



FEDERAL TRADE COMMISSION
ANNUAL REPORT TO CONGRESS
FOR FISCAL YEAR 1995

PURSUANT TO SECTION 201 OF THE
HART-SCOTT-RODINO ANTITRUST
IMPROVEMENTS ACT OF 1976
(EIGHTEENTH REPORT)



INTRODUCTION

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

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

This is the eighteenth annual report to Congress pursuant to this provision. It covers fiscal year 1995.

In general, the Act requires that certain proposed acquisitions of stock or assets must be reported to the Federal Trade Commission and the Antitrust Division of the Department of Justice prior to consummation. The parties must then wait a specified period, usually thirty days (fifteen days in the case of a cash tender offer and ten or fifteen days in the case of a bankruptcy sale¹), before they may complete the transaction. Whether a particular acquisition is subject to these requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Small acquisitions, acquisitions involving small parties and other classes of acquisitions that are less likely to raise antitrust concerns are excluded from the Act's coverage.

¹ The Bankruptcy Reform Act of 1994 amended § 363 of the Bankruptcy Code providing in part that the waiting period required for certain transactions involving an acquired person in bankruptcy be fifteen days. The provision applies to entities that filed for bankruptcy on or after October 22, 1994. Bankruptcy Reform Act, Pub. L. No. 103-394 [H.R. 5116], § 109, 108 Stat. 4106 (1994).

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

If either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) of the Act to request additional information or documentary materials from either or both of the parties to a reported transaction (a "second request"). A second request extends the waiting period for a specified period, usually twenty days (ten days in the case of a cash tender offer), after the parties have complied with the request (or in the case of a tender offer, after the acquiring person complies). This additional time provides the 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 violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.

Final rules implementing the premerger notification program were promulgated by the Commission, with the concurrence of the Assistant Attorney General, on July 31, 1978.² At that time, a comprehensive Statement of Basis and Purpose was also published containing a section-by-section analysis of the rules and an item-by-item analysis of the Premerger Notification and Report Form. The program became effective on September 5, 1978. In

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

1983, the Commission, with the concurrence of the Assistant Attorney General, made several changes in the premerger notification rules. Those amendments became effective on August 29, 1983.³ Additional amendments were published in the Federal Register on March 6, 1987,⁴ and May 29, 1987.⁵

STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported,⁶ the number of filings received, the number of merger investigations in which second requests were issued, and the number of transactions in which requests for early termination of the waiting period were received, granted, and not granted. Appendix A also shows for fiscal years 1986 through 1995 the number of transactions in which second requests could have been issued. (This information appears in Appendix C and is explained in footnote 1 of that appendix.) Appendix B provides a month-by-month comparison of the number of transactions reported (Table 1) and the number of filings received (Table 2) for fiscal years 1986 through 1995. Appendix C shows, for fiscal years 1986 through 1995, the number of transactions in which the agencies

³ 48 Fed. Reg. 34,427 (1983) (codified at 16 C.F.R. Parts 801 through 803).

⁴ 52 Fed. Reg. 7,066 (1987) (codified at 16 C.F.R. Parts 801 through 803).

⁵ 52 Fed. Reg. 20,058 (1987) (codified at 16 C.F.R. Parts 801 through 803).

⁶ The term "transactions", as used in Appendices A, B, and C, and Exhibit A to this report, does not refer to separate mergers or deals; rather, it refers to types of structures such as cash tender offers, options to acquire voting securities from the issuer, options to acquire voting securities from someone other than the issuer, and multiple acquiring or acquired persons that necessitate separate HSR identification numbers to track the filing parties and waiting periods. A particular merger, joint venture or deal may involve more than one transaction. Indeed, some have involved as many as four or five transactions.

could have issued second requests, the number of merger investigations in which second requests were issued, and the percentage of transactions in which second requests were issued. Appendix C may provide a more meaningful measure of the second request rate than Appendix A because Appendix C eliminates from the total number of transactions certain transactions in which the agencies could not, or as a practical matter would not, issue second requests.⁷

The statistics set out in these appendices show that the number of transactions reported in 1995 increased approximately 22.2 percent from the number of transactions reported in 1994 (2,816 transactions were reported in 1995 while 2,305 were reported in 1994). The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in 1995 increased approximately 38.4 percent from the number of merger investigations in which second requests were issued in 1994 (second requests were issued in 101 merger investigations in 1995 while second requests were issued in 73 merger investigations in 1994). However, these numbers indicate only a slight increase in the number of second requests issued as a percentage of reported transactions from 1994 to 1995 (from 3.2 percent in 1994 to 3.6 percent in 1995 based on Appendix A, and from 3.4 percent in 1994 to 3.9 percent in 1995, based on Appendix C).

The statistics also show that in recent years, early termination was requested for most transactions. In 1995, early

⁷ See Appendix C, note 1. As we explained in previous annual reports, the information regarding second requests in Appendices A and C differs from that reported in those appendices in the annual reports for fiscal years 1979-1987. Appendix A and C in the 1979-1987 reports identified the number of transactions in which a second request was issued, while Appendices A and C in the present report show the number of merger investigations in which second requests were issued. A merger investigation may include several transactions. We believe that reporting the number of merger investigations in which second requests were issued better reflects the agencies' enforcement activities because it represents the number of mergers or acquisitions that were investigated to this extent under the Act by the agencies.

termination was requested in 87.7 percent (2,471) of the transactions reported while in 1994 it was requested in 90.3 percent (2,081) of the transactions reported. The number of requests granted increased in 1995 compared to 1994 (from 1,508 in 1994 to 1,869 in 1995). The percentage of requests granted also increased (from 72.5 percent in 1994 to 75.6 percent in 1995).

We have also included in the report, as Exhibit A, statistical tables (Tables I - XI) containing information about the agencies' enforcement interest in transactions reported in fiscal year 1995. The tables provide, for various statistical breakdowns, the number and percentage of transactions in which clearances to investigate were granted by one antitrust agency to the other and the number of merger investigations in which second requests were issued; the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification; the number of transactions based on the sales or assets of the acquiring person or the sales or assets of the acquired entity; and the number of transactions based on the industry group (2-digit SIC code) in which the acquiring person or the acquired entity derived revenue.

The tables in Exhibit A show that clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 14.5 percent of the total number of transactions reported in 1995. In 1994, clearance was granted in 17.0 percent of the transactions reported (see Exhibit A to the Seventeenth Annual Report).

DEVELOPMENTS IN FISCAL YEAR 1995 RELATING TO PREMERGER NOTIFICATION RULES AND PROCEDURES

1. Compliance

The Commission and the Department of Justice continue to monitor compliance with the premerger notification program's filing requirements and initiated a number of investigations to assure compliance in fiscal year 1995. The agencies monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. Industry sources, such as

competitors, customers and suppliers, and interested members of the public often provide the agencies with information about transactions and possible violations of the filing requirements.

Under Section 7A(g) (1) of the Act, any person or company that fails to comply with the Act's notification and waiting period requirements is liable for a civil penalty of up to \$10,000 for each day the violation continues.⁸ In fiscal year 1995, one case was settled in which the Department of Justice had filed a complaint at the Commission's request in 1992⁹ alleging a violation of the Act.

In *United States v. William F. Farley*,¹⁰ the complaint alleged that Farley had violated the Act when he acquired certain voting securities of West Point-Pepperell, Inc. ("WPP"). According to the complaint, Farley was in violation from March 24, 1988, when his holdings of WPP's stock exceeded the \$15 million threshold, until June 22, 1988. The United States contended that Farley's acquisitions of WPP's stock were not made "solely for the purpose of investment" as he asserted, and thus were not exempt from the Act's reporting and waiting requirements. The Northern District of Illinois dismissed the case with prejudice on January 26, 1993, at the government's request, after the United States refused to turn over to defendant assertedly privileged internal Commission documents. On December 15, 1993, the U.S. Court of Appeals for the Seventh Circuit, which found the documents to be irrelevant and

⁸ Effective November 20, 1996, dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction were adjusted for inflation in accordance with the Debt Collection Improvement Act of 1996. The adjustments included, in part, an increase from \$10,000 to \$11,000 for each day during which a person is in violation under Section 7A(g) (1), 15 U.S.C. 18a(g) (1). 61 Fed. Reg. 54548 (October 21, 1996).

⁹ See the Annual Report to Congress for fiscal year 1992.

¹⁰ *United States v. William F. Farley*, Cv. No. 92-1071 (N.D. Ill. complaint filed February 12, 1992; dismissed with prejudice January 26, 1993), *rev'd and remanded*, 1993-2 Trade Cas. ¶ 70,441 (7th Cir. December 15, 1993).

privileged, reversed the dismissal and remanded the case. Under the terms of the final judgment, which was filed on January 11, 1995, Farley agreed to pay a civil penalty of \$425,000 to settle the charges.

2. Amendment to the Rules

On August 9, 1995, the Commission published in the Federal Register a Notice of Final Rulemaking to amend the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the "Form").¹¹ The Form requires data for two time periods: the most recent year for which the requested information is available, and the "base year" which coincides with the Bureau of the Census' most recently available quinquennial economic census.

The rule amends the Form to convert the "base year" from 1987 to 1992, and requires filing persons to use the classification codes referenced in the *1992 Bureau of Census of Manufactures and Census of Mineral Industries*. The amendment enables the agencies to use effectively the most current and reliable statistical information on industry components and market universes published by the Bureau of the Census. The enforcement agencies compare this statistical data with the information provided by the reporting persons to determine whether a proposed transaction may raise serious antitrust concerns.

3. Hart-Scott-Rodino Premerger Program Improvements

The Antitrust Division and the Chairman of the Commission announced measures in fiscal year 1995 to improve the premerger review process.¹² Eight major steps were implemented to reduce any undue burden on parties in complying with the Act and to assure greater consistency between the two enforcement agencies in their merger review procedures. The new measures include (1) expedited "clearance" procedures to determine which agency will

¹¹ 60 Fed. Reg. 40,704 (August 9, 1995).

¹² See Hart-Scott-Rodino Premerger Program Improvements, dated March 23, 1995.

investigate a proposed transaction; (2) issuance of a joint agency model second request; (3) establishment of a procedure under which parties may provide information to the enforcement agencies before clearance is resolved; (4) implementation of uniform procedures to review the burden of second requests and to examine disputes as to substantial compliance;¹³ (5) adoption of a joint "quick look" policy whereby parties to a transaction may identify key issues in which the enforcement agencies should focus their investigations; (6) establishment of a project with the American Bar Association's Antitrust Section to study second request practice issues; (7) development of proposals to expand categories of transactions which would be exempt under the Act; and (8) establishment of joint training programs to harmonize merger review efforts by the agencies.

4. Proposal to Replace and Expand Exemptions

Consistent with the eight initiatives outlined above, the Commission proposed five rules, drafted in cooperation with the Antitrust Division, that would define or create exemptions to the requirements imposed by the Act.¹⁴ The proposed rules would exempt: (1) certain acquisitions of goods transferred in the ordinary course of business; (2) certain acquisitions of real property assets; (3) acquisitions of carbon-based mineral reserve valued at \$200 million or less; (4) acquisitions of voting securities of issuers holding only exempt real property and carbon-based mineral reserves; and (5) acquisitions of investment rental property assets by certain investors.

These proposed amendments were designed to reduce the compliance burden on the business community by eliminating the application of the notification and waiting requirements to a significant number of transactions that are unlikely to violate

¹³ On August 2, 1995, the Commission and the Antitrust Division, jointly, issued a press release clarifying second request internal appeal procedures.

¹⁴ 60 Fed. Reg. 38930 (July 28, 1995). The final rules, with slight modifications, were adopted on March 25, 1996 (61 Fed. Reg. 13666), and will be discussed in the Annual Report for fiscal year 1996.

the antitrust laws. They were also intended to allow the enforcement agencies to focus their resources more effectively on those transactions that present the potential for competitive harm.

5. Federal-State Cooperation Program

In June 1995, the Commission also announced a modification to the Federal-State merger cooperation program under which state attorneys general will be able to obtain information pursuant to both a policy instituted in 1992, and the Commission's general rule governing access requests from state law enforcement agencies.¹⁵ Under the Commission's new policy, states may receive information previously unavailable in Commission merger investigations, including (1) information obtained from third parties; (2) non-HSR protected information obtained from merging parties who have not consented to disclosure; and (3) staff analytic memoranda. The Antitrust Division previously instituted a similar policy. In order to invoke the Commission's new policy, states may request information concerning merger investigations under Commission Rule 4.11(c), 16 CFR § 4.11(c). The Commission's General Counsel will consider such requests on a case-by-case basis. The new policy is intended to improve coordination where both federal and state agencies investigate the same transaction.

¹⁵ 60 Fed. Reg. 54376 (October 23, 1995); see Fifteenth Annual Report to Congress for a discussion of Federal-State merger cooperation initiated in 1992.

MERGER ENFORCEMENT ACTIVITY DURING FISCAL YEAR 1995¹⁶

1. Department of Justice

The Antitrust Division challenged eighteen merger transactions that it concluded could lessen competition if allowed to proceed as proposed during fiscal year 1995. In nine of these instances the Antitrust Division filed a complaint in U.S. District Court.¹⁷ Six of these cases have been settled by consent decree. One was abandoned after the complaint was filed, one was litigated and won (defendants' appeal is pending) and in one other, the trial court denied a request for a permanent injunction, and the government is considering whether to appeal.

¹⁶ The cases in this report were not necessarily reportable under the premerger notification program. Because of the Hart-Scott-Rodino Act's provisions regarding the confidentiality of the information obtained pursuant to this program, it would be inappropriate to identify which cases were initiated under the premerger notification program.

¹⁷ United States v. Motorola, Inc. and Nextel Communications, Inc., Cv. No. 1:94CV02331 (D.D.C. filed October 27, 1994); United States and the States of Florida and Maryland v. Browning-Ferris Industries, Inc., Cv. No. 1:94CV02588 (D.D.C. filed December 1, 1994); United States v. Sabreliner Corporation, Cv. No. 95CV00421 (D.D.C. filed February 6, 1995); United States v. NAT, L.C., and D.R. Partners d/b/a Donrey Media Group, Cv. No. 95-5048 (W.D. Ark. filed March 28, 1995); United States v. Microsoft Corporation and Intuit Inc., Cv. No. C95-1393 WHO (N.D. Cal. filed April 27, 1995); United States v. Engelhard Corporation, Floridin Company, U.S. Borax, Inc. and U.S. Silica, Inc. Cv. No. 6:95-CV-45 (WLS) (M.D. Ga. filed June 12, 1995); United States v. Sprint Corporation and Joint Venture Company, Cv. No. 1:95CV-1304 (D.D.C. filed July 13, 1995); United States v. Interstate Bakeries Corporation and Continental Baking Company, Cv. No. 95C4194 (N.D. Ill. filed July 20, 1995); and United States v. Computer Associates International, Inc. and Legent Corporation, Cv. No. 1:95CV01398 (D.D.C. filed July 28, 1995).

In the other nine challenges during fiscal year 1995, the Antitrust Division informed the parties to a proposed transaction that it would file suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.¹⁸ In eight instances, the parties restructured the proposed transactions. In one instance, the parties abandoned the proposed transaction.

¹⁸ In six instances, the Department of Justice issued press releases. Department of Justice press release issued December 16, 1994, involving the acquisition of Casco Northern Bank by Key Corporation (Key Bank of Maine) involving the banking service business in Maine; Department of Justice press release issued January 26, 1995, involving the proposed merger between McDermott International, Inc. and Offshore Pipelines, Inc., the two largest marine construction companies in the Gulf of Mexico providing barge services; Department of Justice press release issued March 7, 1995, involving the merger between BJ Services and The Western Company of North America, providers of pressure pumping service to both oil and gas wells; Department of Justice press release issued May 25, 1995, involving Ingersoll Rand Company's acquisition of Clark Equipment Company in the asphalt paver business; Department of Justice press release issued September 27, 1995, involving Land-O-Sun Dairies Inc. acquisition of Flav-O-Rich Inc. from Mid-America Dairymen Inc. concerning milk distribution routes; and Department of Justice press release issued September 29, 1995, involving United Healthcare's acquisition of MetraHealth Companies, concerning health maintenance organizations. In addition to the six instances in which the Department issued press releases, the Department informed the parties that the proposed merger between Hibernia National Bank and Pioneer Bank and Trust Company was likely to have anticompetitive effects in the banking services business in the Shreveport/Bossier City area of Louisiana; the Department also informed the parties that the acquisition by First Commerce Corporation (First National Bank of Lake Charles) of Lakeside National Bank was likely to have anticompetitive effects in the banking services business in Louisiana; the Department also informed the parties that the proposed Joint Venture between Calmat Company and Tucson Rock & Sand, Inc. was likely to have anticompetitive effects in the aggregate, ready-mix concrete and asphalt concrete industry in the Tucson, Arizona area.

In *United States v. Motorola, Inc. and Nextel Communications, Inc.*, the Division challenged Nextel Communications, Inc.'s acquisition of Motorola Inc.'s specialized mobile radio ("SMR") service, a dispatch service used by cab and delivery companies. The complaint alleged that the acquisition would have eliminated competition in fifteen major metropolitan cities and caused higher prices and poorer services for consumers. A proposed consent decree was filed simultaneously settling the suit and requiring that the two companies relinquish control of certain SMR channels that they own or manage. Nextel, of Rutherford, New Jersey, and Motorola, of Schaumburg, Illinois, are the nation's leading providers, and each other's principal competitors, of SMR service, a type of radio service used by contractors, service companies, delivery services and other businesses that need to communicate with fleets of vehicles either on a one-to-one or one-to-many basis. The consent decree was entered on July 25, 1995.

In *United States and the State of Florida and the State of Maryland v. Browning-Ferris Industries, Inc.*, the Division challenged Browning-Ferris Industries, Inc.'s ("BFI") acquisition of one of its major competitors, Attwoods plc, headquartered in the United Kingdom. BFI is located in Houston, Texas. The complaint alleged that the merger would have lessened competition in the market for small containerized waste hauling services in Florida and the Mid-Atlantic Region. BFI is the nation's second largest trash hauling company and had annual revenues of more than \$30 billion in 1993. Attwoods' U.S. revenues were more than \$300 million in 1993. A proposed consent decree was filed simultaneously settling the suit. The decree required divestiture of Attwoods' small containerized hauling service assets in several markets and required BFI to offer contracts with less restrictive terms to small containerized hauling service customers in the Baltimore area and in Polk and Broward Counties, Florida. The consent decree was entered on March 30, 1995 and all divestitures have occurred.

In *United States v. Sabreliner Corporation*, the Division challenged the acquisition of Midcoast Aviation Inc. from Trans World Airlines by Sabreliner Corporation of St. Louis, Missouri. Sabreliner and Midcoast are the only two providers of aircraft fueling, cleaning, deicing, and certain other terminal services

at Lambert International Airport in St. Louis, Missouri. These providers are also known as fixed base operators (FBOs) and supply terminal services typically included in the price of jet fuel sold to general aviation customers. In 1994, general aviation aircraft purchased about \$1 billion of jet fuel from FBOs nationwide. Sabreliner's merger of its Lambert Field facilities with Midcoast would have created a monopoly in the sale of jet fuel to transient general aviation customers using the airport. A proposed consent decree was filed simultaneously settling the suit. The decree required Sabreliner to divest either its transient general aviation fueling facilities at Lambert, or, if necessary to attract a purchaser, its entire FBO operation at Lambert. The consent decree was entered on May 5, 1995.

In *United States v. NAT, L.C., and D.R. Partners d/b/a Donrey Media Group*, the Division challenged the combination of the two local daily newspapers serving the Fayetteville/Springdale metropolitan area in Arkansas. NAT L.C., of Little Rock, Arkansas, and D.R. Partners of Fort Smith, Arkansas, are owned by substantially the same Stephens Family trusts. The suit alleged that the common ownership and control would cause serious anticompetitive concerns and lead to higher newspaper prices and advertising rates as well as lower quality. The suit named defendant D.R. Partners, which does business as Donrey Media Group, and NAT L.C., which operate, respectively, the Morning News of Northwest Arkansas and the Northwest Arkansas Times. These two daily newspapers are each other's primary competitor in the sale of local daily newspapers and in the sale of local newspaper advertising. On February 8, 1995, pursuant to a private suit, the U.S. District Court in Fayetteville, Arkansas, granted a hold separate order requiring the owners to maintain the papers separately until the full trial on the merits. Thereafter, the Department requested that its suit be consolidated with the private suit. Trial on the merits began May 1, 1995 and concluded May 10, 1995. On June 30, 1995, a permanent injunction was issued against the acquisition. On August 8, 1995, the defendants filed their appellant brief and the government filed December 21, 1995. Oral argument before the Eighth Circuit Court of Appeals occurred April 1, 1996 and the Division awaits a ruling by the Court of Appeals.

In *United States v. Microsoft Corporation and Intuit Inc.*, the Division challenged the \$2 billion acquisition by Microsoft of Intuit Inc. The complaint alleged that the proposed acquisition would likely lead to higher prices and lessen innovation in the personal finance software market. Intuit's "Quicken" is the leading personal finance software and the number one selling home personal computer software product with a 1994 market share of almost 70 percent and more than seven million users. Microsoft's "Money" is the number two personal finance competitor with a 1994 market share of about 22 percent and about one million users. Intuit and Microsoft accounted for more than 90 percent of the personal finance software sales in the U.S. in 1994. Personal finance software is used by consumers at home on personal computers to control their financial records and transactions. In 1994, sales in that market reached nearly \$90 million. Microsoft is headquartered in Redmond, Washington, and Intuit is headquartered in Menlo Park, California. The proposed combination would have enabled the defendants to eliminate the substantial competition between them in the personal finance/checkbook software market and the emerging home banking market. Trial on the merits was scheduled to commence on June 26, 1995; however, the parties abandoned the transaction on May 19, 1995.

In *United States v. Engelhard Corporation, Floridin Company, U.S. Borax, Inc. and U.S. Silica, Inc.*, the Division challenged the proposed acquisition by Engelhard of Iselin, New Jersey, of Floridin's attapulgitic clay reserves and processing plant. Engelhard and Floridin are the two largest attapulgitic clay companies in the United States and are each other's most significant competitor. Floridin, with offices in Berkeley Springs, West Virginia, is a wholly-owned subsidiary of U.S. Borax, which has offices in Valencia, California. This transaction would combine under single ownership over 80 percent of the attapulgitic clay mining and processing business in this country. Attapulgitic clay is a mineral mined in the United States only in the southwestern part of Georgia and the northwestern part of Florida. There are two basic types of attapulgitic clay--gellant quality attapulgitic clay and sorbet quality attapulgitic clay. Trial on the merits commenced on July 24, 1995 and concluded on August 9, 1995. On March 7, 1997, the district court issued an order denying the government's request for a permanent injunction on the grounds of failure to prove a

relevant market, and the government is considering whether to appeal.

In *United States v. Sprint Corporation and Joint Venture Company*, the Division challenged the proposed joint venture involving a plan by France Telecom and Deutsche Telekom A.G. to purchase \$4 billion of stock in Sprint Corporation and form a joint venture with Sprint to provide global telecommunications services. The transaction, as initially proposed--a combination of foreign monopoly firms with a U.S. long distance firm--would have reduced competition in international telecommunications by placing other U.S. telecommunications firms at a competitive disadvantage. France Telecom is the monopoly provider in France and the fourth largest provider of telecommunications in the world, with \$28 billion in 1994 revenues; Deutsche Telekom is the monopoly provider in Germany and the second largest provider of telecommunications in the world, with 1994 revenues of \$44 billion; and Sprint, of Westwood, Kansas, is a major provider of long distance telecommunications services, with \$12.6 billion in annual revenues. A proposed consent decree was filed simultaneously settling the suit. Under the decree, Sprint and the joint venture are subject to various restrictions that will operate in two phases, changing over time as competition develops in France and Germany. The consent decree was entered on February 16, 1996.

In *United States v. Interstate Bakeries Corporation and Continental Baking Company*, the Division challenged the proposed merger of two of the country's largest manufacturers of white bread. The complaint alleged that the proposed acquisition of Continental Baking Company, of St. Louis, Missouri, the nation's largest wholesale baker and the maker of Wonder Bread, by Interstate Bakeries Corporation, of Kansas City, Missouri, the third largest wholesale baker and the maker of such popular brands as Weber's, Sunbeam and Butternut, violated Section 7 of the Clayton Act and threatened to drive up white bread prices in at least five markets--Los Angeles, San Diego, Chicago, Milwaukee and Central Illinois. Simultaneously, a consent decree was filed settling the suit. The decree required Interstate to sell, in each of the different areas, either the Wonder brand or one of Interstate's brands of premium white pan bread--Weber's in Southern California, Butternut in Chicago, Mrs. Karl's in Milwaukee and Butternut and Sunbeam in Central Illinois.

Continental is a wholly-owned subsidiary of Ralston Purina. It had revenues of \$1.9 billion in 1994. Interstate had revenues of \$1.1 billion in 1994. The consent decree was entered on January 9, 1996.

In *United States v. Computer Associates International, Inc. and Legent Corporation*, the Division challenged the \$1.7 billion proposed acquisition of Legent Corporation of Herndon, Virginia by Computer Associates International, Inc. ("CA") of Islandia, New York. The complaint alleged that the proposed acquisition would eliminate significant competition between CA and Legent in the markets for five relevant software products for use with a type of operating system known as Virtual Storage Extended. CA is the world's largest independent vendor of computer software for mainframe computers and a leading producer of mainframe computer systems management software. In 1994, CA had over \$2 billion in total revenues. Legent is also a major producer of mainframe computer software. In 1994, Legent had total revenues of approximately \$500 million, a major portion of which derived from the development and production of systems management software for mainframe computers. A proposed consent decree was filed simultaneously settling the suit. The decree required CA to grant licenses for Legent products in each of the five markets and forbids CA from taking any action to restrict competitors' access to an important technology in a sixth relevant market--the emerging market for cross-platform distributed systems management that had been previously licensed by Legent from Peer Logic, Inc. Cross-platform products permit centralized management of various computer systems linked together through networks. The consent decree was entered on March 14, 1996.

Additionally, the consent decree in *United States v. Outdoor Systems, Inc.*, (N.D. Ga filed September 8, 1994) was entered by the court.¹⁹

During fiscal year 1995, there were three bank merger transactions for which divestiture was required prior to or concurrently with the acquisition. A "not significantly adverse" letter conditioned on divestiture prior to or concurrently with

¹⁹ See the FY 1994 Annual Report for a description of that case.

consummation of the transaction was sent by the Division to the appropriate bank regulatory agency in all instances.²⁰

2. Federal Trade Commission

The Commission authorized its staff to seek injunctive relief in five merger cases during fiscal year 1995, three of which were filed in district court. Three of the five cases were settled by consent decree; one was dismissed; and one transaction was abandoned by the parties.²¹

In *B.A.T Industries, p.l.c./Brown & Williamson Tobacco Corporation/American Brands, Inc./American Tobacco Company*,²² the

²⁰ On November 14, 1994, a "not significantly adverse" letter was sent to the Board of Governors and on November 16, 1994 a letter was sent to the Comptroller of the Currency regarding the application by Hibernia Corporation, New Orleans, Louisiana, to acquire Pioneer Bancshares, Shreveport, Louisiana; on December 21, 1994, a "not significantly adverse" letter was sent to the Board of Governors regarding the application by Key Corp, Cleveland, Ohio, to acquire Casco Northern Bank, National Association, Portland, Maine; and on May 10, 1995, a "not significantly adverse" letter was sent to the Board of Governors and the Comptroller of the Currency regarding the application by First Commerce Corporation, New Orleans, Louisiana, to acquire Lakeside Bancshares Inc., Lake Charles, Louisiana and merge the First National Bank of Lake Charles into Lakeside National Bank of Lake Charles.

²¹ FTC news release issued July 19, 1994, concerning the proposed acquisition by Ferro Corporation of Chi-Vit Corporation. The press release reported that the Commission had reason to believe the transaction would lessen competition substantially for the manufacture and sale of frit in the United States. Frit is a specialty glass used to make porcelain enameled steel for home appliances, barbecue grills and hot water heaters. The parties abandoned the transaction before papers were filed in court.

²² Federal Trade Commission v. B.A.T. Industries p.l.c.,
(continued...)

Commission filed for a preliminary injunction in October 1994 alleging that B.A.T.'s proposed acquisition of American Tobacco Company ("ATC") from American Brands would lessen competition substantially for the manufacture and sale of cigarettes in the United States. Brown & Williamson Tobacco Corporation, which is controlled by B.A.T., and ATC are, respectively, the third and fifth largest of the six major United States cigarette manufacturers. On December 22, 1994, the Commission accepted a consent agreement for public comment and on April 19, 1995, issued its decision and order. Under the order, B.A.T. was required to divest, within 12 months, six ATC discount cigarette brands and three of its full-revenue brands, as well as the Reidsville, North Carolina, manufacturing facility, to a Commission-approved acquirer.²³

In *Local Health System, Inc./Blue Water Health Services, Corp./Mercy Health Services*,²⁴ the Commission authorized seeking a preliminary injunction alleging that Local Health System, Inc.'s ("LHS") proposed acquisitions of Mercy Hospital-Port Huron ("Mercy") and Port Huron Hospital would lessen competition substantially in the provision of acute care inpatient hospital services in Greater Port Huron, Michigan. Mercy and Port Huron Hospital are the only general acute care hospitals in Port Huron. The Commission filed the preliminary injunction action in the Eastern District of Michigan on November 29, 1994. Thereafter, the parties stated their intention to abandon the transaction. In June 1995, the Commission accepted a consent agreement for public comment and on October 3, 1995, issued its decision and

(...continued)

et al., Civ. No. 94 Civ. 7849 (MP) (S.D.N.Y. filed October 31, 1994); FTC Docket No. 9271 complaint issued November 28, 1994; consent and decision and order issued April 19, 1995.

²³ In October 1996, the Commission approved B.A.T.'s application to divest the Montclair, Riviera, Malibu, Bull Durham, Crowns and Special Tens brands to Commonwealth Tobacco, LLC, a subsidiary of Commonwealth Brands, Inc.

²⁴ *Local Health System, Inc./Blue Water Health Services, Corp./Mercy Health Services*, Docket No. C-3618 (issued October 3, 1995).

order. The order required the parties to terminate, within seven days, all agreements that provided for the acquisition of Port Huron Hospital and Mercy by LHS; and, for a period of three years, the parties are prohibited from acquiring, without prior Commission approval, any acute care hospital facility operated by either of the other companies.

In *Boston Scientific Corporation*,²⁵ the Commission authorized seeking a preliminary injunction alleging that Boston Scientific's acquisitions of Cardiovascular Imaging Systems, Inc. ("CVIS"), and SCIMED Life Systems, Inc. ("SCIMED"), would lessen competition substantially in the research and development, manufacture and sale of intravascular ultrasound ("IVUS") catheters in the United States. IVUS catheters are used as an adjunct to angiography in conjunction with therapeutic procedures, such as balloon angioplasty, atherectomy and stent implantation, to diagnose and treat cardiovascular disease. According to the complaint, Boston Scientific and CVIS were the two leading competitors in the IVUS catheter market. In addition, Boston Scientific's acquisition of SCIMED would eliminate a viable potential entrant. On February 24, 1995, the Commission accepted a consent agreement for public comment and on April 28, 1995, issued its decision and order. Under the order, the parties were permitted to proceed with the transactions, but Boston Scientific was required to grant a perpetual, non-exclusive license of patents, trade secrets, technology and know-how related to CVIS' and SCIMED's IVUS catheters to the Hewlett-Packard Company or another Commission-approved licensee within six months.

In *Freeman Hospital*,²⁶ the Commission filed for a preliminary injunction in February 1995 alleging that the merger of Freeman and the Tri-State Osteopathic Hospital Association

²⁵ Boston Scientific Corporation, Docket No. C-3573 (issued April 28, 1995).

²⁶ FTC v. Freeman Hospital, Civ. No. 95-5015-CV-SW-1 (W.D. Mo. filed February 21, 1995); Nos. 95-1448, 95-2882 (8th Cir.); 1995-2 Trade Cas. ¶ 71,167; FTC Docket No. 9273 (complaint issued March 21, 1995; complaint dismissed by the Commission November 30, 1995).

(d/b/a Oak Hill Hospital) would lessen competition substantially for the production and sale of acute care inpatient hospital services in Joplin, Missouri, and nearby areas of Missouri and Kansas. Freeman and Oak Hill are, respectively, the second and third largest hospitals in Joplin. The district court denied the motion; the U.S. Court of Appeals for the Eighth Circuit entered an injunction pending appeal and remanded the case to the district court for an evidentiary hearing. Subsequently, the district court again declined to issue the preliminary injunction, and the Circuit Court affirmed that decision. Thereafter, the matter was withdrawn from administrative adjudication. On November 30, 1995, the Commission dismissed its administrative complaint after concluding that further litigation was not in the public interest.²⁷

The Commission accepted consent agreements for public comment in 28 other merger cases in fiscal year 1995. A complaint and decision and order were issued in 20 of those cases during the fiscal year, and consent agreements in seven of these cases became final after September 30, 1995. In one of the 28 matters, the Commission rejected the consent agreement and closed the investigation.²⁸

²⁷ See *Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction*, 60 Fed. Reg. 39741 (August 3, 1995).

²⁸ In December 1994, the Commission accepted a consent agreement for public comment concerning Nestle S.A.'s proposed acquisition of Alpo PetFoods from Grand Metropolitan. According to the draft complaint, the transaction would lessen competition substantially for the manufacture and sale of canned cat food in the United States. Under the proposed order, Nestle would have been required to divest its Fort Dodge, Iowa, manufacturing plant. However, based on evidence presented during the public comment period, the Commission rejected the consent agreement and closed its investigation on June 7, 1995.

In *Oerlikon-Buhrle Holding AG*,²⁹ the complaint alleged that Oerlikon-Buhrle's acquisition of Leybold AG from Degussa Aktiengesellschaft would lessen competition substantially in the United States market for the manufacture, distribution and sale of turbomolecular pumps, and the world market for the manufacture, distribution and sale of compact disc metallizers. Turbomolecular pumps are small, jet engine-like devices that produce very high vacuum atmospheres for use in semiconductor manufacturing, and various other scientific applications. Compact disc metallizers are used in the compact disc replication process to apply a reflective coating to clear plastic discs. Under the order, Oerlikon-Buhrle was permitted to acquire Leybold provided that it divest both the turbomolecular pump business of its subsidiary, Balzer-Pfeiffer GmbH, and the Leybold compact disc metallizer business within 12 months.³⁰

In *Eli Lilly and Company, Inc.*,³¹ the complaint alleged that Eli Lilly and Company's ("Lilly") acquisition of PCS Health Systems, Inc. ("PCS"), from McKesson Corporation would lessen competition substantially in the provision of pharmacy benefit management ("PBM") services in the United States. In addition, the Commission alleged that the acquisition would harm competition in pharmaceutical markets because products of manufacturers other than Lilly would likely be foreclosed from the PCS formulary; PCS would be eliminated as an independent negotiator of pharmaceutical prices with manufacturers; and incentives of other manufacturers to develop pharmaceuticals would be diminished. Lilly is a major producer of branded pharmaceuticals. PCS provides PBM services to insurance

²⁹ Oerlikon-Buhrle Holding AG, Docket No. C-3555 (issued February 1, 1995).

³⁰ The Commission approved the divestiture of the compact disc metallizer business to Diana Beteiligungs und Verwaltungs Gesellschaft GmbH in December 1995. In June 1996, the Commission approved Oerlikon-Buhrle's plan to divest its Balzers-Pfeiffer turbomolecular pump business by means of an initial public offering of stock in Pfeiffer Vacuum Technology AG.

³¹ Eli Lilly and Company, Inc., Docket No. C-3594 (issued July 28, 1995).

companies and third-party payors that include the maintenance of a drug formulary,³² as well as claims processing, drug utilization review and pharmacy network administration. According to the complaint, PCS negotiates with pharmaceutical manufacturers, including Lilly, concerning placement on the formulary, as well as rebates, discounts and product prices. Under the order, Lilly, through PCS, is required to maintain an open formulary, and appoint an independent committee of healthcare professionals to determine the inclusion of drugs on the formulary. In addition, Lilly is required to ensure that PCS accepts all discounts, rebates or other concessions offered by any pharmaceutical manufacturer. The order also prohibits Lilly and PCS from exchanging non-public information.

In *Charter Medical Corporation*,³³ the complaint alleged that Charter's acquisition of 17 psychiatric facilities from National Medical Enterprise ("NME") would lessen competition substantially for in-patient services by psychiatric hospitals and psychiatric units of general acute care hospitals in several geographic markets in the United States. Charter and NME owned, respectively, the nation's largest and second largest chain of psychiatric hospitals. Under the order, Charter and NME agreed to modify the original purchase agreement to eliminate from the transaction the purchase of certain NME psychiatric facilities, including Brawner North Medical Health System, Smyrna, Georgia; Crescent Pines Hospital, Stockbridge, Georgia; MidSouth Hospital, Memphis, Tennessee; Laurel Oaks Hospital and Residential

³² A formulary is a listing, by therapeutic category, of FDA-approved ambulatory drug products used to assist pharmacies, physicians and third-party payors in prescribing and dispensing pharmaceuticals. An "open formulary" is a formulary that allows the inclusion of any FDA-approved ambulatory prescription drug product which a group of healthcare professionals determines is appropriate for inclusion in the formulary.

³³ *Charter Medical Corporation*, Docket No. C-3558 (issued February 14, 1995).

Treatment Center, Orlando, Florida; and Psychiatric Institute of Richmond, Richmond, Virginia.³⁴

In *American Home Products Corporation*,³⁵ the complaint alleged that the acquisition by American Home Products Corporation ("AHP") of American Cyanamid Company ("Cyanamid") would lessen competition substantially in the U.S. markets for the manufacture and sale of three existing tetanus and diphtheria vaccines, and the research and development of a new rotavirus vaccine. In addition, the complaint alleged a lessening of competition in the research, development, production and sale of cytokines for white blood cell and platelet restoration. According to the complaint, AHP and Cyanamid were direct competitors in the manufacture and sale of tetanus and diphtheria vaccines, and two of only three producers of rotavirus vaccines with research projects either in or near the clinical development.³⁶ Under the order, AHP must divest its tetanus and diphtheria vaccines business to a Commission-approved purchaser within four months and license Cyanamid's rotavirus research to an approved licensee within one year. The order also prohibits AHP from receiving information relating to the market for cytokines under a previously-established licensing agreement unless the information is aggregated on a worldwide basis.³⁷

³⁴ Pursuant to a June 1994 consent decree with the Department of Justice, NME was in the process of completing a divestiture of its psychiatric hospital operations. The facilities excluded from the Commission order are still subject to the Department of Justice settlement.

³⁵ *American Home Products Corporation*, Docket No. C-3557 (issued February 14, 1995).

³⁶ Rotavirus is an organism that causes severe dehydration in children under the age of 2 years.

³⁷ In July 1995, AHP requested Commission approval to divest its tetanus and diphtheria vaccines assets to Medev PLC.

In *Alliant Techsystems Inc.*,³⁸ the complaint alleged that Alliant's acquisition of Hercules Aerospace Company ("HAC") would lessen competition substantially in the research, development, manufacture and sale of weapons in the United States. Alliant is one of the largest producers of ammunition, munitions and weapons systems. HAC manufactures propellant or explosives used to activate weapons. As a result of the transaction, Alliant would be both an ammunition and munitions producer, as well as the only U.S. supplier of propellant for large-caliber ammunition. The order permits the transaction, but prohibits Alliant's newly-acquired propellant division from sharing with its ammunition and munitions divisions any non-public information that the propellant division receives from other ammunition and munitions manufacturers.

In *Wright Medical Technology, Inc., et. al.*,³⁹ the complaint alleged that Wright Medical Technology, Inc.'s acquisition of Orthomet, Inc., would lessen competition substantially in the United States market for the research, development, manufacture and sale of FDA-approved orthopaedic implants used in the human hand. Under the order, Wright is required to transfer to the Mayo Foundation for Medical Education and Research ("Mayo"), the licensor of Orthomet's implant technology, a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in the human hand and, where applicable, grant to Mayo a license in perpetuity to such assets with full rights of sublicense.

In *Reckitt & Colman plc*,⁴⁰ the complaint alleged that Reckitt and Colman's proposed acquisition of L&F Products Inc. ("L&F") from Eastman Kodak company would lessen competition substantially in the development, manufacture, marketing and sale

³⁸ *Alliant Techsystems Inc.*, Docket No. C-3567 (issued April 7, 1995).

³⁹ *Wright Medical Technology, Inc./Kidd, Kamm Equity Partners, L.P./Kidd, Kamm Investments, L.P./Kidd, Kamm Investments, Inc.*, Docket No. C-3564 (issued March 23, 1995).

⁴⁰ *Reckitt & Colman plc*, Docket No. C-3571 (issued April 4, 1995).

of carpet deodorizer products in the United States. (At the time, Reckitt and Colman also was subject to a Commission order requiring prior approval of the Commission concerning the acquisition of any rug cleaning products business.⁴¹) The order permitted the transaction but required Reckitt & Colman to divest, within six months, both its carpet-deodorizer and rug-cleaning businesses, including the trademarks for "Carpet Fresh" and "Rug Fresh" carpet deodorizer products, and "Woolite" rug cleaning products to a Commission-approved purchaser. In addition, Reckitt & Colman was required to divest, at the option of the acquirer of the carpet deodorizer business, the rights to use the "Airwick" brand name in connection with the manufacture and sale of carpet deodorizer products.

In *IVAX Corporation*,⁴² the complaint alleged that the acquisition by IVAX of Zenith Laboratories, Inc. ("Zenith"), would lessen competition substantially for the sale of generic verapamil in the United States. IVAX and Zenith are the only two companies that supply this drug, which is used to treat patients with chronic cardiac conditions. The order required that the parties exclude from the transaction Zenith's rights to market or sell the sustained-release form of verapamil hydrochloride pursuant to an exclusive distribution agreement with G.D. Searle & Co.

In *HEALTHSOUTH Rehabilitation Corporation*,⁴³ the complaint alleged that the merger of HEALTHSOUTH Rehabilitation Corporation and ReLife, Inc., would lessen competition substantially for inpatient rehabilitation hospital services in the metropolitan areas of Birmingham, Alabama; Charleston, South Carolina; and Nashville, Tennessee. ReLife operated four rehabilitation hospitals or rehabilitation hospital units in or near Birmingham,

⁴¹ Reckitt & Colman plc, Docket No. C-3306 (issued September 26, 1990); see Thirteenth Annual Report to Congress for Fiscal Year 1990.

⁴² IVAX Corporation, Docket No. C-3565 (issued March 27, 1995).

⁴³ HEALTHSOUTH Rehabilitation Corporation, Docket No. C-3570 (issued April 12, 1995).

one in Charleston and two in or near Nashville. HEALTHSOUTH, the largest rehabilitation hospital system in the United States, operated a rehabilitation facility in each of those cities. Under the order, HEALTHSOUTH was required to divest ReLife's Nashville Rehabilitation Hospital to a Commission-approved purchaser within 12 months. In addition, the settlement required HEALTHSOUTH to terminate management contracts pertaining to the operation of rehabilitation units by HEALTHSOUTH at Medical Center East in Birmingham, and by ReLife at Roper Hospital in Charleston.⁴⁴

In *Sensormatic Electronics Corporation*,⁴⁵ the complaint alleged that Sensormatic Electronics Corporation's ("Sensormatic") acquisition of Knogo Corporation would lessen competition substantially in research and development of disposable labels for source labelling, and the processes for manufacturing them in the United States and Canada. Sensormatic and Knogo manufacture electronic article surveillance systems used by hard goods retailers to prevent theft. The parties also were developing disposable labels that could be installed at the manufacturing or distribution level rather than manually by retailers, a process known as "source labelling." Under the order, Sensormatic is prohibited from acquiring Knogo's "SuperStrip" patents and intellectual property rights for source labelling in the United States and Canada. However, it is permitted to acquire a non-exclusive license to use the technology for products manufactured in North America, as well as exclusive rights to the technology outside the United States and Canada.

In *Del Monte Foods Company/Del Monte Corporation/Pacific Coast Producers*,⁴⁶ the complaint alleged that Del Monte's and

⁴⁴ In June 1996, the Commission approved HEALTHSOUTH's application to divest Nashville Rehabilitation Hospital to Edgefield Rehabilitation L.L.C.

⁴⁵ Sensormatic Electronics Corporation, Docket No. C-3572 (issued April 18, 1995).

⁴⁶ Del Monte Foods Company/Del Monte Corporation/Pacific
(continued...)

Pacific Coast Producers's ("PCP") long-term supply agreement would lessen competition substantially in the manufacture and sale of canned fruit in the United States. The parties are leading producers of canned peaches, pears, fruit cocktail and fruit mix. According to the complaint, the parties' 1992 supply agreement gave Del Monte the right to virtually all of PCP's output of canned fruit, as well as an option to purchase PCP outright. The final order required that Del Monte and PCP terminate the option agreement and certain provisions of the supply agreement for the 1995 canning season within three days, and to terminate the remaining provisions of the supply agreement by the end of June 1995.

In *Lockheed Corporation/Martin Marietta Corporation/Lockheed Martin Corporation*,⁴⁷ the complaint alleged that the merger between Lockheed and Martin Marietta would lessen competition substantially in the United States markets for research, development, manufacture and sale of satellites for use in space based early warning systems; military aircraft; and expendable launch vehicles ("ELV"). The parties were direct competitors in the manufacture of space-based early warning satellite systems, and each was involved in an exclusive teaming arrangement with one of the only two suppliers of electro-optical sensors used in those systems. According to the complaint, the transaction would have vertically integrated Lockheed Martin in the manufacture of both tactical fighter aircraft and "LANTIRN," a navigation and targeting infrared system for military aircraft. In addition, the complaint alleged that both companies manufactured satellites and ELVs, which are used to launch satellites into orbit. Under the order, the combined company, Lockheed Martin, would be prohibited from enforcing exclusivity provisions contained in teaming agreements with sensor manufacturers. The order also prohibits the parties' military aircraft division from gaining access to any non-public information that the parties' electronics division receives from competing military aircraft

⁴⁶(...continued)

Coast Producers, Inc., Docket No. C-3569 (issued April 11, 1995).

⁴⁷ *Lockheed Corporation/Martin Marietta Corporation/Lockheed Martin Corporation*, Docket No. C-3576 (issued May 9, 1995).

manufacturers when providing LANTIRN to competing aircraft producers. In addition, the order prohibits the parties from making any modifications to LANTIRN that discriminate against other military aircraft manufacturers. Finally, the order prohibits the parties' ELV divisions from gaining access to any non-public information that their satellite divisions receive from competing ELV suppliers when those competing suppliers launch the parties' satellites.⁴⁸

In *Montedison S.p.A./HIMONT Incorporated/Royal Dutch Petroleum Company/The "Shell" Transport and Trading Company, p.l.c./Shell Oil Company*,⁴⁹ the complaint alleged that the proposed six billion dollar joint venture between Montedison and Shell would lessen competition substantially in the worldwide markets of polypropylene technology, polypropylene licensing and polypropylene catalysts; and in the United States/Canada markets of polypropylene resin and polypropylene impact copolymer resin. The complaint also alleged that the proposed joint venture would have an adverse effect on United States export trade. According to the complaint, Shell, through its United States licensing and production joint venture with Union Carbide Corporation, and Montedison are the two largest polypropylene producers and the two dominant licensors of current polypropylene technology worldwide. Polypropylene, which is the lowest cost thermoplastic resin, has distinct performance characteristics and superior physical properties, including high temperature resistance and stiffness. The order, among other things, required Shell to divest all of its polypropylene assets to Union Carbide Corporation within six months.⁵⁰

⁴⁸ In order to launch a satellite successfully, ELV manufacturers provide extensive competitively sensitive proprietary information to satellite manufacturers.

⁴⁹ *Montedison S.p.A./HIMONT Incorporated/Royal Dutch Petroleum Company/The "Shell" Transport and Trading Company, p.l.c./Shell Oil Company*, Docket No. C-3580 (issued May 25, 1995).

⁵⁰ In December 1995, the Commission approved Shell's plan to divest its polypropylene business to Union Carbide

(continued...)

In *The Penn Traffic Company*,⁵¹ the complaint alleged that the proposed acquisition by Penn Traffic of 45 "Acme" supermarkets from American Stores Company would lessen competition substantially for the retail sale of food and grocery products in supermarkets in three areas of northeastern Pennsylvania. Penn Traffic and Acme are leading operators of grocery stores in the eastern U.S. Under the order, Penn Traffic was permitted to complete the transaction but was required to divest one Acme supermarket in each of Towanda, Mount Carmel and Pittston, Pennsylvania, to a Commission-approved purchaser within 12 months.⁵²

In *Tele-Communications, Inc.*,⁵³ the complaint alleged that Tele-Communication Corporation's ("TCI") proposed acquisition of TeleCable Corporation would lessen competition substantially in the distribution of multichannel video programming by cable television in the Columbus, Georgia, area. TCI and TeleCable are the two largest of three cable television providers in the geographic market. Under the order, TCI was required to divest either TCI's or TeleCable's cable television system operating in Muscogee and Harris Counties within 12 months to a Commission-approved purchaser.⁵⁴

⁵⁰ (...continued)
Corporation.

⁵¹ The Penn Traffic Company, Docket No. C-3577 (issued May 15, 1995).

⁵² In January 1997, the Commission granted Penn Traffics' petition to end its obligation to divest one of two supermarkets in Mount Carmel. According to the Commission, Penn Traffic had demonstrated that new entry eliminated the need for divestiture in that market.

⁵³ *Tele-Communications, Inc.*, Docket No. C-3575 (issued May 3, 1995).

⁵⁴ In May 1996, the Commission approved the application of TCI to divest its Columbus, Georgia, cable television system to Charter Communications, Inc.

In *Service Corporation International*,⁵⁵ the complaint alleged that Service Corporation International's ("SCI") proposed acquisition of Uniservice Corporation would lessen competition substantially in the provision of funerals and perpetual care cemetery services in and around Medford, Oregon. Under the order, SCI is required to divest Uniservice's Medford facilities, including two funeral homes, a cemetery and a crematory, to a Commission-approved purchaser within 12 months.⁵⁶

In *Schnuck Markets, Inc.*,⁵⁷ the complaint alleged that Schnuck Markets Inc.'s ("Schnuck") acquisition of National Holdings, Inc., and certain affiliates ("National"), would lessen competition substantially in the retail sale of food and grocery products in supermarkets in the St. Louis, Missouri, area.⁵⁸ Under the order, Schnuck was required to divest a total of 24 supermarkets in the Missouri counties of Franklin, Jefferson, Lincoln, St. Charles, St. Louis and Warren, as well as in the city of St. Louis; and in the Illinois counties of Clinton, Jersey, Madison, Monroe and St. Clair to a Commission-approved buyer within 12 months.⁵⁹

⁵⁵ *Service Corporation International*, Docket No. C-3579 (issued May 16, 1995).

⁵⁶ In June 1996, the Commission approved the application of SCI to divest Perl Funeral Home, Perl with Siskiyou Funeral Home and Siskiyou Memorial Park to Shirley and Charles Kern.

⁵⁷ *Schnuck Markets, Inc.*, Docket No. C-3585 (issued June 8, 1995).

⁵⁸ In November 1994, Schnuck entered into an agreement with National to acquire its supermarkets in Illinois, Missouri, Louisiana, Mississippi and Alabama. At that time, Schnuck also had an agreement with Schwegmann Giant Super Markets, Inc., whereby Schwegmann would purchase, concurrent with the closing of the transaction between National and Schnucks, the 28 National supermarkets located in Louisiana, Mississippi and Alabama. See *infra*.

⁵⁹ In March 1996, the Commission approved Schnuck's application to divest 23 National supermarkets to Family Company
(continued...)

In *Schwegmann Giant Super Markets, Inc.*,⁶⁰ the complaint alleged that Schwegmann Giant Super Markets' ("Schwegmann") acquisition of certain assets of National Holdings, Inc., would lessen competition substantially in the retail sale of food and grocery products in supermarkets in the metro New Orleans, Louisiana, area. Under the order, Schwegmann was required to divest a total of seven National supermarkets in the Louisiana counties of Orleans, Jefferson and St. Bernard to a Commission-approved purchaser within 12 months.⁶¹

In *Glaxo plc*,⁶² the complaint alleged that Glaxo's \$15 billion acquisition of Wellcome plc would lessen competition substantially in the United States market for the research and development of non-injectable 5HT_{1D} agonists. 5HT_{1D} agonists are a specific class of drugs known to act on receptors in the human body that are responsible for migraine attacks. Under the final order, Glaxo was required to divest, within nine months, Wellcome's worldwide assets relating to the research and

⁵⁹ (...continued)

of America. (The divestiture of Schnuck's fee interest in four of the properties to Four Store Partners, LLC, was approved in October 1996.) In May 1996, the Commission approved Schnuck's application to divest one supermarket located in Ladue, Missouri, to Wild Oats Markets, Inc.

⁶⁰ *Schwegmann Giant Super Markets, Inc.*, Docket No. C-3584 (issued June 2, 1995).

⁶¹ In August 1996, the Commission approved the application of Schwegmann to divest the "Canal Villere" supermarket at 135 Robert E. Boulevard in New Orleans to M. Robert Enterprises, Inc., and the "That Stanley!" supermarket at 9319 Jefferson Highway in River Ridge to Breaux Mart Supermarkets, Inc. In October 1996, the Commission approved Schwegmann's application to divest the "Canal Villere" supermarket at 5245 Veterans Memorial Highway in Metairie to Rouse's Enterprises, Inc., and the "That Stanley!" supermarket at 315 Jud Perez in Chalmette to Stephen C. Fecke. At that time, the Commission also appointed a trustee to sell the supermarket at 4223 Chef Menteur Highway in New Orleans.

⁶² *Glaxo plc*, Docket No. C-3586 (issued June 14, 1995).

development, manufacture, distribution and sale of non-injectable 5HT1D agonists.⁶³

In *Columbia/HCA Healthcare Corporation*,⁶⁴ the complaint alleged that the merger of Columbia/HCA Healthcare Corporation ("Columbia/HCA") and Healthtrust, Inc. - The Hospital Company ("Healthtrust") would lessen competition substantially for the production and sale of acute care inpatient hospital services in the geographic areas of Pensacola, Okaloosa and Orlando, Florida; Ville Platte-Mamou-Opelousas, Louisiana; Denton, Texas; and Salt Lake City/Ogden, Utah. The transaction would combine the two largest hospital chains in the country. Under the order, Columbia/HCA is required to divest, within 12 months, the following hospitals: Medical Center of Santa Rosa, Inc., and North Okaloosa Medical Center Hospital in Milton and Crestview, Florida, respectively; Denton Regional Medical Center or Denton Community Hospital in Denton, Texas; and Ville Platte Medical Center in Ville Platte, Louisiana. The order also required, within nine months, the divestiture of three hospitals in Utah, including Pioneer Valley Hospital in West Valley City; Jordan Valley Hospital in West Jordan; and Davis Hospital and Medical Center in Layton. In addition, Columbia/HCA was required to terminate the SSH Joint Venture, which owns and operates the South Seminole Hospital in Longwood, Florida, by either divesting Healthtrust's interest in the partnership or purchasing the interest of Orlando Regional Health System, Inc., within six months.⁶⁵

⁶³ In September 1996, the Commission approved the application of Glaxo to divest the worldwide assets relating to the research, development, manufacture, distribution and sale of a migraine headache medicine to Zeneca Limited, which is based in London, England.

⁶⁴ *Columbia/HCA Healthcare Corporation*, Docket No. C-3619 (issued October 3, 1995).

⁶⁵ In May 1996, the Commission approved the applications of Columbia/HCA to divest: (1) Davis Hospital and Medical Center in Layton, Utah; Pioneer Valley Hospital in West Valley City, Utah; and Medical Center of Santa Rosa in Milton, Florida, to
(continued...)

In *The Scotts Company*,⁶⁶ the complaint alleged that Scotts' acquisition of Stern's Miracle-Gro Products, Inc., would lessen competition substantially in the United States consumer water-soluble fertilizer market. Water soluble fertilizer is a crystalline powder, which is composed principally of nitrogen, phosphorous and potash, and is applied to gardens and houseplants using a hose-end sprayer or a watering can. According to the complaint, Stern's "Miracle-Gro" and Scotts' "Peters" brand were the first and third largest selling consumer water soluble fertilizers, respectively. Under the final order, Scotts was required to divest, no later than December 31, 1995, its Peters Consumer Water Soluble Fertilizer business to Alljack & Company, or another Commission-approved purchaser.

In *Silicon Graphics, Inc.*,⁶⁷ the complaint alleged that Silicon Graphics, Inc.'s ("SGI") acquisitions of Alias Research Inc. ("Alias") and Wavefront Technologies, Inc. ("Wavefront") would lessen competition substantially in the development, production and sale of entertainment graphics workstations and entertainment graphics software in the United States and the world. According to the complaint, SGI is the dominant provider of entertainment graphics workstations, with over 90 percent of

⁶⁵ (...continued)

Paracelsus Healthcare Corporation of Pasadena, California; and (2) the Emergency Medical Service business of the Santa Rosa Medical Center to Rural/Metro Corporation of Scottsdale, Arizona. In June 1996, Columbia/HCA applied for approval to divest the 50 percent interest of Healthtrust in the SSH Joint Venture to Orlando Regional Healthcare System. In August 1996, the Commission approved Columbia/HCA's application to divest the Ville Platte Medical Center to Ville Platte Medical Center, Inc., and Hospital Service District No. 1 of Evangeline Parish. In November 1996, the Commission approved Columbia/HCA's application to divest Denton community Hospital to NetCare Health Systems, Inc.

⁶⁶ The Scotts Company, Docket No. C-3613 (issued September 8, 1995).

⁶⁷ Silicon Graphics, Inc., Docket No. C-3626 (issued November 14, 1995).

the market. Alias and Wavefront are two of the three leading developers and sellers of entertainment graphics software required by workstation manufacturers. The order would permit the transactions but required SGI to port ALIAS Animator™ and ALIAS PowerAnimator™ entertainment products to another workstation manufacturer; and to maintain an open architecture, and publish the "Application Program Interfaces" for its computers and operating systems so that other software producers may develop and sell entertainment software.

In *Hoechst AG*,⁶⁸ the complaint alleged that Hoechst's acquisition of Marion Merrell Dow Inc. ("MMD") would lessen competition substantially for the research, development, manufacture and sale of (1) once-a-day diltiazem, (2) oral dosage forms of mesalamine, (3) rifampin and (4) drugs approved by FDA for the treatment of intermittent claudication.⁶⁹ Under the order, Hoechst was permitted to acquire MMD,⁷⁰ but was required, within seven days, to provide Biovail Corporation International ("Biovail") with a letter of access to the toxicology data necessary to secure additional FDA approvals for Tiazac®, the once-a-day diltiazem product in development by Hoechst and Biovail. The order also required Hoechst to divest, within nine months, either its own intermittent claudication treatment, Trental®, or one in development by MMD, known as Beraprost. In addition, the order required Hoechst to divest, within nine months, either Pentasa®, MMD's mesalamine product, or the generic formulation of mesalamine Hoechst was developing. Finally, the

⁶⁸ *Hoechst AG*, Docket No. C-3629 (issued December 5, 1995).

⁶⁹ Diltiazem is used to treat hypertension and angina; mesalamine is a treatment for certain gastrointestinal diseases; and rifampin is used to treat tuberculosis. Intermittent claudication involves a severe cramping in the legs as a result of arteriosclerosis.

⁷⁰ Hoechst was permitted to consummate the transaction prior to the conclusion of the Commission's investigation under the terms of a Hold Separate Agreement, which provided that MMD would be operated separately from Hoechst until the Commission completed its investigation.

order required Hoechst to divest, within nine months, Rifadin®, MMD's treatment for tuberculosis, or Hoechst's generic formulation of rifampin which was in development.⁷¹

In *Mustad International Group NV/Mustad Connecticut, Inc.*,⁷² the complaint alleged that a series of acquisitions by Mustad International and its subsidiary, Mustad Connecticut, would lessen competition substantially for the manufacture and sale of rolled horseshoe nails in the United States or the world. According to the complaint, between 1985 and 1993, Mustad acquired control of the horseshoe nail businesses of Capewell Manufacturing Company ("Capewell"), Cooper Horseshoe Nail Co., Ltd., Emcoclavos S.A. and Steward Engineering Company, Ltd. As a result of these acquisitions, Mustad became the largest producer and seller of rolled horseshoe nails in the world with more than a 90 percent share of sales. Under the final order, Mustad was required to divest either the Capewell manufacturing assets as an ongoing business, or four fully-functioning nail machines and one spare machine to a Commission-approved acquirer by May 15, 1996.⁷³

In *Phillips Petroleum Company/Enron Corp.*,⁷⁴ the complaint alleged that Phillips Petroleum Company's ("Phillips") acquisition of Enron Anadarko Gathering Company and Transwestern Anadarko Gathering company, two subsidiaries of Enron Corp., would lessen competition substantially for natural gas gathering services or transportation in the Texas counties of Hansford,

⁷¹ In January 1997, the Commission approved the application of Hoechst to divest Beraprost to Bristol-Myers Squibb Company.

⁷² *Mustad International Group NV/Mustad Connecticut, Inc.*, Docket No. C-3624 (issued October 30, 1995).

⁷³ In September 1996, the Commission approved the application of Mustad to divest certain assets relating to the horseshoe nailmaking business to Metallurgica Rusconi Domenico SAS, which owns the "Mondial" trademark and is based in northern Italy.

⁷⁴ *Phillips Petroleum Company and Enron Corp.*, Docket No. C-3634 (issued December 28, 1995).

Ochiltree and Lipscomb, and of Beaver County, Oklahoma ("Panhandle counties"). Phillips and Enron are the only providers of natural gas gathering services in many areas of the Texas Panhandle. The final order required the parties to modify the purchase agreement to eliminate from the transaction 830 specified miles of pipe and related gas gathering assets within the Panhandle counties.

In *Columbia/HCA Healthcare Corporation*,⁷⁵ the complaint alleged that Columbia/HCA Healthcare Corporation's ("Columbia/HCA") acquisition of John Randolph Medical Center ("John Randolph") would lessen competition substantially for psychiatric hospital services in the Tri-Cities area of south central Virginia, encompassing: the independent cities of Colonial Heights, Hopewell, and Petersburg; Dinwiddie and Prince George counties; and southwestern Charles City and southeastern Chesterfield counties. Columbia/HCA and John Randolph are two of only three providers of psychiatric hospital services in that geographic area. Under the order, Columbia/HCA was permitted to acquire John Randolph but was required to divest Poplar Springs Hospital in Petersburg, Virginia, to a Commission-approved purchaser within 12 months.

In *First Data Corporation*,⁷⁶ the complaint alleged that First Data's acquisition of First Financial Management Corporation ("FFMC") would lessen competition substantially in the sale of consumer money wire transfer services in the United States. According to the complaint, First Data's "MoneyGram" and FFMC's "Western Union" are the only providers of consumer money wire transfers. Under the order, First Data was required to divest either its own consumer money wire transfer business or

⁷⁵ Columbia/HCA Healthcare Corporation, Docket No. C-3627 (issued November 24, 1995).

⁷⁶ First Data Corporation, Docket No. C-3635 (issued January 16, 1996).

In August 1994, the Commission challenged First Data's bid to acquire Western Union Financial Services on the same grounds. Subsequently, First Financial acquired Western Union. See Seventeenth Annual Report to Congress for fiscal year 1994.

that of FFMC within 12 months to a Commission-approved purchaser.⁷⁷

ASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

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

First, as indicated in past annual reports, one of the premerger notification program's primary objectives, eliminating the so-called "midnight merger," has been achieved. The requirement that parties file and wait ensures that virtually all significant mergers or acquisitions occurring in the United States will be reviewed by the antitrust agencies prior to consummation. The agencies generally have the opportunity to challenge unlawful transactions before they occur, thus avoiding the problem of constructing effective post-acquisition relief.

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

Finally, the existence of the premerger notification program alerts businesses to the antitrust concerns raised by proposed transactions. In addition, the greatly increased probability that antitrust violations will be detected prior to consummation may deter some competitively questionable transactions. Prior to the premerger notification program, businesses could, and frequently did, consummate transactions which raised significant antitrust concerns, before the antitrust agencies had the opportunity to consider adequately their competitive effects.

⁷⁷ In November 1996, the Commission approved the application of First Data to divest its "MoneyGram" business to a newly-formed corporation, MoneyGram Payment Systems, Inc.

The enforcement agencies were forced to pursue lengthy post-acquisition litigation during the course of which the consummated transaction continued in place (and afterwards as well, where effective post-acquisition relief was not possible or available). Because the premerger notification program requires reporting before consummation, this problem has been significantly reduced.

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

List of Appendices

- Appendix A - Summary of Transactions, Fiscal Years 1986-1995
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1986-1995.
- Appendix C - Transactions in Which Additional Information Was Requested for Fiscal Years 1986-1995.

List of Exhibits

- Exhibit A - Statistical Tables for Fiscal Year 1995, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest.

Appendix A

Summary of Transactions;

Fiscal Years 1986-1995

1

APPENDIX A
SUMMARY OF TRANSACTIONS
FISCAL YEARS

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
TRANSACTIONS REPORTED	1,949	2,533	2,746	2,883	2,262	1,529	1,589	1,846	2,305	2,816
FILINGS RECEIVED 1/	3,611	4,742	5,172	5,530	4,272	2,914	3,030	3,559	4,403	5,410
TRANSACTIONS IN WHICH A SECOND REQUEST COULD HAVE BEEN ISSUED 2/	1,660	2,170	2,391	2,535	1,955	1,376	1,451	1,745	2,128	2,612
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED	71	58	68	64	89	64	44	71	73	101
FTC 3/ DOJ 3/	32 39	18 40	39 29	35 29	55 34	33 31	26 18	40 31	46 27	58 43
NUMBER OF TRANSACTIONS INVOLVING A REQUEST FOR EARLY TERMINATION 4/ 5/ GRANTED 4/ NOT GRANTED 4/	1,639 1,263 362	2,264 1,752 512	2,440 1,885 555	2,582 1,937 645	1,975 1,299 676	1,321 907 414	1,403 1,020 383	1,689 1,201 488	2,081 1,508 573	2,471 1,869 602

- 1 Usually, two filings are received, one from the acquiring person and one from the acquired person when a transaction is reported. Only one application is received when an acquiring party files for an exemption under sections 7A(c)(6) or (c)(8) of the Clayton Act.
- 2 These figures are from Appendix C and are explained in footnote 1 of that Appendix.
- 3 These statistics are based on the date the request was issued and not the date the investigation was opened.
- 4 These statistics are based on the date of the H-S-R filing and not the date action was taken on the request.
- 5 Includes the following number of non-reportable transactions: twenty in 1984; eighteen in 1985; fourteen in 1986; sixteen in 1987; twenty-four in 1988; fifty-four in 1989; fifty-seven in 1990; twenty-six in 1991; thirty-five in 1992; thirty-eight in 1993; forty in 1994; and forty-eight in 1995.

NOTE: Statistics for earlier years were last reported in the Fifteenth Annual Report to Congress (April 6, 1994).

Appendix B

Number of Transactions Reported and

Filings Received by Month;

Fiscal Years 1986-1995.

APPENDIX B

Table 1. Number of Transactions Reported by Month for the Fiscal Years 1986¹ - 1995

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
October	195	290	245	259	267	148	140	163	184	273
November	187	494	216	316	371	198	180	184	221	309
December	144	199	243	267	139	121	155	160	222	216
January	108	96	161	160	160	96	97	100	156	180
February	120	104	204	201	138	97	87	110	149	170
March	149	163	224	236	179	113	135	149	167	229
April	131	162	230	202	168	120	129	131	167	177
May	211	185	228	254	187	130	142	155	220	281
June	145	197	241	264	182	122	116	151	182	252
July	180	218	223	223	156	130	154	172	208	225
August	187	194	310	273	163	156	124	204	226	237
September	92	231	221	228	152	98	130	167	203	267
TOTAL	1,949	2,533	2,746	2,883	2,262	1,529	1,589	1,846	2,305	2,816

¹ The number of transactions received in the fiscal years 1979 - 1985 was last reported in the Fifteenth Annual Report to Congress (April 6, 1994).

APPENDIX B

TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR FISCAL YEARS 1986² - 1995

	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
October	350	523	443	550	489	270	253	297	332	505
November	348	921	421	602	693	376	326	341	428	614
December	263	404	455	485	289	236	316	325	427	419
January	199	177	311	350	298	184	194	188	293	360
February	221	193	358	362	269	180	165	239	295	326
March	287	278	437	468	343	216	255	263	326	432
April	236	314	445	371	306	223	244	251	321	350
May	350	351	442	472	351	253	268	301	421	534
June	308	360	453	504	349	228	233	311	362	496
July	337	417	403	423	288	235	286	327	380	439
August	351	376	583	517	315	319	227	393	431	455
September	361	428	421	426	282	194	263	323	387	509
TOTAL	3,611	4,742	5,172	5,530	4,272	2,914	3,030	3,559	4,403	5,410

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

² The number of filings received in fiscal years 1979 - 1985 were last reported in the Fifteenth Annual Report to Congress (April 6, 1994).

Appendix C

Transactions in Which Additional

Information Was Requested;

Fiscal Years 1986-1995.

Appendix C

Investigations Where Additional Information Was Requested
Fiscal Years 1985 - 1995

Investigations In Which Second Requests Were Issued 2/	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
Transactions 1/	1,660	2,170	2,391	2,535	1,955	1,376	1,451	1,745	2,128	2,612
FTC										
Number 3/	32	18	39	35	55	33	26	40	46	58
Percent	1.9	0.8	1.6	1.4	2.8	2.4	1.8	2.2	2.2	2.2
DOJ										
Number 3/	39	40	29	29	34	31	18	31	27	43
Percent	2.3	1.8	1.2	1.1	1.7	2.3	1.2	1.8	1.3	1.6

1 These figures omit from the total number of transactions reported all transactions for which the agencies were not authorized to request additional information. These include (1) incomplete transactions (only one party filed a compliant notification); (2) transactions reported pursuant to the exemption provisions of sections 7A(c)(6) and 7A(c)(8) of the Act; and (3) transactions which were found to be non-reportable. In addition, the party filed more than one notification in the same year to acquire voting securities of the same corporation, e.g., filing for the 15% threshold and later filing for the 25% threshold, only a single consolidated transaction has been counted because, as a practical matter, the agencies do not issue more than one second request in such a case. These statistics also omit from the total number of transactions reported secondary acquisitions filed pursuant to Section 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. Appendix C in the Ninth Annual Report did not exclude secondary acquisitions. Accordingly, the numbers of transactions for 1981 - 1984, appearing herein differ from those that appear in Appendix C in that report. Note also that Appendix C in the Ninth Annual Report contained calendar year 1985 figures while this chart shows fiscal 1985 figures.

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

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

4 Earlier statistics for calendar years 1981 - 1984 were last reported in the fifteenth Annual Report to Congress (April 6, 1994).

Exhibit A

Statistical Tables

Fiscal year 1995

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

1

TABLE I

FISCAL YEAR 1995 ^{1/}
 ACQUISITIONS BY SIZE OF TRANSACTION ^{2/}
 (BY SIZE RANGE)

TRANSACTION RANGE (\$MILLIONS)	H-S-R TRANSACTIONS NUMBER 4/ PERCENT 5/	CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS ³					
		NUMBER FTC	NUMBER DOJ	PERCENT FTC	PERCENT DOJ	NUMBER FTC	NUMBER DOJ	PERCENT FTC	PERCENT DOJ	TOTAL	TOTAL
LESS THAN 15	116	3	1	2.6%	0.9%	3.4%	0	1	0.0%	0.9%	0.9%
15 UP TO 25	607	39	16	6.4%	2.6%	9.1%	5	5	0.8%	0.8%	1.6%
25 UP TO 50	697	59	16	8.5%	2.3%	10.8%	7	6	1.0%	0.9%	1.9%
50 UP TO 100	465	50	17	10.8%	3.7%	14.4%	12	6	2.6%	1.3%	3.9%
100 UP TO 150	209	33	9	15.8%	4.3%	20.1%	7	7	3.3%	3.3%	6.7%
150 UP TO 200	136	19	11	14.0%	8.1%	22.1%	5	1	3.7%	0.7%	4.4%
200 UP TO 300	127	20	12	15.7%	9.4%	25.2%	6	2	4.7%	1.6%	6.3%
300 UP TO 500	102	17	6	16.7%	5.9%	22.5%	3	3	2.9%	2.9%	5.9%
500 UP TO 1000	74	13	4	17.6%	5.4%	23.0%	4	3	5.4%	4.1%	9.5%
1000 AND UP	79	17	16	21.5%	20.3%	41.8%	9	9	11.4%	11.4%	22.8%
ALL TRANSACTIONS	2612	270	108	10.3%	4.1%	14.5%	58	43	2.2%	1.6%	3.9%

TABLE II

FISCAL YEAR 1995 1/
ACQUISITIONS BY SIZE OF TRANSACTION 2/
(CUMULATIVE)

TRANSACTION RANGE (\$ MILLIONS)	H-S-R TRANSACTIONS NUMBER 4/ PERCENT 5/		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/			
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF TOTAL		NUMBER		PERCENTAGE OF	
			FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ
LESS THAN 15	116	4.4%	3	1	0.8%	0.3%	0	1	0.0%	1.0%
LESS THAN 25	723	27.7%	42	17	11.1%	4.5%	5	6	5.0%	10.9%
LESS THAN 50	1420	54.4%	101	33	26.7%	8.7%	12	12	11.9%	23.8%
LESS THAN 100	1885	72.2%	151	50	39.9%	13.2%	24	18	23.8%	41.6%
LESS THAN 150	2094	80.2%	184	59	48.7%	15.6%	31	25	30.7%	55.4%
LESS THAN 200	2230	85.4%	203	70	53.7%	18.5%	36	26	35.6%	61.4%
LESS THAN 300	2357	90.2%	223	82	59.0%	21.7%	42	28	41.6%	69.3%
LESS THAN 500	2459	94.1%	240	88	63.5%	23.3%	45	31	44.6%	75.2%
LESS THAN 1000	2533	97.0%	253	92	66.9%	24.3%	49	34	48.5%	82.2%
ALL TRANSACTIONS	2612	100.0%	270	108	71.4%	28.6%	58	43	57.4%	100.0%

TABLE III

FISCAL YEAR 1995 1/
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY

TRANSACTIONS RANGE (\$MILLIONS)	CLEARANCE GRANTED BY AGENCY			TOTAL NUMBER OF TRANSACTIONS 4/			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP 7/			TOTAL NUMBER OF CLEARANCES GRANTED		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
				%	%	%	%	%	%	%	%	%
LESS THAN 15	3	1	4	0.1%	0.0%	0.2%	2.6%	0.9%	3.4%	0.8%	0.3%	1.1%
15 UP TO 25	39	16	55	1.5%	0.6%	2.1%	6.4%	2.6%	9.1%	10.3%	4.2%	14.6%
25 UP TO 50	59	16	75	2.3%	0.6%	2.9%	8.5%	2.3%	10.8%	15.6%	4.2%	19.8%
50 UP TO 100	50	17	67	1.9%	0.7%	2.6%	10.8%	3.7%	14.4%	13.2%	4.5%	17.7%
100 UP TO 150	33	9	42	1.3%	0.3%	1.6%	15.8%	4.3%	20.1%	8.7%	2.4%	11.1%
150 UP TO 200	19	11	30	0.7%	0.4%	1.1%	14.0%	8.1%	22.1%	5.0%	2.9%	7.9%
200 UP TO 300	20	12	32	0.8%	0.5%	1.2%	15.7%	9.4%	25.2%	5.3%	3.2%	8.5%
300 UP TO 500	17	6	23	0.7%	0.2%	0.9%	16.5%	5.8%	22.3%	4.5%	1.6%	6.1%
500 UP TO 1000	13	4	17	0.5%	0.2%	0.7%	17.6%	5.4%	23.0%	3.4%	1.1%	4.5%
100 AND UP	17	16	33	0.7%	0.6%	1.3%	21.5%	20.3%	41.8%	4.5%	4.2%	8.7%
ALL CLEARANCES	270	108	378	10.3%	4.1%	14.5%	10.3%	4.1%	14.5%	71.4%	28.6%	100.0%

CLEARANCE GRANTED AS A PERCENTAGE OF:

TABLE IV

FISCAL YEAR 1995 1/
 INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

TRANSACTION RANGE (\$ MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED ^{3/}		SECOND REQUEST INVESTIGATIONS AS A PERCENTAGE OF: ^{3/}										
	FTC	DOJ	TOTAL NUMBER OF TRANSACTIONS ^{4/}		EACH TRANSACTION RANGE GROUP ^{7/}		TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS ^{3/}		TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS ^{3/}		TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS ^{3/}		
			FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC	DOJ	FTC
LESS THAN 15	0	1	0.0%	0.0%	0.0%	0.9%	0.0%	0.9%	0.0%	1.0%	0.0%	1.0%	1.0%
15 UP TO 25	5	5	0.2%	0.2%	0.4%	0.8%	0.8%	0.8%	0.8%	1.6%	5.0%	5.0%	9.9%
25 UP TO 50	7	6	0.3%	0.2%	0.5%	1.0%	0.9%	1.9%	1.9%	1.9%	6.9%	5.9%	12.9%
50 UP TO 100	12	6	0.5%	0.2%	0.7%	2.6%	1.3%	3.9%	3.9%	3.9%	11.9%	5.9%	17.8%
100 UP TO 150	7	7	0.3%	0.3%	0.5%	3.3%	3.3%	6.7%	6.7%	6.9%	6.9%	6.9%	13.9%
150 UP TO 200	5	1	0.2%	0.0%	0.2%	3.7%	0.7%	4.4%	4.4%	5.0%	5.0%	1.0%	5.9%
200 UP TO 300	6	2	0.2%	0.1%	0.3%	4.7%	0.8%	6.3%	6.3%	5.9%	5.9%	2.0%	7.9%
300 UP TO 500	3	3	0.1%	0.1%	0.2%	2.9%	2.9%	5.8%	5.8%	3.0%	3.0%	3.0%	5.9%
500 UP TO 1000	4	3	0.2%	0.1%	0.3%	5.4%	4.1%	9.5%	4.0%	4.0%	4.0%	3.0%	6.9%
1000 AND UP	9	9	0.3%	0.3%	0.7%	11.4%	11.4%	22.8%	8.9%	8.9%	8.9%	8.9%	17.8%
ALL TRANSACTIONS	58	43	2.2%	1.6%	3.9%	2.2%	1.6%	3.9%	57.4%	42.6%	57.4%	42.6%	100.0%

TABLE V

FISCAL YEAR 1995 1/
ACQUISITIONS BY REPORTING THRESHOLD

THRESHOLD	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OF DOJ			SECOND REQUEST INVESTIGATIONS 3/		
	NUMBER 4/	PERCENT	NUMBER FTC DOJ	PERCENTAGE OF THRESHOLD GROUP FTC DOJ TOTAL	NUMBER FTC DOJ	PERCENTAGE OF THRESHOLD GROUP FTC DOJ TOTAL		
\$15 MILLION	171	6.5%	6	3.5%	0	0.0%	0.0%	
	69	2.6%	5	7.2%	0	0.0%	0.0%	
	104	4.0%	5	4.8%	0	0.0%	0.0%	
	1195	45.8%	139	11.6%	37	3.1%	5.5%	
ASSETS ONLY	1073	41.1%	115	10.7%	21	2.0%	3.2%	
ALL TRANSACTIONS	2612	100.0%	270	10.3%	58	2.2%	3.9%	

TABLE VI

FISCAL YEAR 1995 1/
TRANSACTIONS BY ASSETS OF ACQUIRING PERSONS

ASSET RANGE (\$ MILLIONS)	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ						SECOND REQUEST INVESTIGATIONS 3/					
	NUMBER	PERCENT	NUMBER	FTC	DOJ	ASSET RANGE GROUP	PERCENTAGE OF	NUMBER	FTC	DOJ	ASSET RANGE GROUP	PERCENTAGE OF		
						FTC	DOJ	TOTAL			FTC	DOJ	TOTAL	
LESS THAN 15	78	3.0%	2	1	2.6%	1.3%	3.8%	0	0	0.0%	0.0%	0.0%	0.0%	
15 UP TO 25	44	1.7%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%	0.0%	
25 UP TO 50	91	3.5%	3	1	3.3%	1.1%	4.4%	0	0	0.0%	0.0%	0.0%	0.0%	
50 UP TO 100	141	5.4%	8	7	5.7%	5.0%	10.6%	0	4	0.0%	2.8%	2.8%	2.8%	
100 UP TO 150	161	6.2%	12	1	7.5%	0.6%	8.1%	5	1	3.1%	0.6%	3.7%	3.7%	
150 UP TO 200	101	3.9%	7	7	6.9%	6.9%	13.9%	4	4	4.0%	4.0%	7.9%	7.9%	
200 UP TO 300	179	6.9%	15	10	8.4%	5.6%	14.0%	3	6	1.7%	3.4%	5.0%	5.0%	
300 UP TO 500	221	8.5%	20	8	9.0%	3.6%	12.7%	3	1	1.4%	0.5%	1.8%	1.8%	
500 UP TO 1000	263	10.1%	29	11	11.0%	4.2%	15.2%	5	2	1.9%	0.8%	2.7%	2.7%	
1000 AND UP	1332	51.0%	174	62	13.1%	4.7%	17.7%	38	25	2.9%	1.9%	4.7%	4.7%	
ASSETS NOT AVAILABLE 8/	1	0.0%	0	0	0.0%	0.0%	0.0%	0	0	0.0%	0.0%	0.0%	0.0%	
ALL TRANSACTIONS	2612	100.0%	270	108	10.3%	4.1%	14.5%	58	43	2.2%	1.6%	3.9%	3.9%	

TABLE VII

FISCAL YEAR 1995 ^{1/}
TRANSACTIONS BY SALES OF ACQUIRING PERSONS

SALES RANGE (\$MILLIONS)	H-S-R TRANSACTIONS NUMBER ^{4/} PERCENT	CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS ^{3/}				
		NUMBER FTC	NUMBER DOJ	PERCENTAGE OF SALES RANGE GROUP FTC	PERCENTAGE OF SALES RANGE GROUP DOJ	NUMBER FTC	NUMBER DOJ	PERCENTAGE OF SALES RANGE GROUP FTC	PERCENTAGE OF SALES RANGE GROUP DOJ	
LESS THAN 15	117	1	4	0.9%	3.4%	4.3%	1	0	0.9%	0.9%
15 UP TO 25	36	1	2	2.8%	5.6%	8.3%	0	0	0.0%	0.0%
25 UP TO 50	84	1	1	1.2%	1.2%	2.4%	0	0	0.0%	0.0%
50 UP TO 100	164	8	17	4.9%	10.4%	15.2%	0	4	0.0%	2.4%
100 UP TO 150	114	8	3	7.0%	2.6%	9.6%	2	1	1.8%	0.9%
150 UP TO 200	111	9	4	8.1%	3.6%	11.7%	6	0	5.4%	0.0%
200 UP TO 300	174	22	9	12.6%	5.2%	17.8%	3	5	1.7%	2.9%
300 UP TO 500	230	25	11	10.9%	4.8%	15.7%	6	4	2.6%	1.7%
500 UP TO 1000	315	29	5	9.2%	1.6%	10.8%	5	3	1.6%	1.0%
1000 AND UP	1203	128	70	10.6%	5.8%	16.5%	35	26	2.9%	2.2%
SALES NOT AVAILABLE ^{9/}	64	4	0	6.3%	0.0%	6.3%	0	0	0.0%	0.0%
ALL TRANSACTIONS	2612	236	126	9.0%	4.8%	13.9%	58	43	2.2%	1.6%
				100.0%						3.9%

TABLE VIII

FISCAL YEAR 1995 1/
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES 10/

ASSET RANGE (\$ MILLIONS)	H-S-R TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ				SECOND REQUEST INVESTIGATIONS 3/				
	NUMBER	PERCENT	NUMBER	PERCENTAGE OF ASSET RANGE GROUP		NUMBER	PERCENTAGE OF ASSET RANGE GROUP		NUMBER	PERCENTAGE OF ASSET RANGE GROUP	
			FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
LESS THAN 15	228	8.7%	16	4	7.0%	1.8%	8.8%	1	0.4%	0.4%	0.9%
15 UP TO 25	435	16.7%	36	12	8.3%	2.8%	11.0%	5	1.1%	1.4%	2.5%
25 UP TO 50	496	19.0%	50	14	10.1%	2.8%	12.9%	8	1.6%	0.8%	2.4%
50 UP TO 100	403	15.4%	50	13	12.4%	3.2%	15.6%	12	3.0%	1.2%	4.2%
100 UP TO 150	177	6.8%	23	8	13.0%	4.5%	17.5%	4	2.3%	3.4%	5.6%
150 UP TO 200	139	5.3%	13	10	9.4%	7.2%	16.5%	4	2.9%	1.4%	4.3%
200 UP TO 300	121	4.6%	18	10	14.9%	8.3%	23.1%	3	2.5%	3.3%	5.8%
300 UP TO 500	118	4.5%	11	9	9.3%	7.6%	16.9%	3	2.5%	3.4%	5.9%
500 UP TO 1000	108	4.1%	13	7	12.0%	6.5%	18.5%	1	0.9%	3.7%	4.6%
1000 AND UP	161	6.2%	15	15	9.3%	9.3%	18.6%	10	6.2%	3.7%	9.9%
ASSETS NOT AVAILABLE 11/	226	8.7%	25	6	11.1%	2.7%	13.7%	7	3.1%	0.4%	3.5%
ALL TRANSACTIONS	2612	100.0%	270	108	10.3%	4.1%	14.5%	58	2.2%	1.6%	3.9%

TABLE IX

FISCAL YEAR 1995/
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES 12/

SALES RANGE (\$MILLIONS)	H-S-R TRANSACTIONS NUMBER 4/ PERCENT	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS 3/				
		PERCENTAGE OF SALES RANGE GROUP			PERCENTAGE OF SALES RANGE GROUP				
		NUMBER FTC	NUMBER DOJ	NUMBER FTC	NUMBER DOJ	NUMBER FTC	NUMBER DOJ	NUMBER DOJ	TOTAL
LESS THAN 15	457	27	4	5.9%	0.9%	6.8%	6	1	1.5%
15 UP TO 25	248	23	9	9.3%	3.6%	12.9%	2	1	1.2%
25 UP TO 50	470	51	15	10.9%	3.2%	14.0%	8	8	3.4%
50 UP TO 100	425	53	17	12.5%	4.0%	16.5%	13	7	4.7%
100 UP TO 150	233	28	12	12.0%	5.2%	17.2%	8	4	5.2%
150 UP TO 200	95	9	2	9.5%	2.1%	11.6%	3	3	6.3%
200 UP TO 300	147	20	10	13.6%	6.8%	20.4%	2	4	4.1%
300 UP TO 500	131	25	12	19.1%	9.2%	28.2%	5	6	8.4%
500 UP TO 1000	114	10	8	8.8%	7.0%	15.8%	2	3	4.4%
1000 AND UP	153	14	12	9.2%	7.8%	17.0%	8	5	8.5%
SALES NOT AVAILABLE 13/	139	10	7	7.2%	5.0%	12.2%	1	1	1.4%
ALL TRANSACTIONS	2612	270	108	10.3%	4.1%	14.5%	58	43	3.9%

TABLE X

FISCAL YEAR 1995 ^{1/}
INDUSTRY GROUP OF ACQUIRING PERSONS

2-DIGIT SIC CODE 14/	INDUSTRY DESCRIPTION	NUMBER 4/	ACQUIRING PERSON			SECOND REQUEST		
			CLEARANCE GRANTED TO FTC OR DOJ			INVESTIGATIONS 3/		
			FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
01	Agricultural Production-Crops	2	0	0	0	0	0	0
02	Agricultural Production-Livestock and Animal Specialties	3	0	0	0	0	0	0
07	Agricultural Services	0	0	0	0	0	0	0
08	Forestry	0	0	0	0	0	0	0
10	Metal Mining	6	0	0	0	0	0	0
12	Coal Mining	7	1	0	1	0	0	0
13	Oil and Gas Extraction	106	2	4	6	0	2	2
14	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	7	2	0	2	1	1	2
15	Building Construction - General Contractors and Operative Builders	8	0	0	0	0	0	0
16	Heavy Construction other than Building Construction-Contractors	14	3	1	4	0	0	0

17	Construction-Special Grade Contractors	3	2	0	2	0	0	0	0
20	Food and Kindred Products	89	13	6	19	3	4	7	7
21	Tobacco Products	3	0	0	0	0	0	0	0
22	Textile Mill Products	24	2	1	3	0	1	1	1
23	Apparel and Other Finished Products Made from Fabrics and Similar Materials	14	1	1	2	0	0	0	0
24	Lumber and Wood Products, Except Furniture	18	1	0	1	0	0	0	0
25	Furniture and Fixtures	8	0	1	1	0	0	0	0
26	Paper and Allied Products	31	4	1	5	0	1	1	1
27	Printing, Publishing and Allied Products	68	7	4	11	3	2	5	5
28	Chemicals and Allied Products	129	44	1	45	7	1	8	8
29	Petroleum Refining and Related Industries	15	2	0	2	0	0	0	0
30	Rubber and Misc. Plastics Products	36	10	0	10	3	0	3	3
31	Leather and Leather Products	1	0	0	0	0	0	0	0
32	Stone, Clay, Glass, and Concrete Products	24	6	1	7	1	0	1	1
33	Primary Metal Industries	36	1	3	4	0	3	3	3
34	Fabricated Metal Products, Except Machinery and Transportation Equipment	37	6	2	8	0	0	0	0

35	Industrial and Commercial Machinery and Computer Equipment	80	9	11	20	3	4	7
36	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	63	8	3	11	2	3	5
37	Transportation Equipment	51	6	9	15	0	2	2
38	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	71	25	7	32	6	0	6
39	Miscellaneous Manufacturing Industries	17	3	2	5	1	2	3
40	Railroad Transportation	5	0	0	0	0	0	0
41	Local and Suburban Transit and Interurban Highway Passenger Transportation	4	0	0	0	0	0	0
42	Motor Freight Transportation and Warehousing	9	0	1	1	0	0	0
44	Water Transportation	8	2	0	2	0	0	0
45	Transportation by Air	7	0	1	1	0	1	1
46	Pipelines, Except Natural Gas	5	0	1	1	0	0	0
47	Transportation Services	8	1	0	1	1	0	1
48	Communications	243	16	6	22	4	0	4
49	Electric, Gas, and Sanitary Services	81	6	7	13	1	3	4

50	Wholesale Trade-Durable Goods	103	4	5	9	0	2	2
51	Wholesale Trade-Nondurable Goods	84	7	1	8	2	0	2
52	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	1	0	0	0	0	0	0
53	General Merchandise Stores	18	6	0	6	0	0	0
54	Food Stores	20	4	0	4	3	0	3
55	Automotive Dealers and Gasoline Service Stations	11	1	0	1	0	0	0
56	Apparel and Accessory Stores	10	1	0	1	0	0	0
57	Home Furniture, Furnishings, and Equipment Stores	6	0	0	0	0	0	0
58	Eating and Drinking Places	15	1	0	1	0	0	0
59	Miscellaneous Retail	32	8	0	8	0	0	0
60	Depository Institutions	41	1	2	3	0	0	0
61	Nondepository Credit Institutions	45	0	0	0	0	0	0
62	Security and Commodity Brokers, Dealers Exchanges, and Services	41	0	0	0	0	0	0
63	Insurance Carriers	123	2	2	4	0	3	3
64	Insurance Agents, Brokers, and Services	15	0	0	0	0	0	0
65	Real Estate	35	2	0	2	1	0	1

67	Holding and Other Investment Offices	102	4	1	5	0	0	0	0
70	Hotels, Rooming Houses, Camps, and Other Lodging Places	46	0	0	0	0	0	1	1
72	Personal Services	10	5	0	5	2	0	0	2
73	Business Services	134	15	7	22	2	3	3	5
75	Automotive Repair, Services, and Parking	4	0	0	0	0	0	0	0
78	Motion Pictures	20	1	2	3	0	1	1	1
79	Amusement and Recreation Services	27	0	0	0	0	0	0	0
80	Health Services	208	20	12	32	11	3	14	14
81	Legal Services	0	0	0	0	0	0	0	0
82	Educational Services	4	0	0	0	0	0	0	0
83	Social Services	1	0	0	0	0	0	0	0
86	Membership Organizations	4	0	0	0	0	0	0	0
87	Engineering, Accounting, Research Management, and Related Services	36	3	1	4	0	0	0	0
89	Miscellaneous Services	4	1	1	2	0	0	0	0
99	Nonclassifiable Establishments	1	0	0	0	0	0	0	0
00	Not Available <u>15/</u>	70	1	0	1	1	0	0	1

ALL TRANSACTIONS

2612

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TABLE XI

FISCAL YEAR 1995
INDUSTRY GROUP OF ACQUIRED ENTITY^{17/}

2-DIGIT SIC CODE ^{14/}	INDUSTRY DESCRIPTION	ACQUIRED ENTITY						NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS	
		CLEARANCE GRANTED TO FTC OR DOJ		SECOND REQUEST INVESTIGATIONS ^{3/}		NUMBER OF 2-DIGIT INTRA-INDUSTRY TRANSACTIONS			
		NUMBER ^{4/}	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
01	Agricultural Production-Crops	6	0	0	0	0	0	0	2
02	Agricultural Production-Livestock and Animal Specialties	2	0	0	0	0	0	0	2
07	Agricultural Services	0	0	0	0	0	0	0	0
08	Forestry	1	0	0	0	0	0	0	0
10	Metal Mining	9	0	1	1	0	0	0	3
12	Coal Mining	9	1	0	1	0	0	0	6
13	Oil and Gas Extraction	111	2	3	5	0	2	2	90
14	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	7	2	0	2	1	1	2	5
15	Building Construction - General Contractors and Operative Builders	6	0	0	0	0	0	0	4
16	Heavy Construction other than Building Construction-Contractors	16	3	2	5	0	0	0	11

17	Construction-Special Grade Contractors	3	1	0	1	0	0	0	1
20	Food and Kindred Products	76	13	5	18	5	4	9	63
21	Tobacco Products	5	0	0	0	0	0	0	2
22	Textile Mill Products	20	2	1	3	0	1	1	15
23	Apparel and Other Finished Products Made from Fabrics and Similar Materials	16	1	1	2	0	0	0	9
24	Lumber and Wood Products, Except Furniture	17	1	1	2	0	0	0	14
25	Furniture and Fixtures	7	0	0	0	0	0	0	5
26	Paper and Allied Products	31	4	1	5	0	1	1	26
27	Printing, Publishing and Allied Products	67	7	4	11	4	2	6	55
28	Chemicals and Allied Products	103	33	1	34	7	1	8	79
29	Petroleum Refining and Related Industries	11	1	0	1	0	0	0	8
30	Rubber and Misc. Plastics Products	47	9	0	9	2	0	2	29
31	Leather and Leather Products	1	0	0	0	0	0	0	0
32	Stone, Clay, Glass, and Concrete Products	28	6	1	7	1	0	1	22
33	Primary Metal Industries	27	1	2	3	0	3	3	17
34	Fabricated Metal Products, Except Machinery and Transportation Equipment	47	6	2	8	0	0	0	25

35	Industrial and Commercial Machinery and Computer Equipment	95	12	10	22	3	4	7	62
36	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	62	8	3	11	2	3	5	43
37	Transportation Equipment	50	5	6	11	0	1	1	36
38	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	60	23	7	30	5	0	5	54
39	Miscellaneous Manufacturing Industries	18	3	2	5	1	2	3	12
40	Railroad Transportation	7	1	0	1	0	0	0	3
41	Local and Suburban Transit and Interurban Highway Passenger Transportation	4	0	0	0	0	0	0	4
42	Motor Freight Transportation and Warehousing	5	0	1	1	0	0	0	5
44	Water Transportation	10	2	0	2	0	0	0	7
45	Transportation by Air	8	0	1	1	0	1	1	5
46	Pipelines, Except Natural Gas	7	0	1	1	0	0	0	5
47	Transportation Services	9	0	0	0	0	0	0	4
48	Communications	251	17	6	23	4	1	5	218
49	Electric, Gas, and Sanitary Services	76	7	6	13	1	2	3	63
50	Wholesale Trade-Durable Goods	98	3	6	9	0	3	3	81

51	Wholesale Trade-Nondurable Goods	81	7	1	8	2	0	2	64
52	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	2	0	0	0	0	0	0	1
53	General Merchandise Stores	19	7	0	7	0	0	0	14
54	Food Stores	24	4	0	4	3	0	3	17
55	Automotive Dealers and Gasoline Service Stations	14	1	0	1	0	0	0	7
56	Apparel and Accessory Stores	6	2	0	2	0	0	0	4
57	Home Furniture, Furnishings, and Equipment Stores	10	0	0	0	0	0	0	6
58	Eating and Drinking Places	21	1	0	1	0	0	0	11
59	Miscellaneous Retail	40	8	0	8	0	0	0	26
60	Depository Institutions	16	1	0	1	1	0	1	13
61	Nondepository Credit Institutions	48	0	0	0	0	0	0	39
62	Security and Commodity Brokers, Dealers Exchanges, and Services	35	0	0	0	0	0	0	28
63	Insurance Carriers	110	2	2	4	0	3	3	89
64	Insurance Agents, Brokers, and Services	18	0	0	0	0	0	0	13
65	Real Estate	53	2	0	2	1	0	1	30

67	31	4	1	5	0	0	0	0	0	13
70	47	0	0	0	0	0	0	0	0	37
72	11	5	0	5	2	0	2	0	2	10
73	150	13	7	20	2	3	5	5	5	105
75	6	0	0	0	0	0	0	0	0	4
76	2	0	0	0	0	0	0	0	0	0
78	17	1	3	4	0	1	1	1	1	15
79	30	0	0	0	0	0	0	0	0	18
80	198	20	12	32	10	3	13	13	13	187
81	0	0	0	0	0	0	0	0	0	0
82	3	0	0	0	0	0	0	0	0	0
83	4	0	0	0	0	0	0	0	0	1
86	3	0	0	0	0	0	0	0	0	2
87	47	8	1	9	0	0	0	0	0	26
89	1	1	0	1	0	0	0	0	0	0
99	0	0	0	0	0	0	0	0	0	0
00	132	9	7	16	1	1	2	2	2	6

ALL TRANSACTIONS

2612

270

108

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58

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101

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FISCAL YEAR 1995
FOOTNOTES

- 1J Fiscal 1995 includes transactions reported between October 1, 1994 and September 30, 1995.
- 2J The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to Item 3 (c) of the notification and report form.
- 3J Based on the date the second request was issued.
- 4J During fiscal year 1995, 2812 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 2612, reflects adjustments to eliminate the following types of transactions: (1) 16 transactions reported under Section (c)(6) and 52 transactions reported under Section (c)(8) (transactions involving certain regulated industries and financial businesses); (2) 65 transactions which were followed by separate notifications for one or more additional transactions between the same parties during fiscal 1995 (such transactions are listed here as a single consolidated transaction); (3) 61 transactions found to be non-reportable; and (4) 6 incomplete transactions (only one party in each transaction filed a compliant notification. The table does not, however, exclude competing offers or multiple-party transactions (transactions involving two or more acquiring persons).
- 5J Percentage of total transactions.
- 6J Percentage of transaction range group.
- 7J Percentages also appear in TABLE I.
- 8J This category is composed of newly-formed acquiring persons and transactions withdrawn before staff could make a detailed analysis of the acquisition.
- 9J This category is composed of newly-formed acquiring persons, foreign acquiring persons with no United States revenues, and acquiring persons who had not derived any revenues from their investments at the time of filing.
- 10J The assets of the acquired entity were taken from responses to Item 2(b)(v) (Assets to be Acquired) or from Items 4(a) or (b) (SEC documents and annual reports) of the premerger notification and report form.
- 11J The assets were not available primarily because the acquired entity's financial data was consolidated within its ultimate parent.
- 12J The sales of the acquired entity were taken from Items 4(a) and (b) (SEC documents and annual reports) or responses to Item 5 (dollar revenues) of the premerger notification and report form.
- 13J Transactions in this category are represented by the acquisitions of newly-formed corporations or corporate joint ventures from which no sales were generated, and acquisitions of assets which had produced no sales or revenue during the year prior to filing the notification and report form.
- 14J 2-Digit SIC codes are part of the system of Standard Industrial Classification established by the United States Government Standard Classification Manual, 1987, Executive Office of the President - Office of Management and Budget. The SIC groupings used in this table were determined from responses submitted by filing parties to Item 5 of the premerger notification and report form.
- 15J Transactions included in this category represent newly-formed companies, companies with no United States operations and notifications filed by some individuals.
- 16J Transactions in this category include filings by newly-formed entities.
- 17J The intra-industry transactions column identifies the number of acquisitions in which both the acquiring and acquired persons derived revenues in the same industry.

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

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