



## Hart-Scott-Rodino Annual Report

Fiscal Year 2023 October 1, 2022 through September 30, 2023

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

Lina Khan

*Chair* Federal Trade Commission

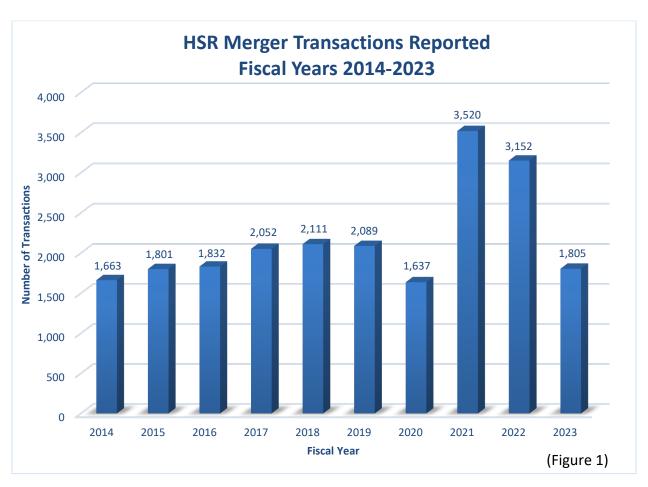
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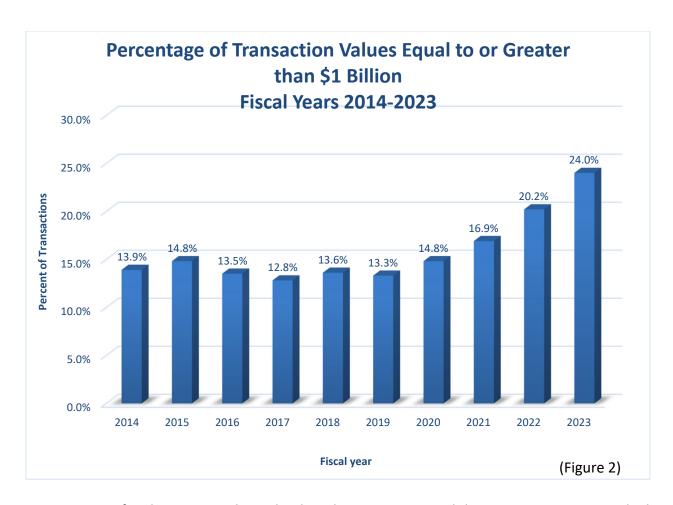
### **INTRODUCTION**

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435 (HSR Act or the Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (FTC or Commission) and the Antitrust Division of the Department of Justice (Antitrust Division or Division) to prevent anticompetitive mergers, acquisitions, and other types of transactions and to prevent interim harm to competition associated with those transactions. 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 2023.<sup>1</sup>

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. Together, the FTC and the Division represent the American people's front-line defense against unlawful industry consolidation, and stopping illegal mergers is central to that mission. In fiscal year 2023, 1,805 transactions were reported under the HSR Act. *See* Figure 1 below. Nearly one-fourth of the transactions reviewed by the agencies were valued over \$1 billion (see Table I), continuing a trend in recent years towards larger and more complex transactions. *See* Figure 2 below.



<sup>&</sup>lt;sup>1</sup> Fiscal year 2023 covered the period from October 1, 2022 through September 30, 2023.



During fiscal year 2023, the Federal Trade Commission and the Antitrust Division worked to block unlawful mergers across a range of industries, including pharmaceuticals, transportation, hospitals, agriculture, mortgage lending, financial services, cement, construction, healthcare advertising, broadcasting, medical devices, electricity, and reproductive health services. The Commission took action against 16 deals: two in which it issued consent orders for public comment; ten in which the transaction was abandoned or restructured as a result of antitrust concerns raised during the investigation; and four in which the Commission initiated administrative or federal court litigation.<sup>2</sup> The Division took action against 12 merger transactions: two that were blocked through lawsuits in U.S. district courts and ten in which the transaction was abandoned or restructured after the Division raised concerns about the threat it posed to competition. In some cases, the parties abandoned their merger plans prior to a complaint, avoiding the expense of extended litigation for both the

<sup>&</sup>lt;sup>2</sup> To avoid double-counting, this Report includes only those merger enforcement actions in which the Commission or the Antitrust Division took its first public action during fiscal year 2023 and does not fully reflect all the merger enforcement activities of the agencies, including litigation resulting in consent orders and/or divestitures during FY 2023 or on-going investigations and litigation.

parties and the agency.<sup>3</sup> Collectively, the agencies' enforcement actions preserved competition across the American economy.

#### The Federal Trade Commission

## FTC Enforcement Actions by Deal Size:4

< \$500M	3
Between \$500M and \$1B	1
Between \$1B and \$10B	1
Over \$10B	3

## Summary Numbers for Enforcement Actions:5

Complaints Filed	4
Litigated Win	1
Consent Entered in the Course of Litigation <sup>6</sup>	2
Litigation Ongoing	1
Consent Filed with Complaint	2
Abandoned or Restructured Pre-Complaint	10

A major area of focus of the FTC was protecting competition in healthcare markets. The FTC challenged Amgen's \$27.8 billion proposed acquisition of Horizon Therapeutics, alleging that the transaction—one of the largest pharmaceutical deals in recent memory—would

<sup>&</sup>lt;sup>3</sup> See, e.g., Press Release, Fed. Trade Comm'n, Statement of Elizabeth Wilkins, Director of the FTC's Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc. to Drop Their Proposed Merger (Feb. 16, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/02/statementelizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical; Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of CalPortland Company's Attempted Acquisition of Assets Owned by Rival Cement Producer Martin Marietta Materials, Inc. (Apr. 28, 2023), https://www.ftc.gov/newsevents/news/press-releases/2023/04/statement-regardingtermination-calportland-companys-attemptedacquisition-assets-owned-rival-cement; Press Release, Fed. Trade Comm'n, Statement Regarding the Termination of Boston Scientific Corporation's Attempted Acquisition of a Majority Stake in M.I. Tech Co., Ltd. (May 24, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/statement-regarding-termination-bostonscientificcorporations-attempted-acquisition-mi-tech; Press Release, Fed. Trade Comm'n, Statement Regarding Termination of CooperCompanies' Attempted Acquisition of Cook Medical's Reproductive Health Business (Aug. 1, 2023), https://www.ftc.gov/news-Pevents/news/press-releases/2023/08/statement-regarding-terminationcoopercompanies-attemptedacquisition-cook-medicals-reproductive; Press Release, Infineum USA L.P., Acquisition Terminated (Feb. 16, 2023), https://www.infineum.com/en-gb/news/acquisition-terminated/.

<sup>&</sup>lt;sup>4</sup> Transaction values represent only those Commission actions for which the value of the transaction has been publicly disclosed.

<sup>&</sup>lt;sup>5</sup> In addition to the Complaints filed in FY2023, the FTC's litigation wins in the fiscal year included *Illumina/Grail*. In March 2023, the Commission found that DNA sequencing provider Illumina's \$7.1 billion vertical acquisition of GRAIL, Inc., which makes a multi-cancer early detection (MCED) test, was likely to substantially reduce competition in U.S. market for research, development, and commercialization of cancer tests and ordered Illumina to divest Grail. https://www.ftc.gov/system/files/ftc\_gov/pdf/d09401commissionfinalopinion.pdf.

<sup>&</sup>lt;sup>6</sup> Matters where the Commission successfully reached a resolution even after federal court litigation had been initiated are listed under "Consent Orders" but not under "Litigated Wins." "Litigated Wins" here lists only those matters where an evidentiary hearing was completed and a decision was issued by the court.

substantially lessen competition in the market for FDA-approved drugs and would enable Amgen to pressure insurance companies and pharmacy benefit managers into favoring Horizon's two monopoly products, Tepezza and Krystexxa. After the complaint was filed, the parties agreed to a consent order, prohibiting the bundling of any Amgen product with Horizon's medications used to treat thyroid eye disease and chronic refractory gout—and protecting Americans who rely on these treatments.

The Commission also filed an administrative complaint and sought a preliminary injunction challenging the \$700 million proposed acquisition of Propel Media, Inc. by IQVIA, the world's largest provider of health care data, alleging that the deal would unlawfully reduce competition and raise health care prices for Americans. After a two-week hearing, the U.S. District Court for the Southern District of New York granted the Commission's preliminary injunction, prompting the parties to abandon their merger plans.<sup>7</sup>

The Commission's merger enforcement work also prompted firms to abandon deals involving reproductive fertility treatments, medical stents, and the combination of two major healthcare systems—protecting patients across the country.

The Commission's work also protected homebuyers from higher costs. The Commission filed an administrative complaint and sought a preliminary injunction challenging Intercontinental Exchange's (ICE) \$13.1 billion proposed acquisition of Black Knight, which would have combined the two largest providers of home mortgage loan origination systems. After the complaint was filed, the parties agreed to a consent order to divest Black Knight's Optimal Blue and Empower business platforms to Constellation Web Solutions and prohibiting the parties from enforcing any noncompete or non-solicit provisions against employees. The structural relief obtained by the FTC helped protect competition in key areas of the mortgage origination process, protecting homebuyers and lenders from higher costs. The FTC's merger enforcement work also led to the abandonment of an acquisition involving major cement producers that would have further concentrated the market and risked raising costs for construction and infrastructure projects.

Lastly, the FTC challenged Microsoft's \$69 billion acquisition of Activision, alleging that Microsoft would have both the means and motive to harm competition by degrading Activision's game quality or player experience on rival gaming platforms, or limiting or withholding Activision's content—creating a walled garden rather than maintaining an open market. After the district court denied a preliminary injunction, the Commission appealed and the case is moving forward in the Commission's administrative proceedings.<sup>9</sup>

<sup>&</sup>lt;sup>7</sup> FTC v. IQVIA Holdings, Inc., No. 1:23-cv-06188 (S.D.N.Y. Jan. 8, 2024 (Op. & Order)).

<sup>&</sup>lt;sup>8</sup> See Press Release, Fed. Trade Comm'n, FTC Approves Final Order Resolving Antitrust Concerns Surrounding ICE, Black Knight Deal (Nov. 3, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-approves-final-order-resolving-antitrust-concerns-surrounding-ice-black-knight-deal.

<sup>&</sup>lt;sup>9</sup> In the Matter of Microsoft Corporation and Activision Blizzard, Inc., FTC Dkt. C-9412 (complaint filed on Dec. 8, 2022).

### The Department of Justice

### **Enforcement Actions by Deal Size:**

< \$500M	2
Between \$500M and \$1B	2
Between \$1B and \$10B	7
JV Affecting Commerce Above \$5B <sup>10</sup>	1

## **Summary Numbers for Enforcement Actions:**

Complaints Filed <sup>11</sup>	1
Litigated Win <sup>12</sup>	2
Consent Entered in the Course of Litigation <sup>13</sup>	1
Abandoned Post-Complaint	0
Consent Filed with Complaint	0
Abandoned or Restructured Pre-Complaint	10

Two of the Division's most noteworthy achievements helped protect competition that benefits airline passengers. In one case, the United States and a group of state Attorneys General successfully persuaded a district court to unwind a joint venture between American Airlines and JetBlue Airways. In a second, related case, the United States and its state Attorneys General partners persuaded another judge to block JetBlue's proposed acquisition of Spirit Airlines. As the court observed in *JetBlue-Spirit*, that acquisition "does violence to the core principle of antitrust law: to protect the United States' markets – and its market participants – from anticompetitive harm." These enforcement efforts protected millions of travelers—especially the most price-sensitive ones—flying on hundreds of routes across the country.

Two other enforcement efforts highlight the Division's commitment to protecting competition across key industries. Tenaris, S.A. sought to acquire Benteler Steel & Tube

<sup>&</sup>lt;sup>10</sup> This reflects the trial victory in *United States v. American Airlines Group Inc.*, No. CV 21-11558-LTS, 2023 WL 4766220 (D. Mass. July 26, 2023). As described further below, *see infra* note 33, the Division previously had categorized this enforcement effort as a non-merger matter for purposes of its annual reporting, but reports it here as a merger matter, in part because of the court's findings after trial.

<sup>&</sup>lt;sup>11</sup> The complaint filed in FY 23 was <u>United States v. JetBlue Airways Corp. and Spirit Airlines</u>, 1:23-cv-10511 (D. Mass. filed March 7, 2023). Because the "Litigated Win" and "Consent Entered" rows reflect cases filed before FY 23, the sum of the "Litigated Win" and "Consent Entered" rows is greater than the "Complaints Filed" row. <sup>12</sup> This includes <u>United States v. Bertelsmann SE & Co. KGaA, Penquin Random House, LLC, ViacomCBS, Inc., and Simon & Schuster, Inc.</u>, 1:21-cv-02886 (D.D.C. filed Nov. 2, 2021), which was discussed in the 2022 annual report because it was initiated in fiscal year 2022, but reached resolution in fiscal year 2023, and also includes the Antitrust Division's trial victory against American Airlines Group Inc. and JetBlue Airways Corp. *See infra* notes 31-33.

<sup>&</sup>lt;sup>13</sup> In *United States v. ASSA ABLOY AB and Spectrum Brands Holdings, Inc.*, 1:22-cv-02791-ABJ (D.D.C. filed Sept. 15, 2022), the U.S. District Court for the District of Columbia entered final judgment on September 13, 2023, requiring ASSA ABLOY to divest assets and abide by other remedies. Like *U.S. v. Bertelsmann*, this case was discussed in the 2022 annual report because it was initiated in fiscal year 2022, but reached resolution in fiscal year 2023.

<sup>&</sup>lt;sup>14</sup> United States v. JetBlue Airways Corp., 712 F. Supp. 3d 109 (D. Mass. 2024).

Manufacturing Corp. The proposed acquisition, if completed, would have diminished competition in the domestic supply of seamless tubing and production casing, important types of steel pipe used in the extraction of oil and gas. In February 2023, Tenaris and Benteler abandoned this transaction in the face of potential enforcement action by the Antitrust Division.

In March 2023, Vistra Corporation announced its plan to acquire Energy Harbor Corporation's nuclear plants in PJM Interconnection (PJM), the regional transmission organization that manages the electricity grid for more than 65 million consumers in all or parts of 13 states and the District of Columbia. The Antitrust Division and the Federal Energy Regulatory Commission (FERC) share jurisdiction to review acquisitions of electric power plants. In accordance with President Biden's Executive Order<sup>15</sup> mandating that executive branch agencies take a whole-of government approach to protecting competition, the Antitrust Division submitted a comment to assist FERC's review of the announced merger. The Division explained that the proposed acquisition could increase Vistra's ability or incentive to withhold electricity from a plant located in Ohio in order to raise wholesale electricity prices in part of the PJM region, specifically Ohio and Pennsylvania. In response to the Division's concerns and further action from FERC, Vistra offered to restructure its proposed acquisition by divesting that power plant in Ohio. FERC issued an Order on February 16, 2024, mandating the divestiture.<sup>16</sup>

The Commission's Premerger Notification Office (PNO) website<sup>17</sup> includes instructions for completing the HSR form, information on the HSR rules, current filing thresholds, filing fee instructions, and procedures for submitting post-consummation filings. The website also provides frequently asked questions regarding HSR filing requirements, the number of HSR transactions submitted each month, and contact information for PNO staff.<sup>18</sup>

### **BACKGROUND OF THE HSR ACT**

Section 201 of the HSR Act amended the Clayton Act by adding a new Section 7A, 15 U.S.C. § 18a. In general, the HSR Act requires that certain proposed acquisitions of voting securities, non-corporate interests, 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 bankruptcy sale), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends on the value of the acquisition and, in certain acquisitions, the size of the parties as measured by their sales and assets. Acquisitions valued below a certain threshold, acquisitions involving parties with assets and sales below a certain threshold, and certain classes of acquisitions that have been viewed as less likely to raise antitrust concerns are excluded from the Act's coverage.

<sup>&</sup>lt;sup>15</sup> Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021).

 $<sup>^{16}</sup>$  Energy Harbor Corp. Vistra Corp., 186 FERC  $\P$  61,129 (Feb. 16, 2024).

<sup>&</sup>lt;sup>17</sup> See Fed. Trade Comm'n, Premerger Notification Program (Aug. 28, 2024), https://www.ftc.gov/enforcement/premerger-notification-program.

<sup>&</sup>lt;sup>18</sup> Resource materials are available on the PNO website; in addition, PNO staff is always available to help HSR practitioners comply with HSR notification requirements.

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 published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form. The program became effective on September 5, 1978. The Commission, with the concurrence of the Assistant Attorney General, has amended the rules and the filing form on many occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules, while ensuring that the agencies receive sufficient information to analyze the underlying transaction. <sup>20</sup>

The primary purpose of the statutory scheme, as the legislative history makes clear, is to provide the antitrust enforcement agencies with the opportunity to identify and review potentially anticompetitive mergers and acquisitions before they are consummated. The premerger notification program, with its filing and waiting period requirements, facilitates this goal.

If either reviewing agency determines during the waiting period that further inquiry is necessary, the reviewing 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 of time (usually 30 days, but 10 days in the case of a cash tender offer or bankruptcy sale) after all parties have complied with the Second Request (or, in the case of a tender offer or bankruptcy sale, after the acquiring person complies). This additional time provides the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may substantially lessen competition or tend to create a monopoly, the agency may challenge the transaction.

## 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 2014-2023, 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,

<sup>&</sup>lt;sup>19</sup> 43 Fed. Reg. 33450 (July 31, 1978).

<sup>&</sup>lt;sup>20</sup> See Fed. Trade Comm'n Legal Library: Statements of Basis and Purpose (June 29, 2023), <a href="https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations/statements-basis-purpose">https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations/statements-basis-purpose</a>.

<sup>&</sup>lt;sup>21</sup> 15 U.S.C. §18a(e)(1)(A) ("The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) . . . . require the submission of additional information or documentary material relevant to the proposed acquisition.").

granted, and not granted.<sup>22</sup> Appendix A also shows the number of transactions in which Second Requests could have been issued, as well as the percentage of transactions in which Second Requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 2014 through 2023.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2023 decreased from the record high number of transactions reported in fiscal years 2021 and 2022 but were generally in line with the number of reported transactions over the past decade.<sup>23</sup> Of the 1,805 reported transactions in fiscal year 2023, Second Requests could have been issued in 1,735 of them. The FTC issued 26 Second Requests in FY 2023. In FY 2023, the Division issued 11 Second Requests. *See* Table I.

The tables (Tables I through XI) in Exhibit A contain information regarding the agencies' enforcement activities for transactions reported in fiscal year 2023. The tables provide, for example, various characteristics of transactions, the number and percentage of transactions in which one antitrust agency granted the other clearance to commence an investigation, and the number of merger investigations in which either agency issued Second Requests. Table III of Exhibit A shows that in fiscal year 2023, the agencies received clearance to conduct an initial investigation in 10.2 percent of the total number of transactions reported. The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. In fiscal year 2023, the aggregate dollar value of reported transactions was \$1.6 trillion.<sup>24</sup>

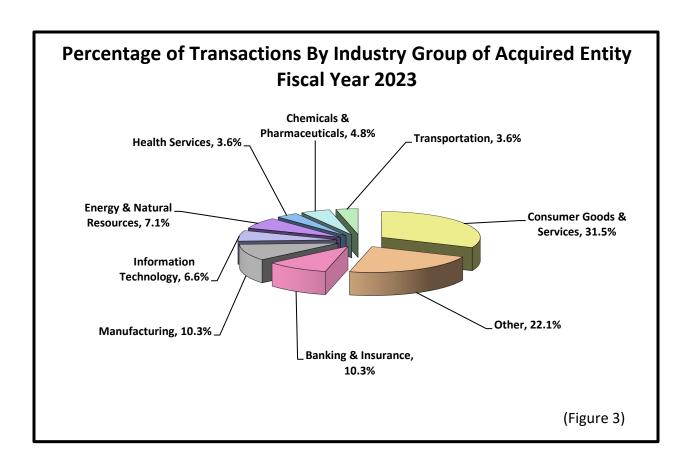
Tables X and XI provide the number of transactions, by broad industry group, in which the acquiring person and the acquired entity, respectively, derived the most revenue. Figure 3 illustrates the percentage of adjusted transactions within industry groups for fiscal year 2023 based on the acquired entity's operations, reflecting the breadth of the agencies' experience in reviewing transactions that impact every sector of the U.S. economy<sup>25</sup>

<sup>&</sup>lt;sup>22</sup> The term "transaction," as used in Appendices A and B and Exhibit A to this Report, does not refer only to individual mergers or acquisitions. A particular merger, joint venture, or acquisition may be structured such that it involves more than one filing that must be made under the HSR Act.

<sup>&</sup>lt;sup>23</sup> This Report, like previous Reports, also includes annual data on "adjusted transactions in which a Second Request could have been issued" (adjusted transactions). *See* Appendix A & Appendix A n.2 (explaining calculation of that data). There were 1,735 adjusted transactions in fiscal year 2023, 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.

<sup>&</sup>lt;sup>24</sup> The information on the value of reported adjusted transactions for fiscal year 2023 is drawn from a database maintained by the Premerger Notification Office.

<sup>&</sup>lt;sup>25</sup> The category designated as "Other" consists of industry segments that include construction, educational services, performing arts, recreation, and other non-classifiable businesses.



#### DEVELOPMENTS WITHIN THE PREMERGER PROGRAM

## 1. Threshold Adjustments

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

On January 26, 2023, the Commission published a notice<sup>26</sup> to reflect adjustment of the reporting thresholds as required by the 2000 amendments<sup>27</sup> to Section 7A of the Clayton Act, 15 U.S.C. § 18a. The revised thresholds, including an increase in the size of transaction threshold from \$101 million to \$111.4 million, became effective February 27, 2023. The thresholds are calculated based on the prior year's GNP. In addition to the adjustment of the reporting thresholds, the Commission announced new merger filing fees based on the size of the proposed transaction. The 2023 Consolidated Appropriations Act now requires the FTC to

<sup>&</sup>lt;sup>26</sup> 88 Fed. Reg. 5006 (Jan. 26, 2022).

<sup>&</sup>lt;sup>27</sup> 15 U.S.C. §18a(a). See Pub. L. No. 106-553, 114 Stat. 2762.

revise the HSR filing fee thresholds on an annual basis based on an amount equal to the percentage increase, if any, in the consumer price index.

#### 2. HSR 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 2023. The agencies use several methods to oversee compliance, including monitoring news outlets and industry publications for transactions that may not have been reported in accordance with the HSR Act's requirements. Industry sources, such as competitors, customers, and suppliers, interested members of the public, and, in certain cases, the parties themselves, also provide the agencies with information about transactions and possible violations of the Act's requirements.

Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$50,120 for each day the violation continues.<sup>28</sup> The antitrust agencies examine the circumstances of each violation to determine whether to seek penalties.<sup>29</sup> During fiscal year 2023, 22 postconsummation "corrective" filings were received.

### 3. HSR Form Change Rulemaking

In June 2023, the Commission, with the concurrence of the Antitrust Division, voted out a notice of proposed rulemaking to change the premerger notification form and associated instructions, as well as the premerger notification rules implementing the HSR Act. On September 27, 2024, the Commission, again with the concurrence of the Antitrust Division, voted out a Final Rule that incorporates updates and revisions to the premerger notification form, instructions, and rules. The changes to the form and associated instructions will enable the agencies to more effectively and efficiently screen transactions for potential competition issues within the initial waiting period.

<sup>&</sup>lt;sup>28</sup> Dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-7 (Nov. 2, 2015). The adjustments have included an increase in the maximum civil penalty from \$10,000 to \$11,000 for each day during which a person is in violation of Section 7A(g)(1) (61 Fed. Reg. 54548 (Oct. 21, 1996), corrected at 61 Fed. Reg. 55840 (Oct. 29, 1996)), to \$16,000 effective February 10, 2009 (74 Fed. Reg. 857 (Jan. 9, 2009)), to \$40,000 effective August 1, 2016 (81 Fed. Reg. 42476 (June 30, 2016)), to \$46,517 effective Jan. 10, 2022 (87 Fed. Reg. 1070 (Jan. 10, 2021)) and to \$50,120 effective January 11, 2022, (88 Fed. Reg. 1499 (Jan. 11, 2022).

<sup>&</sup>lt;sup>29</sup> If parties inadvertently fail to file, the agencies generally will not seek penalties so long as the parties promptly submit corrective filings after discovering the failure to file, submit an acceptable explanation of their failure to file, and have not previously violated the Act.

### **MERGER ENFORCEMENT ACTIVITY**<sup>30</sup>

The Department of Justice

In addition to litigating and investigating several significant non-merger antitrust enforcement matters, during fiscal year 2023 the Antitrust Division took steps to protect competition that resulted in mergers that were either blocked, abandoned, or restructured in light of the Division's concerns.<sup>31</sup>

The two proposed transactions that the Division successfully blocked in active litigation included the following:

In <u>United States v. American Airlines Group Inc.</u>, <sup>32</sup> the Division, joined by the Attorney Generals of the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the States of Arizona, California, and Florida, and the District of Columbia, filed a civil antitrust action to unwind an unprecedented series of agreements between American Airlines and JetBlue designed to consolidate the two airlines' operations in Boston and New York City with effects resembling a merger. <sup>33</sup> At trial in October 2022, the Division proved that this extensive combination, which the companies called the "Northeast Alliance," eliminated competition between American and JetBlue on scores of routes to and from Boston and New York City. And the Division proved that the Northeast Alliance had harmed air travelers across the country by significantly diminishing JetBlue's ability and incentive to act as a disruptive maverick competitor, further consolidating the already highly concentrated airline industry. In July 2023, the U.S. District Court for the District of Massachusetts entered a permanent injunction dissolving the Northeast Alliance. American Airlines is appealing the District Court's ruling.

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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.

31 Two merger enforcement matters, which were discussed in the 2022 annual report because they were initiated in fiscal year 2022, continued into fiscal year 2023. Those two matters, *United States v. ASSA ABLOY AB and Spectrum Brands Holdings, Inc.*, 1:22-cv-02791-ABJ (D.D.C. filed Sept. 15, 2022) and *United States v. Bertelsmann SE & Co. KGAA, Penquin Random House, LLC, ViacomCBS, Inc., and Simon & Schuster, Inc.*, 1:21-cv-02886 (D.D.C. filed Nov. 2, 2021) are not included in the fiscal year 2023 enforcement matters discussed in this section but are being mentioned for completeness. In the former, the U.S. District Court for the District of Columbia entered final judgment on September 13, 2023, requiring ASSA ABLOY, among other things, to divest assets and abide by other remedies. In the latter, the U.S. District Court for the District of Columbia's enjoined the proposed merger on October 31, 2022, and Penguin Random House and Simon & Schuster thereafter abandoned the proposed transaction.

<sup>&</sup>lt;sup>32</sup> United States v. Am. Airlines Grp. Inc., No. CV 21-11558-LTS, 2023 WL 4766220 (D. Mass. July 26, 2023).

<sup>&</sup>lt;sup>33</sup> The Division previously had categorized this enforcement effort as a non-merger matter for purposes of its annual reporting, but reports it here as a merger matter, in part because of the court's finding: "The NEA [Northeast Alliance], of course, is not a merger. American and JetBlue remain separate entities. Both have operations that fall beyond the NEA's reach, and the agreement does not formally embody a complete combination of the partners' operations even within the NEA region. Nevertheless, as implemented by the parties, its effects resemble those of a merger of the parties' operations within the northeast in ways the Court will describe next." *United States v. Am. Airlines Grp. Inc.*, 675 F.Supp.3d 65, 89 (D. Mass. May 19, 2023) (on appeal to the First Circuit).

In *United States v. JetBlue Airways Corp.*, 34 the Division filed a civil antitrust lawsuit to block JetBlue Airways Corporation's proposed \$3.8 billion acquisition of its largest and fastestgrowing ultra-low-cost rival, Spirit Airlines, Inc. The Division's complaint was joined by the Attorneys General of the Commonwealth of Massachusetts, the States of New York, California, Maryland, New Jersey, and North Carolina, and the District of Columbia. The complaint alleged that Spirit's low-cost, no-frills flying option has brought lower fares and more options to routes across the country, making it possible for more Americans – particularly price sensitive consumers who pay their own fares – to travel. JetBlue's acquisition of Spirit would have eliminated the "Spirit Effect," where Spirit's presence flying on a route forces other air carriers, including JetBlue, to lower their fares. The deal also would have eliminated half of the ultralow-cost capacity in the United States, ultimately leading to higher fares and fewer seats, harming millions of consumers on hundreds of routes. In January 2024, the U.S. District Court for the District of Massachusetts blocked the proposed takeover because it "does violence to the core principle of antitrust law: to protect the United States' markets – and market participants – from anticompetitive harm." Subsequently, in March 2024, JetBlue announced that it had abandoned the deal and would not pursue an appeal.

The Division's merger enforcement work also resulted in the abandonment or restructuring of several transactions after the Division raised antitrust concerns.

For example, in February 2023, Tenaris, S.A. and Benteler Steel & Tube Manufacturing Corp. abandoned Tenaris's proposed \$460 million acquisition of Benteler after the Division raised concerns about the impact of the deal on competition. Both companies operate domestic steel mills that supply seamless tubing and production casing, important types of steel pipe used in the extraction of oil and gas. The deal would have increased concentration in an already concentrated industry, cementing Tenaris as the undisputed dominant player in the market.

In March 2023, the Division worked with the Federal Energy Regulatory Commission (FERC) to challenge Vistra Corporation's proposed acquisition of nuclear plants owned by Energy Harbor Corporation. The Division summitted a comment to FERC explaining that the proposed acquisition could substantially lessen competition and increase wholesale electricity prices. After the Division raised these concerns and FERC took further action, Vistra proposed a divestiture to address the Division's competitive concerns. The company offered to restructure its proposed acquisition by divesting that power plant in Ohio. In February 2024, FERC issued an Order mandating that divestiture.

In October and November 2022, the Division helped secure divestitures for two proposed transactions in the banking industry.<sup>35</sup> In October, US Bancorp and MUFG Union Bank

<sup>34</sup> United States v. JetBlue Airways Corp., No. 23-10511-WGY, 2024 U.S. Dist. LEXIS 7509 (D. Mass, Jan. 16, 2024).

<sup>&</sup>lt;sup>35</sup> Based on these divestiture commitments, the transactions were approved pursuant to orders of the Federal Reserve Board. Order Approving the Acquisition of a Bank, FRB Order No. 2022-22 (Oct. 14, 2022); Order Approving the Merger of Bank Holding Companies and Determination on a Financial Holding Company Election, FRB Order No. 2022-20 (Oct. 25, 2022).

("Union Bank") agreed to a divestiture of three of Union Bank's full-service branches after the Division raised concerns that the proposed merger was likely to substantially lessen competition in retail and/or small business banking products and services. Then in November, Columbia Bank and Umpqua Bank agreed to divestitures to remedy the Division's concerns that the proposed merger was likely to substantially lessen competition in retail and/or small business banking products and services in local markets in California, Oregon, and Washington.

#### The Federal Trade Commission

During fiscal year 2023, the Commission challenged 16 mergers that, as proposed, would violate the federal antitrust laws, including several blockbuster multi-billion dollar deals. In four cases, the Commission initiated administrative or federal court litigation, and ten mergers were abandoned after the Commission raised concerns about their potential for eliminating beneficial competition. The Commission also accepted consent orders that require divestitures and other strong relief in two merger cases. As discussed below, two of these litigated matters were also settled by Commission order during FY 2023. In Intercontinental Exchange/Black Knight, the Commission ordered divestitures and in Amgen/Horizon Therapeutics, the Commission imposed strong prohibitions to prevent the merger from causing harm.

In <u>Microsoft/Activision</u>, <sup>37</sup> the Commission filed an administrative complaint challenging Microsoft's \$69 billion proposed acquisition of Activision. The Commission also authorized staff to seek a preliminary injunction in federal court to maintain the status quo pending the outcome of the administrative trial. The complaint alleged that with control over Activision's blockbuster gaming franchises, Microsoft would have both the means and motive to harm competition by degrading Activision's game quality or player experience on rival platforms, limiting access to Activision's content, or withholding content from competitors entirely—resulting in a walled garden rather than an open market. On July 10, 2023, the U.S. District Court for the Northern District of California denied the Commission's request for a preliminary

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<sup>&</sup>lt;sup>36</sup> Other merger cases discussed in prior annual reports also required significant Commission resources during FY 2023. They are not included in the numbers referenced in this report but are being mentioned for completeness and because of their programmatic significance. For example, in December 2023, the Fifth Circuit affirmed the Commission's findings that Illumina's acquisition of Grail lessened competition through the potential foreclosure of a key input by the sole supplier, which would lead to chilled investment by firms reliant on those inputs for their own competitive success. *Illumina, Inc. v. FTC*, 88 F.4<sup>th</sup> 1036, 1055 (5<sup>th</sup> Cir. 2023). After the ruling, Illumina determined to divest its interest in Grail. In January 2023, a district court denied the Commission's motion to enjoin the proposed merger between virtual reality giant Meta and Within Unlimited, the VR studio that marketed the leading VR fitness app and in February the Commission dismissed its related administrative complaint. In July 2023, the Commission issued an order vacating the ALJ's initial decision in the administrative litigation challenging an alleged unlawful agreement between Altria Group, Inc. and Juul Labs, Inc., ending the matter. After the Supreme Court's April 2023 decision in *Axon Enterprise, Inc. v. Fed. Trade Comm'n.*, et al., 598 U.S. ----, 143 S. Ct. 890 (2023), that remanded the petitioners' constitutional challenges back to district court for further proceedings, Commission withdrew its administrative complaint challenging the consummated merger of Axon and its rival VieVu, makers of body-worn camera systems used by police departments.

<sup>&</sup>lt;sup>37</sup> In the Matter of Microsoft Corporation and Activision Blizzard, Inc., FTC Dkt. C-9412 (complaint filed on Dec. 8, 2022), https://www.ftc.gov/legal-library/browse/cases-proceedings/2210077-microsoftactivision-blizzard-matter.

injunction. That decision is on appeal to the U.S. Court of Appeals for the Ninth Circuit. The Commission's administrative proceeding concerning these claims is scheduled to begin three weeks after the Ninth Circuit issues its opinion.

In Intercontinental Exchange/Black Knight, 38 the Commission filed an administrative complaint challenging Intercontinental Exchange's (ICE) \$13.1 billion proposed acquisition of Black Knight and heading off potential price increases for homebuyers. The Commission also authorized staff to seek a preliminary injunction in federal court to maintain the status quo pending the outcome of the administrative trial. The complaint alleged that the proposed merger would give ICE, the largest provider of home mortgage loan origination systems (LOS), control over its top competitor, Black Knight. Because Black Knight is also a vertically integrated business with its own LOS, the complaint also alleged that the merger would have allowed ICE to raise costs to lenders, which would then be passed to homebuyers. If consummated, the combined company would have had the means and incentive to drive up costs, reduce innovation, and reduce lenders' choices for tools necessary to generate and service mortgages. After the Commission filed its complaint, the Commission secured a consent order requiring Black Knight to divest its Optimal Blue and Empower businesses to Constellation Web Solutions, a provider of mortgage-related tools. The order also prohibits the parties from enforcing any noncompete or non-solicit provisions against employees. Following a public comment period, the Commission approved the final order on November 3, 2023.

In <u>Amgen/Horizon Therapeutics</u>, <sup>39</sup> the Commission filed an administrative complaint challenging Amgen's \$27.8 billion proposed acquisition of Horizon. The Commission also authorized staff to seek a preliminary injunction in federal court to maintain the status quo pending the outcome of the administrative trial. The complaint alleged that the proposed merger would enable Amgen to leverage its large portfolio of drugs to pressure insurance companies and pharmacy benefit managers into favoring Horizon's two monopoly products – Tepezza and Krystexxa, used to treat thyroid eye disease and refractory gout, respectively, thereby harming patients who rely on these treatments for their health and quality of life. After the complaint was filed, the Commission secured a consent order prohibiting Amgen from bundling any Amgen product with either of Horizon's Tepezza or Krystexxa products. In addition, Amgen may not condition any product rebate or contract term related to an Amgen product on the sale or positioning of either Tepezza or Krystexxa. Following a public comment period, the Commission approved the final order on December 13, 2023.

In <u>IQVIA/Propel</u>, <sup>40</sup> the Commission filed an administrative complaint challenging the world's largest provider of health care data, IQVIA's, \$700 million proposed acquisition of

<sup>&</sup>lt;sup>38</sup> In the Matter of Intercontinental Exchange and Black Knight, Inc., FTC Dkt. C-9413 (complaint filed on March 9, 2023), <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/221-0142-intercontinental-exchange-incblack-knight-inc-matter">https://www.ftc.gov/legal-library/browse/cases-proceedings/221-0142-intercontinental-exchange-incblack-knight-inc-matter</a>.

<sup>&</sup>lt;sup>39</sup> In the Matter of Amgen Inc. and Horizon Therapeutics PLC, FTC Dkt. C-914 (complaint filed on June 22, 2023), <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/231-0037-amgen-inc-horizon-therapeutics-plc-matter">https://www.ftc.gov/legal-library/browse/cases-proceedings/231-0037-amgen-inc-horizon-therapeutics-plc-matter</a>.

<sup>&</sup>lt;sup>40</sup> In the Matter of IQVIA Holdings Inc. and Propel Media, Inc., FTC Dkt. C-9416 (complaint filed on July 17, 2023), https://www.ftc.gov/legal-library/browse/cases-proceedings/2210196-iqvia-holdingspropel-media-matter.

Propel Media, alleging that the proposed merger would lead to increased healthcare prices. The Commission also authorized staff to seek a preliminary injunction in the U.S. District Court for the Southern District of New York. The complaint alleged that the proposed merger would give IQVIA a market-leading position in programmatic advertising targeted to doctors and other healthcare professionals. IQVIA and Propel are both vertically integrated companies with large healthcare datasets. According to the complaint, post-merger, IQVIA's ownership of both datasets would have raised the incentive to withhold key information to prevent rival companies and potential entrants from effectively competing. After a two-week evidentiary hearing and closing arguments, the District Court granted the Commission's preliminary injunction. Shortly afterwards, the parties abandoned the transaction.

The Commission's merger enforcement work also resulted in the abandonment of various transactions in light of antitrust concerns.

The proposed merger of the State University of New York Upstate Medical University and Crouse Health System, Inc. presented substantial risk of serious competitive and consumer harm in the form of higher healthcare costs, lower quality of care, reduced innovation and access to care, and lower wages for hospital workers. FTC staff had an active investigation into the effects of the proposed merger and had voiced opposition to a request by the parties for a certificate of public advantage, also known as a COPA, which could have shielded the merger from antitrust laws.<sup>41</sup>

CalPortland Company's proposed acquisition of rival cement producer Martin Marietta Materials, Inc. was presumptively illegal under the Merger Guidelines and would have reduced the number of cement suppliers in Southern California from five to four, further concentrating an already concentrated market.<sup>42</sup>

Boston Scientific and M.I. Tech abandoned their proposed transaction in response to investigations by FTC staff and international antitrust enforcers. The proposed merger raised competitive concerns that could have affected doctors and patients.<sup>43</sup>

<sup>&</sup>lt;sup>41</sup> Press Release, Fed. Trade Comm'n, Statement of Elizabeth Wilkins, Director of the FTC's Office of Policy Planning, on the Decision of SUNY Upstate Medical University and Crouse Health System, Inc. to Drop Their Proposed Merger (Feb. 16, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/02/statement-elizabeth-wilkins-director-ftcs-office-policy-planning-decision-suny-upstate-medical.

<sup>&</sup>lt;sup>42</sup> Press Release, Fed. Trade Comm'n, *Statement Regarding the Termination of CalPortland Company's Attempted Acquisition of Assets Owned by Rival Cement Producer Martin Marietta Materials, Inc.* (Apr. 28, 2023), <a href="https://www.ftc.gov/news-events/news/press-releases/2023/04/statement-regarding-termination-calportland-companys-attempted-acquisition-assets-owned-rival-cement">https://www.ftc.gov/news-events/news/press-releases/2023/04/statement-regarding-termination-calportland-companys-attempted-acquisition-assets-owned-rival-cement</a>.

<sup>&</sup>lt;sup>43</sup> Press Release, Fed. Trade Comm'n, *Statement Regarding the Termination of Boston Scientific Corporation's Attempted Acquisition of a Majority Stake in M.I. Tech Co., Ltd.* (May 24, 2023), <a href="https://www.ftc.gov/news-events/news/press-releases/2023/05/statement-regarding-termination-boston-scientificcorporations-attempted-acquisition-mi-tech.">https://www.ftc.gov/news-events/news/press-releases/2023/05/statement-regarding-termination-boston-scientificcorporations-attempted-acquisition-mi-tech.</a>

CooperCompanies' decision to abandon its proposed acquisition of Cook Medical Holdings, LLC's reproductive health business following a full-phase investigation by FTC staff helped ensure continued competition in critical reproductive health markets.<sup>44</sup>

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

In <u>Tractor Supply/Orschein</u>, <sup>45</sup> the Commission challenged Tractor Supply's \$320 million proposed acquisition of Orschein. According to the complaint, the proposed merger would have harmed competition among farm stores in the Midwest and South that sell products for small farmers, ranchers, and landowners. To remedy this concern, the Commission issued a consent order requiring Tractor Supply to divest some Orschein stores and Orschein's corporate offices and its Missouri distribution center to Bomgaars, an lowa-based farm store chain, and some other stores to Buchheit, another chain with farm stores in Missouri and Illinois. Following a public comment period, the Commission approved the final order on December 2, 2022.

In EQT/Quantum, 46 the Commission challenged EQT's \$5.2 billion proposed acquisition of Quantum. According to the complaint, Quantum and EQT are direct competitors in the production and sale of natural gas in the Appalachian Basin, the largest natural gas-producing region in the United States. The proposed merger would make Quantum one of EQT's largest shareholders and give Quantum a seat on EQT's board of directors, which the Commission alleged would violate the antitrust laws and harm competition in this industry. The complaint also alleged that, by making Quantum one of EQT's largest shareholders, the deal would give Quantum the ability to sway EQT's competitive decision-making and access EQT's confidential and competitively sensitive information. According to the complaint, by enabling Quantum to communicate directly with EQT, access and exchange confidential business information, and influence or direct EQT's competitive actions or strategies, this arrangement would create an unfair method of competition in violation of the FTC Act. In addition to the proposed transaction, the complaint addresses a pre-existing joint venture between EQT and Quantum called The Mineral Company (TMC), which is involved in purchasing mineral rights in the Appalachian Basin. According to the complaint, this joint venture relationship raises additional concerns regarding anticompetitive information exchange and harms competition in the acquisition of mineral rights. To remedy these concerns, the Commission issued a consent order prohibiting Quantum from occupying an EQT board seat to prevent an interlocking directorate.

<sup>&</sup>lt;sup>44</sup> Press Release, Fed. Trade Comm'n, *Statement Regarding Termination of CooperCompanies' Attempted Acquisition of Cook Medical's Reproductive Health Business* (Aug. 1, 2023), <a href="https://www.ftc.gov/news-Pevents/news/press-releases/2023/08/statement-regarding-termination-coopercompanies-attemptedacquisition-cook-medicals-reproductive">https://www.ftc.gov/news-Pevents/news/press-releases/2023/08/statement-regarding-termination-coopercompanies-attemptedacquisition-cook-medicals-reproductive</a>.

<sup>&</sup>lt;sup>45</sup> In the Matter of Tractor Supply Company and Orschein Farm and Home LLC, FTC Dkt. C-4776 (final order issued on Dec. 2, 2022), <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/211-0083-tractor-supply-companyorscheln-farm-home-llc-matter">https://www.ftc.gov/legal-library/browse/cases-proceedings/211-0083-tractor-supply-companyorscheln-farm-home-llc-matter</a>.

<sup>&</sup>lt;sup>46</sup> In the Matter of QEP Partners, LP, Quantum Energy Partners VI, LP, Q-TH Appalachia (VI) Investment Partners, LLC, and EQT Corporation, FTC Dkt. C-4799 (final order issued on Oct. 10, 2023), <a href="https://www.ftc.gov/legal-library/browse/cases-proceedings/2210212-qep-partnerseqt-corporation-matter">https://www.ftc.gov/legal-library/browse/cases-proceedings/2210212-qep-partnerseqt-corporation-matter</a>.

The consent order also requires Quantum to divest its EQT shares. This order marks the FTC's first case in 40 years that enforces Section 8 of the Clayton Act, which prohibits interlocking directorates, an arrangement that occurs when an officer or director of one firm simultaneously serves as an officer or director of a competing firm. In addition, the consent order imposes other provisions to prevent anticompetitive information exchanges, immediately unwind the problematic TMC joint venture, protect competition, and ensure the effectiveness of the consent order. Following a public comment period, the Commission approved the final order on October 10, 2023.

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Prior to the HSR Act, businesses could, and often did, consummate transactions that raised significant antitrust concerns before the agencies had an opportunity to review them. This practice forced the agencies to engage in lengthy post-acquisition litigation, during the course of which the transaction's anticompetitive effects continued to harm competition; furthermore, if effective post-acquisition relief was not practicable, the harm continued indefinitely.

Leadership at both agencies commend staff of the Commission and the Department of Justice, including the FTC's Premerger Notification Office, for their diligent and dedicated efforts to identify and investigate mergers and acquisitions that may substantially lessen competition or tend to create a monopoly and to pursue law enforcement before injury can arise. The Commission and the Antitrust Division salute the tireless work of their excellent staffs in protecting the American public from unlawful mergers and acquisitions.

### **LIST OF APPENDICES**

Appendix A: Summary of Transactions, Fiscal Years 2014–2023

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

2014 - 2023

## **LIST OF EXHIBITS**

Exhibit A: Statistical Tables for Fiscal Year 2023 – Data Profiling Hart-Scott-

**Rodino Notification Filings and Enforcement Actions** 

Exhibit B: Summary letters required by Section 102(c) of the Merger Fee

Modernization Act of 2022, including the information required

under Sections 102(a) and (b) of the MMA.

## APPENDIX A

**SUMMARY OF TRANSACTIONS** 

**FISCAL YEARS 2014 – 2023** 

S	APPENDIX A SUMMARY OF TRANSACTIONS BY FISCAL YEAR													
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023				
Transactions Reported	1,663	1,801	1,832	2,052	2,111	2,089	1,637	3,520	3,152	1,805				
Filings Received <sup>1</sup>	3,307	3,585	3,674	4,083	4,188	4,142	3,249	7,002	6,288	3,515				
Adjusted Transactions In Which A Second Request Could Have Been Issued <sup>2</sup>	1,618	1,754	1,772	1,992	2,028	2,030	1,580	3,413	3,029	1,735				
Investigations in Which Second Requests Were Issued	51	47	54	51	45	61	48	65	47	37				
FTC <sup>3</sup>	30	20	25	33	26	30	23	42	25	26				
Percent⁴	1.9%	1.1%	1.4%	1.7%	1.3%	1.5%	1.5%	1.2%	0.8%	1.4%				
DOJ <sup>3</sup>	21	27	29	18	19	31	25	23	22	11				
Percent⁴	1.3%	1.5%	1.6%	0.9%	0.9%	1.5%	1.6%	0.7%	0.7%	0.6%				
Transactions Involving a Request For Early Termination <sup>5</sup>	1,274	1,366	1,374	1,552	1,500	1,507	1,133	2,124	1,345	780				
Granted <sup>5</sup>	1,020	1,086	1,102	1,220	1,170	1,107	861	417	5	0				
Not Granted <sup>5</sup>	254	280	272	332	330	400	272	1,707	1,340	780				

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

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

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

<sup>&</sup>lt;sup>4</sup> Second Request investigations are a percentage of the total number of adjusted transactions. The total percentage reflected in Figure 2 may not equal the sum of reported component values due to rounding.

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

## **APPENDIX B**

## NUMBER OF TRANSACTIONS REPORTED AND FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 2014 - 2023

APPENDIX B

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

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
October	124	144	168	163	174	211	151	202	432	172
November	159	157	243	215	207	254	206	400	575	207
December	108	122	157	148	160	157	164	204	279	170
January	125	118	117	153	170	150	154	210	233	139
February	114	140	127	153	141	145	138	278	206	150
March	100	128	125	146	178	156	136	322	221	122
April	140	131	129	150	140	163	72	261	218	114
May	157	152	168	209	222	191	57	299	211	139
June	150	155	150	191	177	161	117	299	202	145
July	162	170	140	146	180	170	110	329	184	146
August	151	216	166	219	223	173	170	353	197	162
September	173	168	142	159	139	158	162	363	194	139
TOTAL	1,663	1,801	1,832	2,052	2,111	2,089	1,637	3,520	3,152	1,805

APPENDIX B

TABLE 2. NUMBER OF FILINGS RECEIVED BY MONTH FOR FISCAL YEARS

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
October	247	289	345	329	336	421	298	454	870	346
November	325	322	483	416	417	505	413	825	1,187	467
December	211	239	314	297	319	308	329	364	552	287
January	244	244	236	307	316	287	309	399	431	273
February	236	257	249	298	304	295	269	564	407	226
March	195	252	265	302	338	308	270	616	440	243
April	271	265	249	290	285	335	145	524	434	225
May	315	305	331	402	424	365	137	623	420	273
June	304	322	304	388	365	349	212	573	407	301
July	323	327	284	291	364	306	208	659	365	279
August	292	425	339	446	433	358	336	717	407	319
September	344	338	275	317	287	305	323	684	368	276
TOTAL	3,307	3,585	3,674	4,083	4,188	4,142	3,249	7,002	6,288	3,515

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

## **EXHIBIT A**

**STATISTICAL TABLES** 

**FOR** 

FISCAL YEAR 2023

DATA PROFILING HART-SCOTT-RODINO PREMERGER NOTIFICATION FILINGS AND ENFORCEMENT ACTIONS

## TABLE I FISCAL YEAR 2023<sup>1</sup> ACQUISITIONS BY SIZE OF TRANSACTION (BY SIZE RANGE)<sup>2</sup>

	HSR TRA	NSACTIONS	CLEA	CLEARANCE GRANTED TO FTC OR DOJ						SECOND REQUEST INVESTIGATIONS <sup>3</sup>						
TRANSACTION RANGE (\$MILLIONS)	NUMBER <sup>4</sup>	PERCENT	NUMBER		PERCENT OF TRANSACTION RANGE GROUP			NUM	BER	PERCENT OF TRANSACTION RANGE GROUP						
			FTC	FTC DOJ		DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL				
50M - 100M	2	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%				
100M - 150M	173	10.0%	5	2	2.9%	1.2%	4.0%	0	0	0.0%	0.0%	0.0%				
150M - 200M	227	13.1%	10	5	4.4%	2.2%	6.6%	1	0	0.4%	0.0%	0.4%				
200M - 300M	293	16.9%	21	1	7.2%	0.3%	7.5%	8	0	2.7%	0.0%	2.7%				
300M - 500M	259	14.9%	14	8	5.4%	3.1%	8.5%	2	1	0.8%	0.4%	1.2%				
500M - 1000M	364	21.0%	26	21	7.1%	5.8%	12.9%	6	3	1.6%	0.8%	2.5%				
Over 1000M	417	24.0%	48	24	11.5%	5.8%	17.3%	9	7	2.2%	1.7%	3.8%				
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%				

## TABLE II FISCAL YEAR 2023<sup>1</sup> ACQUISITIONS BY SIZE OF TRANSACTION<sup>2</sup>(CUMULATIVE)

	HSR TRA	NSACTIONS	CLEA	RANCE (	OR DOJ	SECOND REQUEST INVESTIGATIONS <sup>3</sup>						
TRANSACTION RANGE (\$MILLIONS)	NUMBER <sup>4</sup>	PERCENT	NUI	NUMBER PERCENTAGE OF TOTAL NUMBER OF CLEARANCES				NUM	BER	PERCENTAGE OF TOTAL NUMBER OF SECOND REQUESTS		
			FTC	FTC DOJ		DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
LESS THAN 50M 5	0	0.0%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 100M	2	0.1%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
LESS THAN 150M	175	10.1%	5	2	2.7%	1.1%	3.8%	0	0	0.0%	0.0%	0.0%
LESS THAN 200M	402	23.2%	15	7	8.1%	3.8%	11.9%	1	0	2.7%	0.0%	2.7%
LESS THAN 300M	695	40.1%	36	8	19.5%	4.3%	23.8%	9	0	24.3%	0.0%	24.3%
LESS THAN 500M	954	55.0%	50	16	27.0%	8.6%	35.7%	11	1	29.7%	2.7%	32.4%
LESS THAN 1000M	1,263	72.8%	72	33	38.9%	17.8%	56.8%	17	3	45.9%	8.1%	54.1%
ALL TRANSACTIONS	1,735	100%	124	61	67.0%	33.0%	100.0%	26	11	70.3%	29.7%	100.0%

## TABLE III FISCAL YEAR 2023<sup>1</sup> TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

	C	LEARANCI	ES		CLEARANCE GRANTED AS A PERCENTAGE OF:										
TRANSACTION RANGE (\$MILLIONS)	(\$MILLIONS)			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL N OF CLEA PER AC	RANCES	TOTAL NUMBER OF CLEARANCES GRANTED						
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL				
50M - 100M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%				
100M - 150M	5	2	7	2.9%	1.2%	4.0%	4.0%	3.3%	2.7%	1.1%	3.8%				
150M - 200M	10	5	15	4.4%	2.2%	6.6%	8.1%	8.2%	5.4%	2.7%	8.1%				
200M - 300M	21	1	22	7.2%	0.3%	7.5%	16.9%	1.6%	11.4%	0.5%	11.9%				
300M - 500M	14	8	22	5.4%	3.1%	8.5%	11.3%	13.1%	7.6%	4.3%	11.9%				
500M - 1000M	26	21	47	7.1%	5.8%	12.9%	21.0%	34.4%	14.1%	11.4%	25.4%				
Over 1000M	48	24	72	11.5%	5.8%	17.3%	38.7%	39.3%	25.9%	13.0%	38.9%				
ALL TRANSACTIONS	124	61	185	7.1%	3.5%	10.7%	100.0%	100.0%	67.0%	33.0%	100.0%				

## TABLE IV FISCAL YEAR 2023<sup>1</sup> TRANSACTIONS IN WHICH SECOND REQUESTS WERE ISSUED

		ESTIGATIO			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:											
TRANSACTION RANGE (\$MILLIONS)		ICH A SEC EQUEST W ISSUED <sup>3</sup>	AS		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				
50M - 100M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%				
100M - 150M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%				
150M - 200M	1	0	1	0.1%	0.0%	0.1%	0.4%	0.0%	0.4%	2.7%	0.0%	2.7%				
200M - 300M	8	0	8	0.5%	0.0%	0.5%	2.7%	0.0%	2.7%	21.6%	0.0%	21.6%				
300M - 500M	2	1	3	0.1%	0.1%	0.2%	0.8%	0.4%	1.2%	5.4%	2.7%	8.1%				
500M - 1000M	6	3	9	0.3%	0.2%	0.5%	1.6%	0.8%	2.5%	16.2%	8.1%	24.3%				
Over 1000M	9	7	16	0.5%	0.4%	0.9%	2.2%	1.7%	3.8%	24.3%	18.9%	43.2%				
ALL TRANSACTIONS	26	11	37	1.5%	0.6%	2.1%	1.5%	0.6%	2.1%	70.3%	29.7%	100.0%				

## TABLE V FISCAL YEAR 2023<sup>1</sup> ACQUISITIONS BY REPORTING THRESHOLD

	HSR TRA	NSACTIONS	CLEA	RANCE (	GRANTED	то FTC	SECOND REQUEST INVESTIGATIONS <sup>3</sup>					
THRESHOLD <sup>6</sup>	NUMBER	PERCENT	NUMBER		PERCENT OF THRESHOLD GROUP			NUM	BER	PERCENT OF THRESHOLD GROUP		
				DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
\$50M (as adjusted)	96	5.5%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
\$100M (as adjusted)	160	9.2%	2	5	1.3%	3.1%	4.4%	0	0	0.0%	0.0%	0.0%
\$500M (as adjusted)	24	1.4%	0	4	0.0%	16.7%	16.7%	0	0	0.0%	0.0%	0.0%
25%	3	0.2%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%
50%	631	36.4%	64	33	10.1%	5.2%	15.4%	13	10	2.1%	1.6%	3.6%
ASSETS ONLY	225	13.0%	35	3	15.6%	1.3%	16.9%	8	0	3.6%	0.0%	3.6%
NCI	596	34.4%	23	16	3.9%	2.7%	6.5%	5	1	0.8%	0.2%	1.0%
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%

## TABLE VI FISCAL YEAR 2023<sup>1</sup> TRANSACTION BY ASSETS OF ACQUIRING PERSON

	HSR TRA	NSACTIONS	CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS <sup>3</sup>						
ASSET RANGE (\$MILLIONS)	NUMBER PERCENT		NU	NUMBER		PERCENT OF ASSET RANGE GROUP			BER	PERCENT OF ASSET RANGE GROUP			
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL	
Below 50M	224	12.9%	0	1	0.0%	0.4%	0.4%	0	0	0.0%	0.0%	0.0%	
50M - 100M	20	1.2%	0	3	0.0%	15.0%	15.0%	0	0	0.0%	0.0%	0.0%	
100M - 150M	23	1.3%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%	
150M - 200M	24	1.4%	0	1	0.0%	4.2%	4.2%	0	0	0.0%	0.0%	0.0%	
200M - 300M	158	9.1%	4	0	2.5%	0.0%	2.5%	0	0	0.0%	0.0%	0.0%	
300M - 500M	117	6.7%	9	4	7.7%	3.4%	11.1%	0	0	0.0%	0.0%	0.0%	
500M - 1000M	157	9.0%	7	3	4.5%	1.9%	6.4%	0	1	0.0%	0.6%	0.6%	
Over 1000M	1,012	58.3%	104	49	10.3%	4.8%	15.1%	26	10	2.6%	1.0%	3.6%	
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%	

## TABLE VII FISCAL YEAR 2023<sup>1</sup> TRANSACTION BY SALES OF ACQUIRING PERSON

	HSR TRANSACTIONS					CLEARANCE GRANTED TO FTC OR DOJ						SECOND REQUEST INVESTIGATIONS <sup>3</sup>						
SALES RANGE (\$MILLIONS)	NUMBER PERCENT		<b>NU</b> I	NUMBER		PERCENT OF SALES RANGE GROUP			BER	PERCENT OF SALES RANGE GROUP								
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL						
Below 50M	170	9.8%	1	2	0.6%	1.2%	1.8%	0	0	0.0%	0.0%	0.0%						
50M - 100M	61	3.5%	1	2	1.6%	3.3%	4.9%	0	0	0.0%	0.0%	0.0%						
100M - 150M	53	3.1%	3	2	5.7%	3.8%	9.4%	0	1	0.0%	1.9%	1.9%						
150M - 200M	52	3.0%	3	0	5.8%	0.0%	5.8%	0	0	0.0%	0.0%	0.0%						
200M - 300M	49	2.8%	3	1	6.1%	2.0%	8.2%	0	0	0.0%	0.0%	0.0%						
300M - 500M	108	6.2%	6	3	5.6%	2.8%	8.3%	0	0	0.0%	0.0%	0.0%						
500M - 1000M	154	8.9%	4	6	2.6%	3.9%	6.5%	1	3	0.6%	1.9%	2.6%						
Over 1000M	848	48.9%	102	45	12.0%	5.3%	17.3%	25	7	2.9%	0.8%	3.8%						
Sales Not Available <sup>7</sup>	240	13.8%	1	0	0.4%	0.0%	0.4%	0	0	0.0%	0.0%	0.0%						
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%						

## TABLE VIII FISCAL YEAR 2023<sup>1</sup> TRANSACTION BY ASSETS OF ACQUIRED ENTITIES<sup>8</sup>

	HSR TRA	NSACTIONS	CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS <sup>3</sup>						
ASSET RANGE (\$MILLIONS)	NUMBER	PERCENT	NUMBER		PERCENT OF ASSET RANGE GROUP			NUMI	BER	PERCENT OF ASSET RANGE GROUP				
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL		
Below 50M	250	14.4%	12	4	4.8%	1.6%	6.4%	2	1	0.8%	0.4%	1.2%		
50M - 100M	197	11.4%	9	4	4.6%	2.0%	6.6%	1	0	0.5%	0.0%	0.5%		
100M - 150M	165	9.5%	14	2	8.5%	1.2%	9.7%	0	0	0.0%	0.0%	0.0%		
150M - 200M	92	5.3%	6	1	6.5%	1.1%	7.6%	0	0	0.0%	0.0%	0.0%		
200M - 300M	157	9.0%	12	5	7.6%	3.2%	10.8%	4	0	2.5%	0.0%	2.5%		
300M - 500M	146	8.4%	10	4	6.8%	2.7%	9.6%	2	2	1.4%	1.4%	2.7%		
500M - 1000M	177	10.2%	17	7	9.6%	4.0%	13.6%	3	2	1.7%	1.1%	2.8%		
Over 1000M	388	22.4%	28	23	7.2%	5.9%	13.1%	7	4	1.8%	1.0%	2.8%		
Assets Not Available 8	163	9.4%	16	11	9.8%	6.7%	16.6%	7	2	4.3%	1.2%	5.5%		
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%		

## TABLE IX FISCAL YEAR 2023<sup>1</sup> TRANSACTION BY SALES OF ACQUIRED ENTITIES <sup>9</sup>

	HSR TRA	NSACTIONS	CLEA	CLEARANCE GRANTED TO FTC OR D					SECOND REQUEST INVESTIGATIONS						
SALES RANGE (\$MILLIONS)	NUMBER	NUMBER PERCENT		NUMBER		PERCENT OF SALES RANGE GROUP			BER	PERCENT OF SALES RANGE GROUP					
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL			
Below 50M	305	17.6%	19	3	6.2%	1.0%	7.2%	2	1	0.7%	0.3%	1.0%			
50M - 100M	277	16.0%	15	5	5.4%	1.8%	7.2%	5	0	1.8%	0.0%	1.8%			
100M - 150M	160	9.2%	10	5	6.3%	3.1%	9.4%	3	1	1.9%	0.6%	2.5%			
150M - 200M	132	7.6%	6	3	4.5%	2.3%	6.8%	2	1	1.5%	0.8%	2.3%			
200M - 300M	161	9.3%	9	5	5.6%	3.1%	8.7%	1	1	0.6%	0.6%	1.2%			
300M - 500M	144	8.3%	12	7	8.3%	4.9%	13.2%	0	2	0.0%	1.4%	1.4%			
500M - 1000M	152	8.8%	13	6	8.6%	3.9%	12.5%	3	1	2.0%	0.7%	2.6%			
Over 1000M	326	18.8%	29	22	8.9%	6.7%	15.6%	8	4	2.5%	1.2%	3.7%			
Sales not Available 10	78	4.5%	11	5	14.1%	6.4%	20.5%	2	0	2.6%	0.0%	2.6%			
ALL TRANSACTIONS	1,735	100.0%	124	61	7.1%	3.5%	10.7%	26	11	1.5%	0.6%	2.1%			

# TABLE X FISCAL YEAR 2023 <sup>1</sup> INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY		LEARAN NTED T OR DO	O FTC	SECOND REQUEST INVESTIGATIONS <sup>3</sup>			
				2022 <sup>12</sup>	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
000 13	Not Available	241	13.9%	-1.1%	1	1	2	0	0	0	
111	Crop Production	2	0.1%	0.0%	0	0	0	0	0	0	
112	Animal Production	2	0.1%	0.1%	0	0	0	0	0	0	
115	Support Activities for Agriculture and Forestry	1	0.1%	0.1%	0	1	1	0	0	0	
211	Oil and Gas Extraction	38	2.2%	1.0%	2	0	2	1	0	1	
212	Mining (except Oil and Gas)	3	0.2%	0.0%	0	0	0	0	0	0	
213	Support Activities for Mining	10	0.6%	0.4%	0	0	0	0	0	0	
221	Utilities	39	2.2%	0.8%	1	3	4	1	1	2	
237	Heavy and Civil Engineering Construction	14	0.8%	0.0%	0	0	0	0	0	0	
238	Specialty Trade Contractors	20	1.2%	0.3%	0	2	2	0	0	0	
311	Food and Kindred Products	35	2.0%	0.5%	6	4	10	1	2	3	
312	Beverage and Tobacco Product Manufacturing	12	0.7%	0.3%	2	0	2	0	0	0	
315	Apparel Manufacturing	3	0.2%	0.1%	0	0	0	0	0	0	
321	Wood Product Manufacturing	9	0.5%	0.1%	1	0	1	0	0	0	
322	Paper Manufacturing	12	0.7%	0.3%	0	2	2	0	1	1	
323	Printing and Related Support Actitivies	3	0.2%	0.1%	0	0	0	0	0	0	
324	Petroleum and Coal Products Manufacturing	10	0.6%	0.3%	2	0	2	1	0	1	
325	Chemical Manufacturing	96	5.5%	-0.1%	24	4	28	4	1	5	
326	Plastics and Rubber Manfuacturing	15	0.9%	0.2%	1	0	1	0	0	0	
327	Nonmetallic Mineral Product Manufacturing	11	0.6%	-0.1%	2	2	4	1	0	1	
331	Primary Metal Manufacturing	12	0.7%	0.2%	1	0	1	0	0	0	

## TABLE X FISCAL YEAR 2023 <sup>1</sup> INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY		LEARAN NTED T OR DO	O FTC	SECOND REQUEST INVESTIGATIONS <sup>3</sup>			
				2022 <sup>12</sup>	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
332	Fabricated Metal Product Manufacturing	13	0.7%	-0.5%	0	0	0	0	0	0	
333	Machinery Manufacturing	31	1.8%	0.1%	1	5	6	0	1	1	
334	Computer and Electronic Product Manufacturing	25	1.4%	0.2%	4	0	4	1	0	1	
335	Electrical Equipment, Applicance, and Component Manufacturing	9	0.5%	-0.1%	0	1	1	0	0	0	
336	Transportation Equipment Manufacturing	21	1.2%	0.2%	0	3	3	0	0	0	
337	Furniture and Related Product Manufacturing	2	0.1%	0.0%	2	0	2	1	0	1	
339	Miscellaneous Manufacturing	20	1.2%	-0.1%	4	0	4	1	0	1	
423	Merchant Wholesalers, Durable Goods	71	4.1%	-0.8%	6	3	9	1	1	2	
424	Merchant Wholesales, Nondurable Goods	85	4.9%	0.9%	8	2	10	3	0	3	
425	Wholesale Electric Markets and Agent and Brokers	3	0.2%	0.1%	0	0	0	0	0	0	
441	Motor Vehicle and Parts Dealers	22	1.3%	-0.1%	0	0	0	0	0	0	
442	Furniture and Home Furnishing Stores	2	0.1%	0.1%	0	0	0	0	0	0	
444	Electronics and Appliance Stores	2	0.1%	0.0%	0	0	0	0	0	0	
445	Food and Beverage Stores	3	0.2%	-0.1%	2	0	2	1	0	1	
446	Health and Personal Care Stores	9	0.5%	0.2%	4	1	5	1	1	2	
447	Gasoline Stations	9	0.5%	0.4%	5	0	5	0	0	0	
448	Clothing and Clothing Accessories Stores	7	0.4%	0.0%	2	1	3	0	0	0	
451	Sporting Goods, Hobby, Book, and Music Stores	4	0.2%	0.2%	0	0	0	0	0	0	
452	General Merchandise Stores	3	0.2%	0.0%	0	0	0	0	0	0	
453	Miscellaneous Store Retailers	1	0.1%	-0.3%	0	0	0	0	0	0	
454	Nonstore Retailers	10	0.6%	0.0%	1	0	1	0	0	0	

# TABLE X FISCAL YEAR 2023 <sup>1</sup> INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY		LEARAN NTED T OR DO	O FTC	SECO INV	OND RE ESTIGA	QUEST TIONS <sup>3</sup>
				2022 <sup>12</sup>	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
481	Air Transportation	2	0.1%	-0.1%	0	0	0	0	0	0
482	Railroad Transportation	1	0.1%	0.0%	0	0	0	0	0	0
483	Water Transportation	8	0.5%	0.4%	0	2	2	0	0	0
484	Truck Transportation	12	0.7%	0.3%	0	0	0	0	0	0
485	Transit and Ground Transportation	5	0.3%	0.2%	0	0	0	0	0	0
486	Pipeline Transportation	8	0.5%	0.1%	0	0	0	0	0	0
488	Support Actitivies for Transportation	19	1.1%	-0.3%	0	0	0	0	0	0
492	Couriers	2	0.1%	0.1%	0	0	0	0	0	0
493	Warehousing and Storage	2	0.1%	0.0%	0	0	0	0	0	0
511	Publishing Industries (except Internet)	50	2.9%	-1.5%	0	2	2	0	1	1
512	Motion Pictures and Sound Recording Industries	8	0.5%	0.1%	0	0	0	0	0	0
515	Broadcasting (except Internet)	5	0.3%	0.1%	0	1	1	0	0	0
517	Telecommunications	10	0.6%	-0.1%	0	1	1	0	0	0
518	Internet Service Providers, Web Search Portals, and Data Processing Services	15	0.9%	-0.7%	1	1	2	0	1	1
519	Other Information Services	12	0.7%	-0.3%	1	2	3	0	0	0
522	Credit Intermediation and Related Activities	31	1.8%	-0.4%	0	0	0	0	0	0
523	Securitites, Commodity Contracts, and Other Financial Investments and Related Activities	183	10.5%	-0.1%	2	5	7	1	0	1
524	Insurance Carriers and Related Actitivities	63	3.6%	-0.2%	2	4	6	0	1	1
525	Funds, Trusts, and Other Financial Vehicles	38	2.2%	0.4%	0	0	0	0	0	0
531	Real Estate	9	0.5%	-0.3%	0	0	0	0	0	0
532	Rental and Leasing Services	12	0.7%	-0.1%	1	0	1	0	0	0

# TABLE X FISCAL YEAR 2023 <sup>1</sup> INDUSTRY GROUP OF ACQUIRING PERSON

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER <sup>4</sup>	PERCENT OF TOTAL	% POINTS CHANGE FROM FY	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS <sup>3</sup>			
		2022 <sup>12</sup>		FTC	DOJ	TOTAL	FTC	DOJ	TOTAL		
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	13	0.7%	0.2%	2	1	3	1	0	1	
541	Professional, Scientific, and Technical Services	115	6.6%	-1.6%	10	2	12	3	0	3	
551	Management Companies and Enterprises	3	0.2%	-0.1%	0	0	0	0	0	0	
561	Administrative and Support Services	53	3.1%	0.2%	0	0	0	0	0	0	
562	Waste Management and Remediation Services	11	0.6%	0.0%	0	1	1	0	0	0	
611	Educational Services	6	0.3%	-0.2%	2	0	2	1	0	1	
621	Ambulatory Health Care Services	29	1.7%	-0.1%	2	0	2	0	0	0	
622	Hospitals	27	1.6%	0.8%	16	0	16	2	0	2	
623	Nursing Care Facilities	2	0.1%	0.0%	1	0	1	0	0	0	
624	Social Assistance	1	0.1%	0.0%	0	0	0	0	0	0	
711	Performing Arts, Spector Sports, and Related Industries	5	0.3%	0.0%	0	3	3	0	0	0	
713	Amusement, Gambling, and Recreation Industries	8	0.5%	0.3%	0	0	0	0	0	0	
721	Accommodation	1	0.1%	-0.2%	0	0	0	0	0	0	
722	Food Services and Drinking Places	12	0.7%	-0.1%	1	0	1	0	0	0	
811	Repairs and Maintenance	9	0.5%	0.0%	1	0	1	0	0	0	
812	Personal and Laundry Services	3	0.2%	0.1%	0	0	0	0	0	0	
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	2	0.1%	0.1%	0	1	1	0	0	0	
		1,735	100.0%		124	61	185	26	11	37	

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER 4	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2022 12	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST 3 INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSAC- TIONS <sub>14</sub>
	N. (4. 9.1)			2022 12	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	11010514
000 13	Not Available	61	3.5%	-0.1%	11	0	11	2	0	2	0
111	Crop Production	2	0.1%	0.0%	0	0	0	0	0	0	0
115	Support Activities for Agriculture and Forestry	1	0.1%	0.0%	0	1	1	0	0	0	0
211	Oil and Gas Extraction	43	2.5%	1.1%	1	0	1	0	0	0	16
212	Mining (except Oil and Gas)	12	0.7%	0.4%	0	0	0	0	0	0	1
213	Support Activities for Mining	13	0.7%	0.3%	0	1	1	0	0	0	2
221	Utilities	48	2.8%	0.8%	0	1	1	0	1	1	3
236	Construction of Buildings	4	0.2%	0.0%	0	0	0	0	0	0	0
237	Heavy and Civil Engineering Construction	11	0.6%	-0.2%	0	0	0	0	0	0	0
238	Specialty Trade Contractors	27	1.6%	0.2%	0	1	1	0	0	0	3
311	Food and Kindred Products	41	2.4%	0.2%	2	5	7	1	1	2	5
312	Beverage and Tobacco Product Manufacturing	9	0.5%	-0.2%	2	0	2	1	0	1	0
313	Textile Mills	1	0.1%	0.0%	0	1	1	0	0	0	0
315	Apparel Manufacturing	1	0.1%	0.0%	0	0	0	0	0	0	0
321	Wood Product Manufacturing	11	0.6%	0.0%	1	1	2	0	0	0	0
322	Paper Manufacturing	9	0.5%	0.1%	0	1	1	0	1	1	0
323	Printing and Related Support Actitivies	3	0.2%	-0.2%	0	0	0	0	0	0	1
324	Petroleum and Coal Products Manufacturing	7	0.4%	0.2%	4	0	4	2	0	2	2
325	Chemical Manufacturing	84	4.8%	0.9%	11	4	15	1	0	1	0
326	Plastics and Rubber Manfuacturing	11	0.6%	-0.5%	1	0	1	0	0	0	1
327	Nonmetallic Mineral Product Manufacturing	10	0.6%	0.1%	3	0	3	1	0	1	3

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER 4	PERCENT OF TOTAL	% POINTS CHANGE FROM FY 2022 12	GRAN	CLEARANCE RANTED TO FTC OR DOJ  C DOJ TOTAL FTC DOJ TOTAL		QUEST 3 FIONS	NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSAC- TIONS <sub>14</sub>		
331	Primary Metal Manufacturing	10	0.6%	0.1%	0	1	1	0	0	0	2
332	Fabricated Metal Product Manufacturing	17	1.0%	-0.3%	1	2	3	2	0	2	0
333	Machinery Manufacturing	34	2.0%	0.5%	0	3	3	0	1	1	2
334	Computer and Electronic Product Manufacturing	37	2.1%	-0.1%	1	1	2	0	0	0	0
335	Electrical Equipment, Applicance, and Component Manufacturing	10	0.6%	-0.1%	0	0	0	0	0	0	0
336	Transportation Equipment Manufacturing	26	1.5%	0.1%	3	1	4	1	0	1	0
337	Furniture and Related Product Manufacturing	1	0.1%	0.0%	0	0	0	0	0	0	0
339	Miscellaneous Manufacturing	25	1.4%	0.2%	8	0	8	1	0	1	0
423	Merchant Wholesalers, Durable Goods	96	5.5%	0.1%	2	4	6	0	1	1	3
424	Merchant Wholesales, Nondurable Goods	89	5.1%	0.8%	9	2	11	3	1	4	5
425	Wholesale Electric Markets and Agent and Brokers	3	0.2%	0.1%	0	0	0	0	0	0	0
441	Motor Vehicle and Parts Dealers	22	1.3%	0.1%	1	0	1	0	0	0	3
442	Furniture and Home Furnishing Stores	1	0.1%	0.0%	1	0	1	1	0	1	0
444	Electronics and Appliance Stores	3	0.2%	0.0%	0	0	0	0	0	0	0
445	Food and Beverage Stores	3	0.2%	-0.1%	2	0	2	1	0	1	0
446	Health and Personal Care Stores	14	0.8%	0.6%	4	1	5	1	0	1	0
447	Gasoline Stations	11	0.6%	0.4%	6	0	6	0	0	0	2
448	Clothing and Clothing Accessories Stores	8	0.5%	0.2%	2	0	2	0	0	0	0
452	General Merchandise Stores	4	0.2%	0.1%	0	0	0	0	0	0	0
453	Miscellaneous Store Retailers	3	0.2%	0.0%	0	0	0	0	0	0	0
454	Nonstore Retailers	23	1.3%	0.0%	3	0	3	0	0	0	0

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER 4	PERCENT OF TOTAL	% POINTS CHANGE FROM FY	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST 3 INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSAC- TIONS <sub>14</sub>	
				2022 12	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	110NS <sub>14</sub>	
481	Air Transportation	6	0.3%	-0.3%	0	0	0	0	0	0	1	
483	Water Transportation	5	0.3%	0.1%	0	2	2	0	0	0	2	
484	Truck Transportation	15	0.9%	0.5%	0	1	1	0	0	0	0	
485	Transit and Ground Transportation	4	0.2%	0.0%	0	0	0	0	0	0	0	
486	Pipeline Transportation	13	0.7%	0.1%	1	0	1	2	0	2	0	
488	Support Actitivies for Transportation	20	1.2%	-0.4%	0	0	0	0	0	0	0	
492	Couriers	1	0.1%	0.0%	0	0	0	0	0	0	0	
493	Warehousing and Storage	9	0.5%	0.0%	0	0	0	1	0	1	0	
511	Publishing Industries (except Internet)	111	6.4%	-2.4%	3	3	6	0	1	1	2	
512	Motion Pictures and Sound Recording Industries	9	0.5%	0.0%	0	1	1	0	0	0	0	
515	Broadcasting (except Internet)	8	0.5%	0.1%	0	0	0	0	0	0	0	
517	Telecommunications	24	1.4%	0.5%	0	4	4	0	0	0	0	
518	Internet Service Providers, Web Search Portals, and Data Processing Services	37	2.1%	-1.4%	0	0	0	0	0	0	0	
519	Other Information Services	17	1.0%	-1.0%	1	0	1	0	0	0	0	
522	Credit Intermediation and Related Activities	32	1.8%	-0.4%	0	0	0	0	0	0	3	
523	Securitites, Commodity Contracts, and Other Financial Investments and Related Activities	71	4.1%	0.7%	0	2	2	0	0	0	4	
524	Insurance Carriers and Related Actitivities	57	3.3%	-0.2%	1	0	1	0	0	0	5	
525	Funds, Trusts, and Other Financial Vehicles	3	0.2%	-0.2%	0	0	0	0	0	0	0	
531	Real Estate	11	0.6%	-0.3%	0	0	0	0	0	0	0	
532	Rental and Leasing Services	17	1.0%	0.0%	2	0	2	0	0	0	0	
533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	15	0.9%	0.0%	2	1	3	0	0	0	0	

3 DIGIT NAICS CODE <sup>11</sup>	INDUSTRY DESCRIPTION	NUMBER 4	PERCENT OF TOTAL	% POINTS CHANGE FROM FY	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST 3 INVESTIGATIONS			NUMBER OF 3 DIGIT INTRA- INDUSTRY TRANSAC-
				2022 12	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	TIONS <sub>14</sub>
541	Professional, Scientific, and Technical Services	186	10.7%	-0.9%	11	4	15	2	2	4	1
551	Management Companies and Enterprises	1	0.1%	0.0%	0	0	0	0	0	0	0
561	Administrative and Support Services	50	2.9%	-0.5%	0	2	2	0	0	0	2
562	Waste Management and Remediation Services	26	1.5%	0.7%	0	4	4	0	0	0	0
611	Educational Services	14	0.8%	0.0%	1	1	2	0	0	0	0
621	Ambulatory Health Care Services	33	1.9%	-1.0%	8	2	10	1	2	3	0
622	Hospitals	22	1.3%	0.4%	13	0	13	2	0	2	2
623	Nursing Care Facilities	4	0.2%	0.0%	1	0	1	0	0	0	0
624	Social Assistance	4	0.2%	0.0%	0	0	0	0	0	0	0
711	Performing Arts, Spector Sports, and Related Industries	11	0.6%	0.2%	0	3	3	0	0	0	1
713	Amusement, Gambling, and Recreation Industries	15	0.9%	0.4%	0	0	0	0	0	0	1
721	Accommodation	2	0.1%	-0.2%	0	0	0	0	0	0	0
722	Food Services and Drinking Places	12	0.7%	0.1%	1	0	1	0	0	0	0
811	Repairs and Maintenance	15	0.9%	0.1%	0	0	0	0	0	0	1
812	Personal and Laundry Services	5	0.3%	0.1%	0	0	0	0	0	0	0
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	1	0.1%	0.0%	0	0	0	0	0	0	0
		1,735	100.0%		124	61	185	26	11	37	79

- 1 Fiscal year 2023 figures include transactions reported between October 1, 2022 and September 30, 2023.
- 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 2023, 1,805 transactions were reported under the HSR Premerger Notification program. The smaller number, 1,735, 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 2023 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. As of FY 2017, the threshold categories include non-corporate interests (NCI), encompassing transactions in which the acquiring entity acquires 50% of more of the non-corporate interests of the acquired entity. In addition, the 2023 Merger Filing Fee Modernization Act introduced additional filing fee tiers and new filing fees. Both the filing fee tiers and the filing fees are adjusted annually along with the jurisdictional thresholds.
- <sup>7</sup> 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 2022 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.

#### **EXHIBIT B**

Summary letters required by Section 102(c) of the Merger Fee Modernization Act of 2022, including the information required under Sections 102(a) and (b) of the MMA.



#### UNITED STATES OF AMERICA

# Federal Trade Commission WASHINGTON, D.C. 20580

July 1, 2024

The Honorable Jim Jordan Chairman, Committee on the Judiciary U.S. House of Representatives Washington, DC 20515

The Honorable Jerrold Nadler Ranking Member, Committee on the Judiciary U.S. House of Representatives Washington, D.C. 20515

The Honorable Thomas Massie Chairman, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust U.S. House of Representatives Washington, D.C. 20515

The Honorable Lou Correa
Ranking Member, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan, Ranking Member Nadler, Chairman Massie, and Ranking Member Correa:

On behalf of the Federal Trade Commission and the Justice Department's Antitrust Division (collectively, the Agencies), please find below the summary required by Section 102(c) of the Merger Fee Modernization Act of 2022 ("MMA"), including the information required under Sections 102(a) and (b) of the MMA.

#### **Summary of the FY2023 HSR Annual Report**

In fiscal year 2023, 1,805 transactions were reported under the Hart-Scott-Rodino Antitrust Improvements (HSR) Act, which is in line with the number of transactions reported over the past 10 years, excluding the record high number of transactions reported in fiscal years 2021 and 2022. Nearly one-fourth of the transactions reviewed by the Agencies were valued over \$1 billion, continuing a trend in recent years towards larger and more complex transactions.

During fiscal year 2023, the Federal Trade Commission took enforcement actions against 16 deals: four in which the Commission initiated administrative or federal court litigation; ten in

which the transaction was abandoned or restructured after the Commission raised concerns about the threat they posed to competition; and two in which it issued consent orders for public comment. The Antitrust Division took enforcement actions against 12 deals: two that were blocked through lawsuits in U.S. district court; ten in which the transaction was abandoned or restructured after the Antitrust Division raised concerns about the threat they posed to competition.

#### Section 102

(a)(1) The amount of funds made available to the Federal Trade Commission and the Department of Justice, respectively, from the premerger notification filing fees under this section, as adjusted by the Merger Filing Fee Modernization Act of 2022, as compared to the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2022.

#### FY23 Total Fee Estimate (Oct – Feb) – prior fee structure

October –	\$21,337,500
November –	\$24,665,275
December –	\$17,167,600
January –	\$18,577,550
February (adjusted) –	\$19,775,010

Total (Oct – Feb): \$101,522,935

#### FY23 Total Fee Estimate (Mar – Sept) – applying prior fee structure

```
210 Tier 1 Transactions @ $45,000 = $9,450,000
482 Tier 2 Transactions @ $125,000 = $60,250,000
231 Tier 3 Transactions @ $280,000 = $64,680,000
```

Total (Mar – Sep): \$134,380,000

If the MMA did not apply, total collections for FY23 would have been \$235,902,935, with \$117,951,467.50 made available to the FTC and \$117,951,467.50 made available to the Department of Justice.

Actual Filing Fee Revenue for FY23 was \$343,628,165.01, with \$171,814,082.51 made available to the FTC and \$171,814,082.50 made available to the Department of Justice.

Difference due to MMA: +\$107,725,230.01

(a)(2) The total revenue derived from premerger notification filing fees, by tier, by the Federal Trade Commission and the Department of Justice, respectively.

**RESPONSE**: See Appendix A, attached.

(a)(3) The gross cost of operations of the Federal Trade Commission, by Budget Activity, and the Antitrust Division of the Department of Justice, respectively.

#### **RESPONSE:**

Gross Cost of Operations											
FTC											
(Dollars in Millions)	FY 2022	FY 2023									
Consumer Protection	193	218									
Antitrust	166	200									
TOTAL	359	418									
DOJ, Antitrust Division											
(Dollars in Millions)	FY 2022	FY 2023									
Antitrust	208	220									

**(b) (1)** for actions with respect to which the record of the vote of each member of the Federal Trade Commission is on the public record of the Federal Trade Commission, a list of each action with respect to which the Federal Trade Commission took or declined to take action on a 3 to 2 vote; and

**RESPONSE**: There were no such actions during FY23.

(b)(2) for all actions for which the Federal Trade Commission took a vote, the percentage of such actions that were decided on a 3 to 2 vote.

**RESPONSE**: Zero percent during FY23.

If you or your staff have additional questions or comments, please do not hesitate to contact Jeanne Bumpus, FTC Director of the Office of Congressional Relations, at (202) 326-2946 or Slade Bond, DOJ Deputy Assistant Attorney General, Office of Legislative Affairs, at 202-616-8795.

Sincerely,

Lina M. Khan

Chair, Federal Trade Commission

# Appendix A: HSR PREMERGER FILING FEES FY 2023 SUMMARY REPORT PREPARED BY FEDERAL TRADE COMMISSION

				FY 20	23 Fee Collections	and Income					
Filing Fee Thresholds	\$92M - < \$184M	\$184M - < \$919.9M	\$919.9M or Greater	\$111.4M - < \$161.4M	\$161.5M - < \$499.9M	\$500M - < \$999.9M	\$1B - < 1.9B	\$2B - < \$4.9B	\$5B or Greater		
Filing Fee	\$45,000	\$125,000	\$280,000	\$30,000	\$100,000	\$250,000	\$400,000	\$800,000	\$2,250,000	Other Amounts	TOTAL
Filings	254.0	396.0	133.5	182.5	432.0	163.5	93.0	52.0	32.0	NA	1,738.50
Fees Collected	11,430,000	49,500,000	37,380,000	5,475,000	43,200,000	40,875,000	37,200,000	41,600,000	72,000,000	7,291,466	345,951,466.01
Refunds										(2,323,301)	(2,323,301.00)
Net Fee Income	11,430,000	49,500,000	37,380,000	5,475,000	43,200,000	40,875,000	37,200,000	41,600,000	72,000,000	4,968,165	343,628,165.01

FY 2023 Fee Distribution:	Year-to-Date
DOJ	171,814,082.50
FTC	171,814,082.51
Total Distributed Fees	343,628,165.01

The first three tiers cover October through February and the last six tiers cover February through September.

During fiscal year 2023, 1,805 transactions were reported under the HSR Premerger Notification program. The smaller number here, 1,738.50, reflects filing fees received (including partial fees), and adjustments to eliminate the following types of transactions, for which no transaction fee was received: (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).



#### UNITED STATES OF AMERICA

### Federal Trade Commission WASHINGTON, D.C. 20580

Office of the Chair

July 1, 2024

The Honorable Dick Durbin Chair, Committee on the Judiciary U.S. Senate Washington, D.C. 20510

The Honorable Lindsey Graham Ranking Member, Committee on the Judiciary U.S. Senate Washington, D.C. 20510

The Honorable Amy Klobuchar Chair, Subcommittee on Competition Policy, Antitrust, and Consumer Rights Committee on the Judiciary U.S. Senate Washington, D.C. 20510

The Honorable Mike Lee Ranking Member, Subcommittee on Competition Policy, Antitrust, and Consumer Rights Committee on the Judiciary U.S. Senate Washington, D.C. 20510

Dear Chair Durbin, Ranking Member Graham, Chair Klobuchar, and Ranking Member Lee:

On behalf of the Federal Trade Commission and the Justice Department's Antitrust Division (collectively, the Agencies), please find below the summary required by Section 102(c) of the Merger Fee Modernization Act of 2022 ("MMA"), including the information required under Sections 102(a) and (b) of the MMA.

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#### **Section 102**

(a)(1) The amount of funds made available to the Federal Trade Commission and the Department of Justice, respectively, from the premerger notification filing fees under this section, as adjusted by the Merger Filing Fee Modernization Act of 2022, as compared to the funds made available to the Federal Trade Commission and the Department of Justice, respectively, from premerger notification filing fees as the fees were determined in fiscal year 2022.

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Difference due to MMA: +\$107,725,230.01

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**RESPONSE**: See Appendix A, attached.

(a)(3) The gross cost of operations of the Federal Trade Commission, by Budget Activity, and the Antitrust Division of the Department of Justice, respectively.

#### **RESPONSE:**

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(Dollars in Millions)	FY 2022	FY 2023									
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(Dollars in Millions)	FY 2022	FY 2023									
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**RESPONSE**: There were no such actions during FY23.

(b)(2) for all actions for which the Federal Trade Commission took a vote, the percentage of such actions that were decided on a 3 to 2 vote.

**RESPONSE**: Zero percent during FY23.

If you or your staff have additional questions or comments, please do not hesitate to contact Jeanne Bumpus, FTC Director of the Office of Congressional Relations, at (202) 326-2946 or Slade Bond, DOJ Deputy Assistant Attorney General, Office of Legislative Affairs, at 202-616-8795.

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Lina M. Khan

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Chair, Federal Trade Commission

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