Vons was required to divest one of the three supermarkets it acquired from Williams in San Luis Obispo.<sup>30</sup> The order also requires Vons to obtain Commission approval for ten years before purchasing a grocery store anywhere in the United States within nine months after closing or selling all of its supermarkets within seven miles of the acquired store, if the buyer will not operate the stores as supermarkets.

The Commission issued decisions and orders in two merger cases during fiscal year 1992 involving acquisitions in which the administrative complaint was issued before October 1, 1991.

In *University Health, Inc.*,<sup>31</sup> University Health agreed to settle charges stemming from its proposed acquisition of St. Joseph Hospital from Health Care Corporation of the Sisters of St. Joseph of Carondelet. According to the complaint, University Health's acquisition of St. Joseph would lessen competition substantially for acute care hospital services in the Augusta, Georgia, area. The Commission's motion for a preliminary

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<sup>29</sup> The Vons Companies, Inc., Docket No. C3391 (issued August 7, 1992).

<sup>30</sup> Vons must divest the supermarket located at 1314 Madonna Road, but can retain the other two acquired supermarkets.

<sup>31</sup> University Health, Inc., Docket No. 9246 (issued September 9, 1992).

injunction was denied by the U.S. District Court for the Southern District of Georgia in April 1991. However, the parties abandoned the transaction after the U.S. Court of Appeals for the Eleventh Circuit directed the district court to grant the Commission's request for a preliminary injunction to enjoin the acquisition.<sup>32</sup> The order prohibits University Health from acquiring St. Joseph Hospital, or any other acute care hospital in the Augusta, Georgia, area for ten years without prior approval of the Commission.

In *Hoechst AG*,<sup>33</sup> the Commission gave final approval to a consent agreement settling charges stemming from Hoechst's 1987 acquisition of the Celanese Corp. The 1989 administrative complaint alleged that the acquisition would lessen competition substantially in the manufacture and sale of acetal in world markets, including the United States. Acetal, an engineering thermoplastic polymer, is used as a replacement for metal in small mechanical parts such as gears and rollers in automobiles and in consumer products, including videotape recorders, lawn sprinklers, pens and disposable lighters. Under the order, Hoechst is prohibited, for a period of ten years, from entering into an agreement with any producer of acetal products to divide markets. The order also precludes Hoechst from restricting the United States operations of Polyplastics Company, Ltd., of Japan, a joint venture between Hoechst and Daicel Chemical Industries, Ltd.

The Commission issued a decision and order in four merger cases during fiscal year 1992 in which it had previously accepted consent agreements for public comment before October 1, 1991.

In *Nippon Sheet Glass Company*,<sup>34</sup> Nippon agreed to settle charges that its acquisition of 20 percent of the voting securities of the Libby-Owens-Ford Company ("LOF"), a subsidiary of Pilkington, PLC, would lessen competition substantially in the North American wired glass market. Wired glass is a specialty flat glass used primarily in shower and bath enclosures and in fire-retarding applications, such as fire doors. All wired glass sold in the United States is imported. According to the complaint, the acquisition agreement gave LOF the sole right to

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<sup>32</sup> Federal Trade Commission v. University Health, Inc., 1991-1 Trade Cases ¶ 69,508 (11th Cir. 1991), rev'g 1991-1 Trade Cases ¶ 69,400, ¶ 69,444 (S.D.GA filed March 20, 1991; preliminary injunction denied, April 4, 1991).

<sup>33</sup> Hoechst AG, Docket No. D.9216 (issued September 12, 1991).

<sup>34</sup> Nippon Sheet Glass Company, Docket No. C3346 (issued October 7, 1991).



distribute wired glass for both Nippon and Pilkington in North America, eliminating competition between the two firms. Under the order, Nippon and Pilkington are prohibited, for a period of ten years, from jointly manufacturing, marketing or distributing polished wired glass through LOF or any other entity in North America without obtaining the Commission's prior approval.

In *PepsiCo, Inc.*,<sup>35</sup> PepsiCo agreed to settle charges that its acquisition of Twin Ports Seven-Up Bottling Company ("Twin Ports") would lessen competition substantially in the carbonated soft drink industry in the Duluth, Minnesota, area. According to the complaint, Twin Ports sells non-Pepsi brands in competition with Pepsi brands in the Duluth area. The complaint alleged that the acquisition would increase the likelihood of inter-brand collusion. Under the order, PepsiCo was required to divest Twin Ports within a nine-month period to a Commission approved buyer. Pepsi must also obtain approval from the Commission before purchasing the rights to distribute non-Pepsi soft drinks, or acquiring an interest in an entity with such rights, in the Duluth area.

In *Sentinel Group, Inc.*,<sup>36</sup> Sentinel agreed to settle charges that its acquisitions of funeral homes in recent years lessened competition substantially for funeral services in six cities in Georgia and Arkansas. According to the complaint, Sentinel's acquisitions in Waycross, Summerville, Gainesville, Savannah and Rome, Georgia, and in Ft. Smith, Arkansas, would enhance significantly the possibility of collusion. Under the order, Sentinel was required to divest one of its funeral homes in each of Waycross, Summerville and Gainesville, Georgia.

In *Alpha Acquisition Corporation/RWE-DEA Akteingesellschaft Fur Mineraloel Und Chemie/RWE Aktiengesellschaft/Vista Chemical Co.*,<sup>37</sup> RWE agreed to settle charges that its acquisition of Vista Chemical Company lessened competition substantially in the world market for high-purity alcohol process alumina. Alumina is a chemical intermediate product used in making catalysts for the petroleum refining, chemical and automotive emissions control industries. According to the complaint, RWE and Vista were the only two companies to employ a process that yields alumina as a by-product in the production of linear alcohol. Under the order,

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<sup>35</sup> *PepsiCo, Inc.*, Docket No. C3347 (issued October 15, 1991).

<sup>36</sup> *Sentinel Group, Inc.*, Docket No. C3348 (issued October 23, 1991).

<sup>37</sup> *Alpha Acquisition Corporation/RWE-DEA Aktiengesellschaft/RWE Aktiengesellschaft/Vista Chemical Co.*, Docket No. C3349 (issued October 29, 1991).

RWE must grant to a licensee the rights to patents, trade secrets and other information relating to the processing of this alumina.

The Court of Appeals for the Ninth Circuit affirmed a 1990 civil penalty judgment in fiscal year 1992. In *United States v. Louisiana-Pacific Corporation*,<sup>38</sup> the Antitrust Division, in September 1981, filed a complaint at the Commission's request alleging that Louisiana-Pacific ("LP") failed to divest its Rocklin, California, fiberboard plant as ordered by the Commission in 1979.<sup>39</sup> The U.S. District Court for the District of Oregon ordered LP to pay a \$4 million civil penalty for violating the order. The U.S. Court of Appeals for the Ninth Circuit vacated the penalty and remanded the case in 1985. In 1990, the district court reimposed the civil penalty. On June 24, 1992, the court of appeals affirmed the \$4 million civil penalty. This penalty is the largest ever awarded to the Commission.

#### ASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

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

First, as indicated in past annual reports, one of the premerger notification program's primary objectives, eliminating the so-called "midnight merger," has been achieved. The requirement that parties file and wait ensures that virtually all significant mergers or acquisitions occurring 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.

Second, in most cases the parties provide sufficient information to allow the enforcement agencies to determine promptly whether a transaction raises any antitrust problems. In addition, over the years, parties have increasingly supplied information voluntarily to the Commission and the Antitrust Division. This cooperation has resulted in fewer second requests than would otherwise have been necessary.

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<sup>38</sup> *United States v. Louisiana-Pacific Corporation*, Cv. No. 81-813-RE (9th Cir. decision and order issued June 24, 1992).

<sup>39</sup> Subsequently, the plant was divested in December 1983 after the U.S. District Court for the District of Oregon appointed a trustee to sell the facility.

Finally, the existence of the premerger notification program alerts businesses to the antitrust concerns raised by proposed transactions. In addition, the greatly increased probability that antitrust violations will be detected prior to consummation may deter some competitively questionable transactions. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions which raised significant antitrust concerns, before the antitrust agencies had the opportunity to adequately consider their competitive effects. The enforcement agencies were forced to pursue lengthy post-acquisition litigation during the course of which the consummated transaction continued in place (and afterwards as well, where effective post-acquisition relief was not possible or available). Because the premerger notification program requires reporting before consummation, this problem has been significantly reduced.

The Assistant Attorney General of the Antitrust Division concurs with this annual report.

Date:

List of Appendices

- Appendix A - Summary of Transactions, Fiscal Years 1979-1992
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1979-1992.
- Appendix C - Transactions in Which Additional Information Was Requested for Calendar Years 1981-1984 and Fiscal Years 1985-1992.

List of Exhibits

- Exhibit A - Statistical Tables for Fiscal Year 1992, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest.
- Exhibit B - Department of Justice Press Release issued March 6, 1992; and Federal Register Notice issued May 22, 1992

Appendix A  
Summary of Transactions;  
Fiscal Years 1979-1992

APPENDIX A  
SUMMARY OF TRANSACTIONS  
FISCAL YEARS

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
TRANSACTIONS REPORTED	861	784	996	1,203	1,093	1,340	1,603	1,949	2,533	2,746	2,883	2,262	1,529	1,589
FILINGS RECEIVED 1/	1,643	1,552	1,804	2,056	1,971	2,418	2,975	3,611	4,742	5,172	5,530	4,272	2,914	3,030
TRANSACTIONS IN WHICH A SECOND REQUEST COULD HAVE BEEN ISSUED 2/	NA	NA	762	713	903	1119	1301	1660	2170	2391	2535	1955	1376	1,451
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED	113	68	69	65	34	61	67	71	58	68	64	89	64	44
FTC 3/	63	31	34	39	12	25	24	32	18	39	35	55	33	26
DOJ 3/	50	37	35	26	22	36	43	39	40	29	29	34	31	18
NUMBER OF TRANSACTIONS INVOLVING A REQUEST FOR EARLY TERMINATION 4/ 5/	123	100	164	222	606	963	1,281	1,639	2,264	2,440	2,582	1,975	1,321	1,403
GRANTED 4/	60	75	135	142	495	781	975	1,263	1,752	1,885	1,937	1,299	907	1,020
NOT GRANTED 4/	62	22	26	63	103	153	288	362	512	555	645	676	414	383

- 1 Usually, two filings are received, one from the acquiring person and one from the acquired person when a transaction is reported. Only one application is received when an acquiring party files for an exemption under sections 7A(c)(6) or (c)(8) of the Clayton Act.
- 2 These figures are from Appendix C and are explained in footnote 1 of that Appendix. The figures for 1981 - 1984 are on a calendar basis, and for 1985 - 1992 on a fiscal year basis.
- 3 These statistics are based on the date the request was issued and not the date the investigation was opened.
- 4 These statistics are based on the date of the H-6-R filing and not the date action was taken on the request.
- 5 Includes the following number of non-reportable transactions: three in both 1979 and 1980; two in 1981; fifteen in 1982; eight in 1983; twenty in 1984; eighteen in 1985; fourteen in 1986; sixteen in 1987; twenty-four in 1988; fifty-four in 1989; fifty-seven in 1990; twenty-six in 1991; and thirty-five in 1992.

Appendix B

Number of Transactions Reported and  
Filings Received by Month;  
Fiscal Years 1979-1992.

APPENDIX B

Table 1. Number of Transactions Reported by Month for the Fiscal Years 1979 - 1992

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
October	63	78	91	116	89	89	132	195	290	245	259	267	148	140
November	80	85	78	117	100	107	145	187	494	216	316	371	198	180
December	67	54	88	111	96	124	103	144	199	243	267	139	121	155
January	71	56	73	92	91	76	111	108	96	161	160	160	96	97
February	75	64	60	67	57	98	110	120	104	204	201	138	97	87
March	75	58	75	105	80	136	153	149	163	224	236	179	113	135
April	57	60	64	95	81	118	149	131	162	230	202	168	120	129
May	84	55	92	105	88	107	156	211	185	228	254	187	130	142
June	76	64	87	131	104	112	126	145	197	241	264	182	122	116
July	88	60	107	102	92	120	160	180	218	223	223	156	130	154
August	75	82	92	91	116	144	136	187	194	310	273	163	156	124
September	50	68	89	71	99	109	122	192	231	221	228	152	98	130
<b>TOTAL</b>	<b>861</b>	<b>784</b>	<b>996</b>	<b>1,203</b>	<b>1,093</b>	<b>1,340</b>	<b>1,603</b>	<b>1,949</b>	<b>2,533</b>	<b>2,746</b>	<b>2,883</b>	<b>2,262</b>	<b>1,529</b>	<b>1,589</b>



APPENDIX B

Table 2. Number of Filings Received J/ by Month for Fiscal Years 1979 - 1992

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
October	122	228	159	249	199	155	229	350	523	443	550	489	270	253
November	158	207	142	200	181	210	269	348	921	421	602	693	376	326
December	108	108	152	200	167	212	194	263	404	455	485	289	236	316
January	127	105	134	144	149	131	211	199	177	311	350	298	184	194
February	150	113	108	104	116	180	210	221	193	358	362	269	180	165
March	146	103	145	181	148	255	295	287	278	437	468	343	216	255
April	112	108	111	152	129	212	267	236	314	445	371	306	223	244
May	166	94	163	169	139	199	286	350	351	442	472	351	253	268
June	142	110	161	213	191	193	232	308	360	453	504	349	228	233
July	168	104	183	178	169	211	302	337	417	403	423	288	235	286
August	141	143	162	144	199	260	239	351	376	583	517	315	319	227
September	103	129	184	122	184	200	241	361	428	421	426	282	194	263
<b>TOTAL</b>	<b>1,643</b>	<b>1,552</b>	<b>1,804</b>	<b>2,056</b>	<b>1,971</b>	<b>2,418</b>	<b>2,975</b>	<b>3,611</b>	<b>4,742</b>	<b>5,172</b>	<b>5,530</b>	<b>4,272</b>	<b>2,914</b>	<b>3,030</b>

J/ Usually, two filings are received, one from the acquiring person and one from the acquired person when a 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.

Appendix C

Transactions in Which Additional  
Information Was Requested;  
Calendar Years 1981-1984  
and  
Fiscal Years 1985-1992.

Appendix C

Investigations Where Additional Information Was Requested  
Calendar Years 1981 - 1984 and Fiscal Years 1985 - 1992

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Transactions 1/ Investigations In Which Second Requests Were Issued 2/	762	713	903	1,119	1,301	1,660	2,170	2,391	2,535	1,955	1,376	1,451
FTC												
Number 3/ Percent	34 4.5	39 5.5	12 1.3	25 2.2	24 1.8	32 1.9	18 0.8	39 1.6	35 1.4	55 2.8	33 2.4	26 1.8
DOJ												
Number 3/ Percent	35 4.6	26 3.6	22 2.4	36 3.2	43 3.3	39 2.3	40 1.8	29 1.2	29 1.1	34 1.7	31 2.3	18 1.2

1 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 compliant notification); (2) transactions reported pursuant to the exemption provisions of sections 7A(c)(6) and 7A(c)(8) of the Act; and (3) transactions which were found to be non-reportable. In addition, where a party filed more than one notification in the same year to acquire voting securities of the same corporation, e.g., filing for the 15% threshold and later filing for the 25% threshold, only a single consolidated transaction has been counted because, as a practical matter, the agencies do not issue securities and has also filed for the exercise of an option to acquire shares from the target issuer and for a subsequent merger, the transaction is assigned three numbers by the Premerger Office but is treated in this table as one transaction. In contrast, the same transaction would be counted as three transactions in the "transactions reported" category in Appendix A. These statistics also omit from the total number of transactions reported secondary acquisitions filed pursuant to Section 801.4 of the premerger notification rules. Secondary acquisitions have been deducted in order to be consistent with the statistic presented in most of the prior annual reports. Appendix C in the Eighth Annual Report did not exclude secondary acquisitions. Accordingly, the numbers of transactions for 1981 - 1984 appearing herein differ from those that appear in Appendix C in that report. Note also that Appendix C in the Ninth Annual Report contained calendar year 1985 figures while this chart shows fiscal 1985 figures.

2 Based on the date the second request was issued, not the date the investigation was opened.

3 Second request investigations as a percentage of the total number of transactions listed in this table.

Exhibit A

Statistical tables;

fiscal year 1992.

Data profiling Hart-Scott-Rodino premerger  
notification filings and enforcement interest



TABLE II

FISCAL 1992 1/  
ACQUISITIONS BY SIZE OF TRANSACTION 2/  
(CUMULATIVE)

TRANSACTION RANGE	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS 3/				
	NUMBER 4 /	PERCENT 5 /	PERCENTAGE OF TOTAL NUMBER OF CLEARANCES GRANTED			PERCENTAGE OF TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS 3/				
			FTC	DOJ	TOTAL	FTC	DOJ	TOTAL		
LESS THAN 15	122	8.4	13	4	6.1	1.9	7.9	1	-	2.3
LESS THAN 25	491	33.8	46	14	21.4	6.5	27.9	6	3	13.6
LESS THAN 50	857	59.1	79	25	36.7	11.6	48.4	11	5	25.0
LESS THAN 100	1141	78.6	107	39	49.8	18.1	67.9	17	8	38.6
LESS THAN 150	1233	85.0	119	44	55.3	20.5	75.8	20	10	45.5
LESS THAN 200	1283	88.4	125	47	58.1	21.9	80.0	21	11	47.7
LESS THAN 300	1344	92.6	136	50	63.3	23.3	86.5	22	13	50.0
LESS THAN 500	1392	95.9	146	53	67.9	24.7	92.6	23	14	52.3
LESS THAN 1000	1430	98.6	156	57	72.6	26.5	99.1	26	17	59.1
ALL TRANSACTIONS	1451	100.0	157	58	73.0	27.0	100.0	26	18	59.1

TABLE III

FISCAL YEAR 1992 1/  
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

CLEARANCE GRANTED AS A PERCENTAGE OF:

TRANSACTION RANGE ( \$MILLIONS )	CLEARANCE GRANTED BY AGENCY			TOTAL NUMBER OF TRANSACTIONS <sup>4</sup> /			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP <sup>7</sup> /			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
LESS THAN 15	13	4	17	.9	.3	1.2	10.7	3.3	13.9	6.1	1.9	7.9
15 UP TO 25	33	10	43	2.3	.7	3.0	8.9	2.7	11.7	15.4	4.7	20.0
25 UP TO 50	33	11	44	2.3	.8	3.0	9.0	3.0	12.0	15.4	5.1	20.5
50 UP TO 100	28	14	42	1.9	1.0	2.9	9.9	4.9	14.8	13.0	6.5	19.5
100 UP TO 150	12	5	17	.8	.3	1.2	13.0	5.4	18.5	5.6	2.3	7.9
150 UP TO 200	6	3	9	.4	.2	.6	12.0	6.0	18.0	5.6	1.4	7.0
200 UP TO 300	11	3	14	.8	.2	1.0	18.0	4.9	23.0	5.1	1.4	6.5
300 UP TO 500	10	3	13	.7	.2	.9	20.8	6.3	27.1	4.7	1.4	6.1
500 UP TO 1000	10	4	14	.7	.3	1.0	26.3	10.5	36.8	4.7	1.9	6.5
1000 AND UP	1	1	2	.1	.1	.1	4.8	4.8	9.5	.5	.5	.9
ALL CLEARANCES	157	58	215	10.8	4.0	14.8	10.8	4.0	14.8	73.0	27.0	100.0

TABLE IV

FISCAL YEAR 1992 1/  
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

SECOND REQUEST INVESTIGATIONS 3/ AS A PERCENTAGE OF:

TRANSACTION RANGE ( \$MILLIONS )	INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED3/			TOTAL NUMBER OF TRANSACTIONS4/			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP7/			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS3/		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
LESS THAN 15	1	-	1	.1	-	.1	.8	-	.8	2.3	-	2.3
15 UP TO 25	5	3	8	.3	.2	.6	1.4	.8	2.2	11.4	6.8	18.2
25 UP TO 50	5	2	7	.3	.1	.5	1.4	.6	1.9	11.4	4.6	15.9
50 UP TO 100	6	3	9	.4	.2	.6	2.1	1.1	3.2	13.6	6.8	20.5
100 UP TO 150	3	2	5	.2	.1	.3	3.3	2.2	5.4	6.8	4.6	11.4
150 UP TO 200	1	1	2	.1	.1	.1	2.0	2.0	4.0	2.3	2.3	4.6
200 UP TO 300	1	2	3	.1	.1	.2	1.6	3.3	4.9	2.3	4.6	6.8
300 UP TO 500	1	1	2	.1	.1	.1	2.1	2.1	4.2	2.3	2.3	4.6
500 UP TO 1000	3	3	6	.2	.2	.4	7.9	7.9	15.8	6.8	6.8	13.6
1000 AND UP	-	1	1	-	.1	.1	-	4.8	4.8	-	2.3	2.3
ALL TRANSACTIONS	26	18	44	1.8	1.2	3.0	1.8	1.2	3.0	59.1	40.9	100.0





TABLE VI

FISCAL YEAR 1992 1/  
TRANSACTIONS BY ASSETS OF ACQUIRING PERSONS

ASSET RANGE ( \$MILLIONS )	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS3/			
	NUMBER4/	PERCENT	NUMBER FTC DOJ	PERCENTAGE OF ASSET RANGE GROUP		NUMBER FTC DOJ	PERCENTAGE OF ASSET RANGE GROUP			
				FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
LESS THAN 15	35	2.4	-	-	-	8.6	-	-	2.9	
15 UP TO 25	15	1.0	-	-	-	-	-	-	-	
25 UP TO 50	64	4.4	-	-	-	3.1	-	-	-	
50 UP TO 100	74	5.1	9	2	12.2	16.2	1	1	2.7	
100 UP TO 150	74	5.1	9	2	12.2	14.9	-	-	-	
150 UP TO 200	56	3.9	7	1	12.5	14.3	-	-	-	
200 UP TO 300	85	5.9	10	1	11.8	12.9	3	1	4.7	
300 UP TO 500	124	8.6	12	5	9.7	13.7	3	1	3.2	
500 UP TO 1000	166	11.4	18	5	10.8	13.9	2	2	2.4	
1000 AND UP	758	52.2	92	36	12.1	16.9	17	12	3.8	
ASSETS NOT AVAILABLE8/	-	-	-	-	-	-	-	-	-	
ALL TRANSACTIONS	1451	100.0	157	58	10.8	14.8	26	18	3.0	

TABLE VII

FISCAL YEAR 1992 1/  
TRANSACTIONS BY SALES OF ACQUIRING PERSONS

	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/					
	NUMBER 4/	PERCENT	NUMBER FTC	NUMBER DOJ	PERCENTAGE OF SALES RANGE GROUP FTC	PERCENTAGE OF SALES RANGE GROUP DOJ	TOTAL	NUMBER FTC	NUMBER DOJ	PERCENTAGE OF SALES RANGE GROUP FTC	PERCENTAGE OF SALES RANGE GROUP DOJ	TOTAL
LESS THAN 15	81	5.6	4	3	4.9	3.7	8.6	-	1	-	1.2	1.2
15 UP TO 25	29	2.0	-	-	-	-	-	-	-	-	-	-
25 UP TO 50	44	3.0	2	2	4.6	4.6	9.1	2	-	-	-	4.6
50 UP TO 100	68	4.7	5	4	7.4	5.9	13.2	1	1	4.6	1.5	4.6
100 UP TO 150	75	5.2	8	3	10.7	4.0	14.7	1	1	1.5	1.3	2.9
150 UP TO 200	47	3.2	8	-	17.0	-	17.0	-	-	-	-	-
200 UP TO 300	81	5.6	4	2	4.9	2.5	7.4	-	-	-	-	-
300 UP TO 500	123	8.5	9	2	7.3	1.6	8.9	4	1	3.3	.8	4.1
500 UP TO 1000	143	9.9	18	5	12.6	3.5	16.1	1	1	.7	.7	1.4
1000 AND UP	743	51.2	99	37	13.3	5.0	18.3	17	13	2.3	1.8	4.0
SALES NOT AVAILABLE 2/	17	1.2	-	-	-	-	-	-	-	-	-	-
ALL TRANSACTIONS	1451	100.0	157	58	10.8	4.0	14.8	26	18	1.8	1.2	3.0

TABLE VIII

FISCAL YEAR 1992 1/  
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES 10/

ASSET RANGE ( \$ MILLIONS )	H-S-R TRANSACTIONS NUMBER <sup>4</sup> / PERCENT	CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/					
		NUMBER FTC	DOJ	ASSET RANGE PERCENTAGE OF FTC DOJ	TOTAL	NUMBER FTC	DOJ	ASSET RANGE PERCENTAGE OF FTC DOJ	TOTAL		
LESS THAN 15	139	14	3	10.1	2.2	12.2	1	1	.7	.7	1.4
15 UP TO 25	241	22	11	9.1	4.6	13.7	1	1	.4	.4	.8
25 UP TO 50	282	34	7	12.1	2.5	14.5	8	1	2.8	.4	3.2
50 UP TO 100	250	32	12	12.8	4.8	17.6	7	2	2.8	.8	3.6
100 UP TO 150	97	7	7	7.2	7.2	14.4	1	1	1.0	2.1	3.1
150 UP TO 200	52	8	2	15.3	3.9	19.2	1	2	1.9	-	1.9
200 UP TO 300	63	7	2	11.1	3.2	14.3	-	1	-	1.6	1.6
300 UP TO 500	75	7	3	9.3	4.0	13.3	2	3	2.7	4.0	6.7
500 UP TO 1000	56	6	2	10.7	3.6	14.3	2	1	3.6	1.8	5.4
1000 AND UP	72	6	2	8.3	2.8	11.1	1	2	1.4	2.8	4.2
ASSETS NOT AVAILABLE 11/	123	14	7	11.4	5.7	17.1	2	4	1.6	3.3	4.9
ALL TRANSACTIONS	1451	157	58	10.8	4.0	14.8	26	18	1.8	1.2	3.0

TABLE IX

FISCAL YEAR 1992 1/  
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES 12/

SALES RANGE ( \$MILLIONS )	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/			
	NUMBER 4/	PERCENT	NUMBER FTC DOJ	PERCENTAGE OF SALES RANGE GROUP FTC DOJ TOTAL	NUMBER FTC DOJ	PERCENTAGE OF SALES RANGE GROUP FTC DOJ TOTAL				
LESS THAN 15	277	19.1	21	7.6	1.8	5	1.8	2	1.8	2.5
15 UP TO 25	119	8.2	9	7.6	1.7	4	3.4	2	3.4	3.4
25 UP TO 50	314	21.6	35	11.2	3.5	2	.6	-	-	.6
50 UP TO 100	217	15.0	23	10.6	6.5	3	1.4	6	2.8	4.1
100 UP TO 150	103	7.1	10	9.7	5.8	1	1.0	1	1.0	1.9
150 UP TO 200	64	4.4	8	12.5	3.1	2	3.1	1	3.1	3.1
200 UP TO 300	71	4.9	11	15.5	1.4	4	5.6	2	2.8	8.5
300 UP TO 500	64	4.4	9	14.1	6.3	2	3.1	2	3.1	3.1
500 UP TO 1000	76	5.2	8	10.5	6.6	-	-	2	2.6	2.6
1000 AND UP	83	5.7	12	14.5	6.0	3	3.6	5	6.0	9.6
SALES NOT AVAILABLE 13/	63	4.3	11	17.5	4.8	-	-	-	-	-
ALL TRANSACTIONS	1451	100.0	157	10.8	4.0	26	1.8	18	1.2	3.0



TABLE X

FISCAL YEAR 1992 1/  
INDUSTRY GROUP OF ACQUIRING PERSONS

20	Food and Kindred Products	36	2	-	2	1	-	1
21	Tobacco Products	3	1	-	1	-	-	1
22	Textile Mill Products	7	-	1	1	-	-	-
23	Apparel and other Finished Products made from Fabrics and Similar Materials	2	1	-	1	-	-	-
24	Lumber and Wood Products, Except Furniture	4	-	1	1	-	-	-
25	Furniture and Fixtures	1	-	-	-	-	-	-
26	Paper and Allied Products	19	5	-	5	-	-	-
27	Printing, Publishing and Allied Products	28	3	1	4	1	-	1
28	Chemicals and Allied Products	44	13	-	13	5	-	5
29	Petroleum Refining and Related Industries	5	-	-	-	-	-	-
30	Rubber and Misc. Plastics Products	10	-	-	-	-	-	-
31	Leather and Leather Products	1	-	-	-	-	-	-
32	Stone, Clay, Glass, and Concrete Products	10	4	1	5	-	-	-
33	Primary Metal Industries	16	1	2	3	-	-	-
34	Fabricated Metal Products, Except Machinery and Transportation Equipment	12	3	-	3	2	1	1

TABLE X

PISCAL YEAR 1992 1/  
INDUSTRY GROUP OF ACQUIRING PERSONS

35	Industrial and Commercial Machinery and Computer Equipment	23	5	1	6	1	-	1
36	Electronic and other Electrical Equipment and Components, Except Computer Equipment	28	8	1	9	1	1	2
37	Transportation Equipment	14	4	1	5	1	1	2
38	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	11	3	1	4	1	-	1
39	Miscellaneous Manufacturing Industries	4	-	1	1	-	-	-
40	Railroad Transportation	2	1	-	1	-	-	-
42	Motor Freight Transportation and Warehousing	2	-	-	-	-	-	-
44	Water Transportation	7	1	-	1	-	-	-
45	Transportation by Air	20	-	3	3	-	-	-
46	Pipelines, Except Natural Gas	-	-	-	-	-	-	-
47	Transportation Services	-	-	-	-	-	-	-
48	Communications	65	2	2	4	-	1	1
49	Electric, Gas, and Sanitary Services	30	2	-	2	-	-	-
50	Wholesale Trade-Durable Goods	42	7	-	7	-	-	-
51	Wholesale Trade-Nondurable Goods	47	5	-	5	-	-	-



TABLE X

FISCAL YEAR 1992 <sup>1</sup>/<sub>1</sub>  
INDUSTRY GROUP OF ACQUIRING PERSONS

52	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	2	-	-	-	-	-	-	-
53	General Merchandise Stores	18	1	-	-	1	-	-	-
54	Food Stores	13	1	-	-	1	1	-	1
55	Automotive Dealers and Gasoline Service Stations	3	-	-	-	-	-	-	-
56	Apparel and Accessory Stores	2	-	-	-	-	-	-	-
57	Home Furniture, Furnishings, and Equipment Stores	3	-	-	-	-	-	-	-
58	Eating and Drinking Places	5	-	-	-	-	-	-	-
59	Miscellaneous Retail	11	1	-	-	1	-	-	-
60	Depository Institutions	12	-	-	-	-	-	-	-
61	Nondepository Credit Institutions	12	-	-	-	-	-	-	-
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	11	-	-	-	-	-	-	-
63	Insurance Carriers	47	3	2	5	-	1	1	1
64	Insurance Agents, Brokers, and Services	6	1	-	1	-	-	-	-
65	Real Estate	20	-	-	-	-	-	-	-
67	Holding and other Investment Offices	57	4	3	7	-	1	1	1



TABLE XI

FISCAL YEAR 1992 1/  
INDUSTRY GROUP OF ACQUIRED PERSONS

48	Communications	102	2	4	6	2	3	5	56
49	Electric, Gas, and Sanitary Services	27	2	1	3	-	-	-	15
50	Wholesale Trade-Durable Goods	43	4	-	4	-	-	-	17
51	Wholesale Trade-Non-durable Goods	73	12	-	12	3	-	3	24
52	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	1	-	-	-	-	-	-	-
53	General Merchandise Stores	14	2	-	2	-	-	-	9
54	Food Stores	11	1	-	1	1	-	1	6
55	Automotive Dealers and Gasoline Service Stations	5	-	-	-	-	-	-	-
56	Apparel and Accessory Stores	5	-	-	-	-	-	-	1
57	Home Furniture, Furnishings, and Equipment Stores	10	-	-	-	-	-	-	3
58	Eating and Drinking Places	9	-	-	-	-	-	-	2
59	Miscellaneous Retail	23	2	-	2	-	-	-	6
60	Depository Institutions	11	-	-	-	-	-	-	4
61	Nondepository Credit Institutions	36	-	-	-	-	-	-	6
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	8	-	-	-	-	-	-	5

TABLE XI

FISCAL YEAR 1992 1/  
INDUSTRY GROUP OF ACQUIRED PERSONS

63	Insurance Carriers	52	3	3	6		1	1		36
64	Insurance Agents, Brokers, and Services	9	1	-	1	-	-	-	-	6
65	Real Estate	52	2	1	3	-	-	-	-	11
67	Holding and other Investment Offices	18	-	-	-	-	-	-	-	2
70	Hotels, Rooming Houses, Camps, and other Lodging Places	21	-	-	-	-	-	-	-	7
72	Personal Services	5	-	1	1	-	1	1	1	1
73	Business Services	56	7	3	10	-	-	-	-	22
75	Automotive Repair, Services, and Parking	7	-	-	-	-	-	-	-	1
76	Miscellaneous Repair Services	1	-	-	-	-	-	-	-	-
78	Motion Pictures	19	2	-	2	-	-	-	-	4
79	Amusement and Recreation Services,	11	-	-	-	-	-	-	-	1
80	Health Services	59	4	7	11	1	1	2	44	1
82	Educational Services	-	-	-	-	-	-	-	-	-
83	Social Services	2	-	-	-	-	-	-	-	-
87	Engineering, Accounting, Research, Management, and Related Services	15	-	1	1	-	-	-	-	5

TABLE XI

FISCAL YEAR 1992 1/  
INDUSTRY GROUP OF ACQUIRED PERSONS

99	Nonclassifiable Establishments	1	-	-	-	-	-	-	-
DV	Diversified Companies	160	27	10	37	3	4	7	110
00	Not Available 16/	64	10	3	13	1	-	1	3
	ALL TRANSACTIONS	1451	157	58	215	26	18	44	593

FISCAL YEAR 1992  
FOOTNOTES

- 1/ Fiscal 1992 includes transactions reported between October 1, 1991 and September 30, 1992.
- 2/ The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to Item 3 (c) of the notification and report form.
- 3/ Based on the date the second request was issued.
- 4/ During fiscal year 1992, 1589 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 1451, reflects adjustments to eliminate the following types of transactions: (1) 18 transactions reported under Section (c)(6) and 59 transactions reported under Section (c)(8) (transactions involving certain regulated industries and financial businesses); (2) 7 transactions which were followed by separate notifications for one or more additional transactions between the same parties during fiscal 1992 (such transactions are listed here as a single consolidated transaction); (3) 42 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party in each transaction filed a compliant notification); and (5) 8 transactions withdrawn before the waiting period began. The table does not, however, exclude 15 competing offers or 265 multiple-party transactions (transactions involving two or more acquiring or acquired persons).
- 5/ Percentage of total transactions.
- 6/ Percentage of transaction range group.
- 7/ Percentages also appear in TABLE I.
- 8/ This category is composed of newly-formed acquiring persons and transactions withdrawn before staff could make a detailed analysis of the acquisition.
- 9/ This category is composed of newly-formed acquiring persons, foreign acquiring persons with no United States revenues, and acquiring persons who had not derived any revenues from their investments at the time of filing.
- 10/ The assets of the acquired entity were taken from responses to Item 2(d)(i) (Assets to be Acquired) or from Items 4(a) or (b) (SFC documents and annual reports) of the premerger notification and report form.
- 11/ The assets were not available primarily because the acquired firms' financials were consolidated with those of each respective acquired ultimate parent.

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

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

14/ 2-Digit SIC codes are part of the system of Standard Industrial Classification established by the UNITED STATES GOVERNMENT STANDARD CLASSIFICATION MANUAL, 1987, Executive Office of the President - Office of Management and Budget. The SIC groupings used in this table were determined from responses submitted by filing parties to Item 5 of the pro-forma notification and report form.

15/ Transactions included in this category represent newly-formed companies, companies with no United States operations, notifications filed by some individuals, and filings withdrawn before the industry classification could be determined.

16/ Transactions in this category include filings withdrawn before an industry group could be determined and newly-formed entities.

NOTE: Detail may not add to total due to rounding.

Exhibit B

Department of Justice Press Released

issued March 6, 1992; and

Federal Register Notice

issued May 22, 1992





# Department of Justice

FOR IMMEDIATE RELEASE  
FRIDAY, MARCH 6, 1992

AT  
(202) 514-2007  
TDD (202) 514-1888

**JUSTICE DEPARTMENT ANNOUNCES NEW PROCEDURE TO  
COORDINATE MERGER ANTITRUST INVESTIGATIONS WITH STATES**

WASHINGTON, D.C. -- The Department of Justice today announced a new procedure under which the Antitrust Division and state antitrust enforcement agencies can coordinate the collection of information in investigating mergers when the parties voluntarily agree to waive confidentiality requirements.

In many instances, the Antitrust Division and one or more state governments simultaneously investigate a single merger transaction, which can result in duplicative, overlapping and sometimes inconsistent requests for information that can increase considerably the costs of compliance and impede coordination. At the same time, the inability of federal and state enforcers to discuss the merits of the proposed transactions based upon commonly collected information can lead to divergent enforcement conclusions.

The procedure announced today will permit the merging parties, at their initiative, to facilitate coordinated state and federal investigations.

To implement the procedure, the merging parties must give the Department a letter agreeing to provide to state enforcement agencies all information provided to the Department and waiving

(MORE)

applicable confidentiality provisions to the extent necessary to allow discussions between the Department and state enforcement agencies of otherwise protected information.

After receiving the necessary letters, the Department will provide the designated lead state copies of all information requests issued in the matter, and the expiration dates for all applicable waiting periods. To the extent practicable and desirable, the Department will cooperate with the lead state in analyzing the merger. Any such cooperation will be limited to avoid waiver of deliberative process, work product, or other privileges of either the Department or the state enforcement agencies.

James F. Rill, Assistant Attorney General in charge of the Antitrust Division, said, "The new coordination procedure, which is based on favorable practical experiences in a number of past parallel federal and state investigations, can, in appropriate cases, provide substantial benefits to merging parties, as well as to federal and state antitrust enforcement authorities."

####

**PROTOCOL FOR COORDINATION IN MERGER INVESTIGATIONS  
BETWEEN THE ANTITRUST DIVISION AND STATE ATTORNEYS GENERAL**

Some mergers and acquisition may become subject to parallel investigations by the Antitrust Division of the U.S. Department of Justice and one or more State Attorneys General. In such cases, parties to the merger may find it desirable to facilitate coordination between state and federal antitrust enforcers reviewing the transaction. This protocol describes the procedures under which the Antitrust Division will, upon the request of the merging parties, provide certain otherwise confidential information to State Attorneys General in order to facilitate investigative coordination.

**PROCEDURES**

This protocol shall apply, upon the request of the merging parties, where all acquiring and acquired persons in the transaction submit a letter to the Division that:

1. agrees to provide to the lead state, as designated under the National Association of Attorneys General Voluntary Premerger Disclosure Compact, all information submitted to the Antitrust Division pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the HSR Act") or pursuant to Civil Investigative Demands; and
2. waives the confidentiality provisions of the HSR Act, 15 U.S.C. § 18a(h), and the the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), to the extent necessary to allow discussions of protected materials between the Antitrust Division and State Attorneys General.

Where the foregoing requirements have been satisfied, the Antitrust Division will provide to the lead state:

1. copies of all requests for additional information issued pursuant to the HSR Act;
2. copies of all civil investigative demands issued pursuant to the Antitrust Civil Process Act;

3. the expiration dates of all applicable waiting periods under the HSR Act.

To the extent practicable and desirable in the circumstances of a particular case, the Antitrust Division will cooperate with the lead state in analyzing the merger.

1. *Michigan National Corporation*, Farmington Hills, Michigan; to engage *de novo* in providing data processing services to financial and banking institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y, through the acquisition of a to-be-formed wholly owned subsidiary, *Acquico, Inc.*, Dallas, Texas, which will acquire all of the assets and assume certain liabilities of *BancA Corporation*, Dallas, Texas.

Board of Governors of the Federal Reserve System, May 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-12001 Filed 5-21-92; 8:45 am]

BILLING CODE 6210-01-F

### Jay H. Lustig; Change in Bank Control Notice

#### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1992.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jay H. Lustig*, Redondo Beach, California; to acquire 20 percent of the voting shares of *National Bancshares Corporation of Texas*, San Antonio, Texas, and thereby indirectly acquire *NBC Bank - Eagle Pass, N.A.*, Eagle Pass, Texas, *NBC Bank - Laredo, N.A.*, Laredo, Texas, and *NBC Bank - Rockdale*, Rockdale, Texas.

Board of Governors of the Federal Reserve System, May 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11999 Filed 5-21-92; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

### Program for Federal-State Cooperation in Merger Enforcement

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of implementation of program for federal-state cooperation in merger enforcement.

**SUMMARY:** The Commission is implementing a program to facilitate federal-state cooperation in merger enforcement. Under the program, the Commission will exchange with state antitrust enforcement authorities certain information and analysis developed in investigations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, provided that the parties who submit filings under the Act consent to a limited waiver of the statute's confidentiality protections.

**EFFECTIVE DATE:** May 13, 1992.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey M. Green, Assistant to the Director, Bureau of Competition, (202) 326-2641.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of March 6, 1992, 57 FR 8127, the Commission announced that it was considering a program for Federal-State cooperation in merger enforcement, and solicited public comment. Two comments were received, one supporting the proposal and one raising several concerns. The Commission is now implementing the program, with minor clarifications.

As explained previously, the program will complement the National Association of Attorneys General Voluntary Pre-Merger Disclosure Compact ("Compact"). The Compact applies when a proposed merger, acquisition, or other transaction is subject to reporting requirements under section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The HSR Act requires that the parties to most significant acquisitions of voting securities or assets notify the Commission (and the Department of Justice) in advance, and delay consummation of the transaction until certain waiting periods specified in the Act have elapsed.

Under the Compact, participating states agree that they will not serve demands for information during the HSR waiting period and prior to instituting a judicial proceeding to enjoin a proposed transaction, if the parties to the proposed transaction ("submitters") provide specified information to the liaison state defined by the Compact.

The information specified includes copies of (1) the submitters' HSR filings; (2) second requests for additional information issued pursuant to section 7A(e)(1) of the HSR Act, 15 U.S.C. 18a(e)(1), or other requests directed to submitters by Federal antitrust enforcement authorities; and (3) on request by a participating state, materials provided by submitters in response to such further Federal requests.

Under the Commission program, the Commission will provide certain additional information to participants in the Compact who submit a certification of confidentiality to the General Counsel of the Commission ("General Counsel"). A model certification follows at appendix I. The information will be provided, however, only if all of the submitters choose (1) to provide a copy of their HSR filings to the liaison state under the Compact (the Commission will not provide a copy of HSR filings to any state), and (2) to provide the Assistant Director for Premerger Notification in the Bureau of Competition with letters waiving confidentiality protections under Federal law, insofar as those protections constrain disclosures by the Commission to members of the Compact. A model letter follows at appendix II.

If waivers are received from the submitters, the Commission will thereafter respond to requests for assistance from the participating liaison state. Specifically, under this program, Commission staff will provide the liaison State with the following information.

First, staff will provide copies of second requests, and copies of third party subpoenas with the identities of the subpoena recipients redacted. (If redaction of identities is insufficient to protect confidential information about subpoena recipients, individual specifications may be deleted or entire subpoenas may be withheld).

Second, staff will identify the expiration dates of HSR waiting periods.

Third, staff will provide limited assistance in analyzing the merger. However, staff will not disclose specific recommendations made or to be made to agency decisionmakers, and will limit disclosures as necessary to protect confidential information, including information supplied by third parties.

The program contains several safeguards to protect the confidentiality of this limited information that the Commission will provide to states. First, a state that obtains information under the program can share such information only with other states that have

completed a confidentiality certification. The General Counsel's office will maintain a list of participating states, and will provide the list to each participating state.

Second, a participating state must advise the Commission's General Counsel if it receives a discovery request or public access request for information obtained under the program. Further, the state must assert vigorously any privilege or exemption claimed by the General Counsel, or assist the General Counsel in intervening in a proceeding to assert the exemption or privilege. In no event may the state take any action or make any statement that will compromise the Commission's claim of confidentiality.

In deciding to implement this program, the Commission has considered the two concerns raised by Mr. Robert O'Connell of Murray Hill, New Jersey. First, Mr. O'Connell expressed concern that the program would permit disclosure of filings from all the submitters in a transaction even if only one of the submitters had waived confidentiality protections. As the description above clarifies, the Commission will share information under the program only when all the submitters consent.

Second, Mr. O'Connell urged the Commission to require an indemnification agreement from states participating in the program, so that submitters will have effective recourse if information that is provided to the states is improperly disclosed. The Commission declines to pursue this proposal. As the Federal Register notice proposing the program explains, the Commission will not provide the HSR filings themselves to states. The purpose of the confidentiality protections accorded under the Commission program is to protect only "the limited information that the Commission would itself provide to states." The model waiver letter in appendix II therefore makes explicit that the Commission program does not provide for disclosure of HSR filings by the Commission, but that these filings will be released to participating states by the submitters pursuant to the Compact, and will be provided only with such confidentiality protections as are accorded by the Compact and its members.<sup>1</sup>

<sup>1</sup> Under the Compact, members "agree to keep confidential the H.S.R. filing, [and] not to make any portion of such filing public except as may be relevant to instituting a judicial action to enjoin the merger or file comments with regard to the merger with federal enforcement agencies \* \* \*"

As to the limited confidential information to be disclosed by the Commission (and not previously disclosed to the states by the parties) the certification of confidentiality from the states provides adequate protection. The Commission routinely shares sensitive information with states pursuant to confidentiality agreements that have no indemnification provision. See 16 CFR 4.11(c). Congress has deemed "a certification \* \* \* that \* \* \* information will be maintained in confidence and will be used only for official law enforcement purposes" as adequate protection for the Commission to share trade secrets and confidential commercial information with state law enforcement agencies. 15 U.S.C. 46(f); see also 15 U.S.C. 57b-2(b)(6) (providing for sharing of protected information received under compulsory process in an investigation). Since Congress did not require an indemnification agreement as a prerequisite for sharing sensitive information obtained under the FTC Act, and since the Commission's own experience indicates that a certification of confidentiality provides adequate protection for information shared with states, it is not necessary or appropriate to obtain an indemnification agreement to share HSR information pursuant to a waiver.

#### Appendix I—Model Certification for States

To: General Counsel, Federal Trade Commission, Washington, DC 20580.  
Re: Participation in Program for Federal-State Cooperation in Merger Enforcement: Certification of Intent to Maintain Confidentiality.

On behalf of the Attorney General of \_\_\_\_\_ (name of jurisdiction), I certify that the \_\_\_\_\_ (name of jurisdiction) will maintain the confidentiality of all information and analysis (hereafter "information") obtained directly from the Commission under the captioned program, as well as all information obtained indirectly from the Commission through another state participating in the program. All information obtained under the program will be used only for official law enforcement purposes.

If any such information is subject to a discovery request in litigation or an access request under a public access law, the \_\_\_\_\_ (name of jurisdiction) will advise the General Counsel of the Federal Trade Commission ("General Counsel") of the request, and will vigorously assert any privilege or exemption claimed by the General Counsel, or assist the General Counsel in intervening in a state or federal proceeding to protect the information in question. In no event will any action be taken, or any statement be made, that will compromise the Commission's claim of confidentiality.

I understand that information obtained pursuant to this certification may be shared

with other state Attorney General offices only if they have filed a certification with the General Counsel.

Signed: \_\_\_\_\_  
Position: \_\_\_\_\_  
Telephone: \_\_\_\_\_

#### Appendix II—Model Waiver for Submitters

TO: Assistant Director for Premerger Notification, Bureau of Competition, Federal Trade Commission, Washington, DC 20580.

With respect to [the proposed acquisition of X Corp. by Y. Corp.], the undersigned attorney or corporate officer, acting on behalf of [indicate entity], hereby waives confidentiality protections under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Hart-Scott-Rodino Act, 15 U.S.C. 18a(h), and the Federal Trade Commission's Rules of Practice, 16 CFR 4.9 *et seq.*, insofar as these protections in any way limit discussions about [identity of transaction] between the Federal Trade Commission and members of the NAAG Voluntary Pre-merger Disclosure Compact ("Compact").

In understand that the Commission will not provide the states with copies of filings by [indicate entity] under the Hart-Scott-Rodino Act. Rather, these materials will be provided to the states by [indicate entity] pursuant to the Compact, and will be provided only with such confidentiality protections as are accorded by the Compact and its members.

Signed: \_\_\_\_\_  
Position: \_\_\_\_\_  
Telephone: \_\_\_\_\_

End of Appendix II

(Authority: 15 U.S.C. § 46).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-12073 Filed 5-21-92; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### Twenty-Sixth National Immunization Conference: Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control (CDC) will convene a meeting of federal, state, and local public health officials, as well as representatives from the public and private sector, who are involved in the organization and implementation of immunization activities.

Name: Twenty-Sixth National Immunization Conference.

#### Times and Dates:

Registration, 1 p.m.-5 p.m., May 31, 1992,  
and 8 a.m.-12 noon and 1:30 p.m.-4 p.m.,  
June 1, 1992  
8 a.m.-6:30 p.m., June 1-2, 1992  
8 a.m.-5 p.m., June 3, 1992  
8 a.m.-5:15 p.m., June 4, 1992