

**FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION**



**DEPARTMENT OF JUSTICE
ANTITRUST DIVISION**

ANNUAL REPORT TO CONGRESS FISCAL YEAR 2002

**Pursuant to Subsection (j) of Section 7A of the Clayton Act
Hart-Scott-Rodino Antitrust Improvements Act of 1976
(Twenty-Fifth Report)**

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INTRODUCTION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act” or the “Act”), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, gives the Federal Trade Commission (the “Commission”) and the Antitrust Division of the Department of Justice (the “Antitrust Division” or “Division”) the opportunity to obtain effective preliminary relief against anticompetitive mergers and to prevent interim harm to competition and consumers. The premerger notification program was instrumental in detecting transactions that were the subject of the numerous enforcement actions brought in fiscal year 2002 to protect consumers -- individuals, businesses, and government -- against anticompetitive mergers.

Fiscal year 2002 marked the first full year of operation under the extensive reforms to the HSR Act.¹ The increase in the reporting thresholds inherently resulted in a decrease in the number of reportable transactions as did the overall decline in merger activity from that of recent years. (See Figure 1 below.) In fiscal year 2002, 1,187 transactions were reported under the Act, representing about a 50 percent decrease from the number of transactions reported in fiscal year 2001, and about a 76 percent decrease from the 4,926 transactions reported in fiscal year 2000, the last full fiscal year under the previous reporting thresholds.²

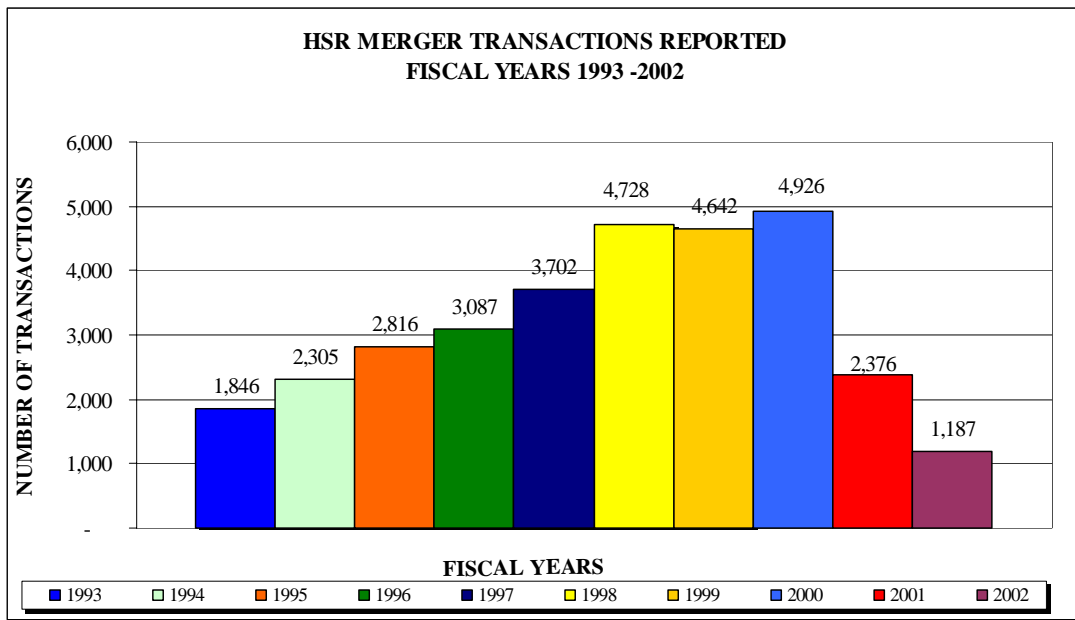


Figure 1

During the year, the Commission challenged twenty-four transactions, leading to ten consent orders, two administrative complaints, and seven abandoned transactions. The

¹ Section 630 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 2001, Pub. L. No. 106-553, 114 Stat. 2762. The legislation, which became effective February 1, 2001, raised the size-of-transaction threshold from \$15 million to \$50 million and made other changes to the filing and waiting period requirements.

² See Appendix A.

practitioners and others who are not familiar with the program, and incorporated those seminar materials on the website.

BACKGROUND OF THE HSR ACT

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, amended the Clayton Act by adding a new Section 7A, 15 U.S.C. §18a. Subsection (j) of Section 7A provides:

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

This is the twenty-fifth annual report to Congress pursuant to this provision. It covers fiscal year 2002 -- October 1, 2001 through September 30, 2002.

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

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

However, if either agency determines during the waiting period that further inquiry is necessary, it is authorized by Section 7A(e) of the Clayton Act to issue a request for additional information and documentary material ("a second request"). The second request extends the waiting period for a specified period after all parties have complied with the request (or, in the case of a tender offer or a bankruptcy sale, after the acquiring person complies).⁷ This additional time provides the reviewing agency with the opportunity to

⁷ Under the statutory changes cited in footnote 1, this waiting period extension was increased to 30 days for most transactions. The 10-day waiting period extension for cash tender offers and bankruptcies remains the same.

analyze the information and to take appropriate action before the transaction is consummated. If the reviewing agency believes that a proposed transaction may substantially lessen competition, it may seek an injunction in federal district court to prohibit consummation of the transaction.

The Commission, with the concurrence of the Assistant Attorney General, promulgated final rules implementing the premerger notification program on July 31, 1978. At that time, a comprehensive Statement of Basis and Purpose was also published, containing a section-by-section analysis of the rules and an item-by-item analysis of the filing form. The program became effective on September 5, 1978. The Commission, with the concurrence of the Assistant Attorney General, has amended the rules and the filing form on several occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules.⁸

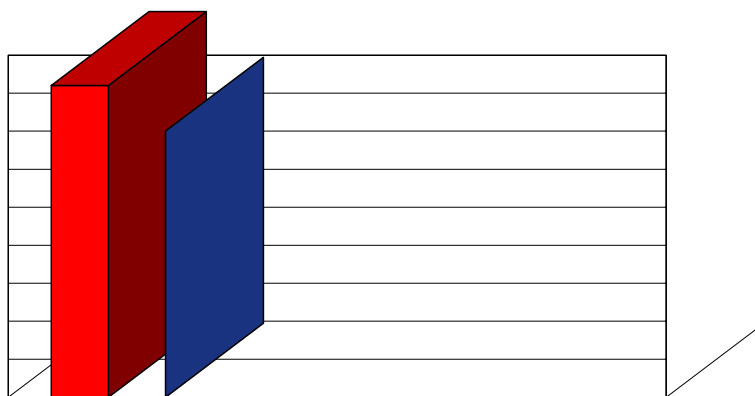
A STATISTICAL PROFILE OF THE PREMERGER NOTIFICATION PROGRAM

The appendices to this report provide a statistical summary of the operation of the premerger notification program. Appendix A shows, for a ten-year period, the number of transactions reported,⁹ 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 1993 through 2002 the number of transactions in which second requests could have been issued, as well as the percentage of transactions in which second requests were issued. Appendix B provides a month-by-month comparison of the number of transactions reported and the number of filings received for fiscal years 1993 through 2002.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2002 decreased approximately 50 percent from the number of transactions reported in fiscal year 2001. In fiscal year 2002, 1,187 transactions were reported, while 2,376 were reported in fiscal year 2001. The statistics in Appendix A show that the number of merger investigations in which second requests were issued in fiscal year 2002 decreased approximately 30 percent from the number of merger investigations in which second requests were issued in fiscal year 2001. Second requests were issued in 49 merger investigations in

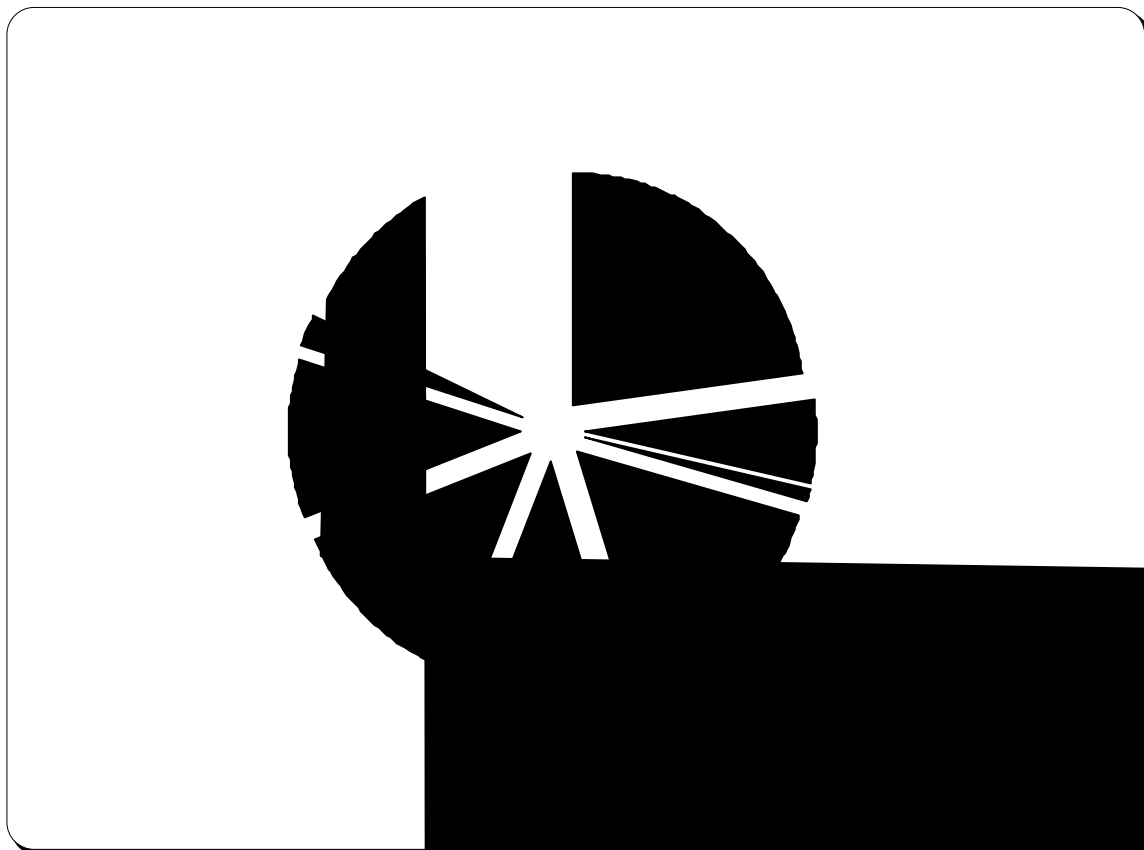
⁸ 43 Fed. Reg. 3443 (August 4, 1978); 43 Fed. Reg. 36053 (August 15, 1978); 44 Fed. Reg. (November 21, 1979); 45 Fed. Reg. 14205 (March 5, 1980); 48 Fe

fiscal year 2002, while second requests were issued in 70 merger investigations in fiscal year 2001. While the number of second requests declined, the percentage of second request transactions increased. (See Figure 2 below.)



percentage of reportable transactions within industry groups for fiscal year 2002 based on the acquired entity's operations.

RC B P Y E



Act into the Premerger Notification Program. In fiscal year 2002, in response to public comments, the Commission, with the concurrence of the Assistant Attorney General, modified one of the Interim Rules. The final rule restored to parties who filed prior to February 1, 2001 the full five-year period following expiration of the waiting period to acquire up to the next notification threshold that was in effect at the time of filing.¹²

The second 2001 Federal Register notice had set forth certain proposed amendments that were not necessary to implement the HSR Act, but consisted instead of updates, corrections and other improvements in the rules that the Commission determined were timely and appropriate. These proposals had included modifying Section 802.2 by removing associated agricultural assets from the agricultural property exemption, revising Section 802.6(b) regarding federal regulatory approval, and restructuring and revising Sections 802.50 and 802.51 to clarify and refocus exemptions for acquisitions of foreign assets and voting securities. During fiscal year 2002, these amendments were finalized (with some changes in response to public comment) and became effective on April 17, 2002.¹³

2. *Compliance*

The Commission and the Department of Justice continued to monitor compliance with the premerger notification program's filing and waiting period requirements and initiated a number of compliance investigations in fiscal year 2002. The agencies monitor compliance through a variety of methods, including the review of newspapers and industry publications for announcements of transactions that may not have been reported in accordance with the requirements of the Act. In addition, industry sources, such as competitors, customers and suppliers, as well as interested members of the public, provide the agencies with information about transactions and possible violations of the Act's requirements. Under Section 7A(g)(1) of the Act, any person that fails to comply with the Act's notification and waiting requirements is liable for a civil penalty of up to \$11,000 for each day the violation continues.¹⁴ In fiscal year 2002, corrective filings for thirteen transactions were received¹⁵ and one enforcement action was brought.

changes included implementing the increase in the size-of-transaction threshold and the introduction of a three-tiered filing fee structure, and the elimination of Section 802.20 (which applied to acquisitions of 15% but valued at \$15 million or less), as well as updating the filing form.

¹² 67 Fed. Reg. 11904 (March 18, 2002).

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

¹⁴ Effective November 20, 1996, dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction were adjusted for inflation.

In *The Hearst Trust*,¹⁶ the complaint alleged that Hearst failed to submit certain key corporate documents that were required for premerger notification review under the HSR Act before acquiring Medi-Span, Inc. in 1998, and that the failure to submit these documents hindered the ability of the federal antitrust agencies to analyze the competitive effects of the acquisition prior to consummation. Hearst's acquisition of Medi-Span, its main competitor in the market for electronic integratable drug information databases, also known as integratable drug data files, allowed Hearst's First DataBank, Inc. subsidiary to institute substantial price increases to its customers for use of the electronic databases which contain clinical, pricing and other information on prescription and non-prescription drugs. Pharmacists, physicians, hospital staff, and health plans use these databases to help them provide high-quality, cost-effective patient care. Most notably, integratable drug data files are needed for pharmacists to get quick, automatic warnings of any dangerous interactions between newly prescribed drugs and other drugs their patients are already taking. A consent decree that was filed simultaneously with the complaint and entered by the court on October 15, 2001 required Hearst to pay \$4 million in civil penalties, as of then the largest amount paid by a single company for a violation of the premerger notification law.

MERGER ENFORCEMENT ACTIVITY¹⁷

1. *The Department of Justice*

During fiscal year 2002, the Antitrust Division challenged ten merger transactions that it concluded may have substantially lessened competition if allowed to proceed as proposed. In four of these transactions, the Antitrust Division filed a complaint in U.S. district court. Two of these cases were settled by consent decree; one transaction was abandoned after filing the complaint; and one case was litigated unsuccessfully in district court. In the six other challenges during fiscal year 2002, the Antitrust Division informed the parties to a proposed transaction that it would likely file suit challenging the transaction unless the parties restructured the proposal to avoid competitive problems or abandoned the proposal altogether.¹⁸ In five of these proposed transactions, the parties restructured the transactions;

¹⁶ United States v. The Hearst Trust and The Hearst Corporation, Civil No. 1:01CV02119 (D.D.C. complaint filed October 11, 2001).

In *Federal Trade Commission v. The Hearst Trust*, Civ. No. 1:01CV00734 (D.D.C. complaint filed April 5, 2001), the Commission filed for a permanent injunction alleging that Hearst and First DataBank illegally acquired a monopoly in the market for electronic integratable drug information drug data files. On December 14, 2001, the Commission voted to approve a proposed settlement that required Hearst to divest the former Medi-Span business and pay \$19 million as disgorgement of unlawful profits. The settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. The funds were required to be distributed to injured customers as part of the settlement of a private class action suit alleging unlawful overcharges by Hearst. The district court approved the final order and stipulated permanent injunction on December 18, 2001. See Annual Report to Congress, Fiscal Year 2001 at 19-20.

¹⁷ All cases in this report were not necessarily reportable under the premerger notification program. Because of provisions regarding the confidentiality of the information obtained pursuant to the Act, it would be inappropriate to identify which cases were initiated under the program.

¹⁸ In four instances, the Department of Justice issued press releases: November 29, 2001 – Wells Fargo

and in one, the parties abandoned the proposed transaction entirely.

In *United States v. SunGard Data Systems, Inc. and Comdisco, Inc.*,¹⁹ the Division sued to prevent SunGard from acquiring Comdisco and consequently reducing competition substantially in the sale of shared hot site disaster recovery services provided to consumers in the event of an interruption of a computer data center due to an incapacitating event. The companies were two of three major suppliers of shared hot site services for data recovery. For

acquisition of Grove Investors. The complaint alleged that the acquisition, as originally proposed, would have reduced competition by combining two of only three major producers of medium- and heavy-lift boom trucks in North America. A boom truck is a stiff boom telescopic crane mounted on a standard flat-bed commercial truck chassis. This general-purpose mobile crane has a broad range of applications in the construction, petroleum, and utility industries. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Manitowoc was required to divest either its own or Grove's boom truck business to a purchaser acceptable to the Division. The Court entered the consent decree on December 11, 2002.

In *United States v. Archer-Daniels-Midland Company and Minnesota Corn Processors*,²² the companies agreed to dissolve a joint venture with a competing corn wet miller in order for ADM to proceed with its \$634 million proposed acquisition of MCP. ADM and MCP were two of the largest wet corn millers in the United States. The complaint alleged that the acquisition, as originally structured, would have lessened competition substantially by reducing the number of independent competitors in the corn wet milling industry to four and making coordination among the remaining firms more likely. The wet

merger cases previously filed by the Division in fiscal year 2001.²⁴

Additionally, on September 10, 2002, in *United States v. Earthgrains Co., Specialty Foods Corp. and Metz Holdings, Inc.* (N.D. Ill.), the Division petitioned the Court to find Earthgrains Baking Companies, Inc., successor in interest to Earthgrains Company, in civil contempt for violating an order that had been entered by the court on July 3, 2000.²⁵ According to the motion, Earthgrains violated the consent decree by failing to maintain assets prior to their divestiture, as required by the Hold Separate Stipulation and Order. To resolve the matter, Earthgrains agreed to pay a \$100,000 civil penalty to the United States.

2. *The Federal Trade Commission*

The Commission challenged twenty-four transactions that it concluded would lessen competition if allowed to proceed as proposed during fiscal year 2002,²⁶ leading to ten consent orders, two administrative complaints, and seven withdrawn filings. In five of the twenty-four matters, the Commission authorized staff to seek injunctive relief; of these, one case was filed in district court and after a preliminary injunction was granted the parties abandoned the transaction, in two cases the parties negotiated a consent agreement, and in two other cases the parties abandoned the transaction.

In *Diageo plc/Vivendi Universal S.A.*,²⁷ the Commission authorized staff to file for a preliminary injunction to block Diageo's and Pernod Ricard S.A.'s proposed \$8.15 billion joint acquisition of Vivendi's Seagram Wine and Spirits business. According to the complaint, the proposed acquisition would have substantially lessened competition in five relevant product markets in the distilled spirits industry. Specifically, the rum market would have become a duopoly controlled by Bacardi U.S.A., the industry leader, and Diageo/Seagram, the second and third largest sellers of rum in the United States. Together, Bacardi U.S.A. and Diageo/Seagram would have controlled 95 percent of all premium rum sales in the United States. The next largest competitor would have a market share in the United States of about only two percent. Diageo would have also acquired highly sensitive commercial business information about Seagram's Gin, its principal competitor in the retail gin market. Prior to the Commission's filing of a complaint seeking the preliminary injunction, a proposed consent agreement was negotiated that allowed the parties to proceed with the transaction under certain conditions. The order required Diageo to divest its Malibu

²⁴ On April 5, 2002, the District Court entered the consent decree in *United States v. Premdor, Inc., Premdor U.S. Holdings, Inc., Int'l Paper Co. & Masonite Corp.* (D.D.C. Aug. 3, 2001); on April 17, 2002, the consent decree was entered in *United States v. 3D Systems Corp. & DTM Corp.* (D.D.C. Aug. 16, 2001). See the Annual Report to Congress, Fiscal Year 2001 for a description of these cases.

²⁵ See the Annual Report to Congress, Fiscal Year 2000 for a description of this case.

²⁶ In addition to the two administrative complaints discussed on page 14 of this report, an administrative complaint was also issued in *Libbey Inc./Newell Rubbermaid, Inc.* (See the above discussion). To avoid double counting this report includes only those merger enforcement actions in which the Commission took its first public action during fiscal year 2002.

²⁷ *Diageo plc/Vivendi Universal S.A.*, Docket No. C-4032 (issued February 4, 2002).

the markets for performance and Schmidt-Cassegrain telescopes. Celestron International was the number two performance telescope provider in the United States and the only other supplier of Schmidt-Cassegrain telescopes. The acquisition would have adversely impacted the performance telescope market by eliminating competition between the two companies and by creating a monopoly in the market for Schmidt-Cassegrain telescopes. In May 2002, Meade notified the Commission that it had abandoned its efforts to bid for the Celestron assets.

In *Cytec Corporation/Digene Corporation*,³¹ the Commission authorized staff to seek a preliminary injunction to block Cytec's proposed acquisition of Digene. According to the complaint, the combination of the two companies would have lessened competition and increased consumer prices within the highly concentrated market for primary cervical cancer screening tests. Both Cytec and Digene manufactured and sold products used to screen

source code. In addition, MSC was required to permit certain customers to terminate paid-up licenses entered into since the acquisitions and required MSC to refund a portion of the advance consideration paid by its customers.

The Commission also issued an administrative complaint in *Chicago Bridge & Iron Company N.V., Chicago Bridge & Iron Company, and Pitt-Des Moines, Inc.*,³³ alleging that CB&I's 2001 acquisition of the Water Division and Engineered Construction Division of Pitt-Des Moines, Inc. ("PDM") substantially lessened competition in four relevant specialty industrial storage tank markets. According to the complaint, CB&I and PDM competed against each other as the two leading U.S. producers of large, field-erected industrial and water storage tanks and other specialized steel-plate structures. The combination of the two companies resulted in a monopoly in the U.S. markets for two of the more difficult and costly products to construct – LNG tanks and thermal vacuum chambers. In addition, the combination of the two companies resulted in a dominant firm in the U.S. markets for LPG tanks and LIN/LOX/LAR tanks. On June 18, 2003, in an Initial Decision, the administrative law judge upheld the administrative complaint allegations. The order entered by the judge required CB&I to divest all of the assets acquired in the February 2001 acquisition, in order to restore competition as it existed prior to the acquisition.

In fiscal year 2002, the Commission accepted consent agreements for public comment in ten merger cases. A complaint and decision and order were issued in eight of these matters during the fiscal year, and a consent agreement in two of these cases became final after September 2002.

In *Airgas, Inc.*,³⁴ the complaint alleged that Airgas's purchase of the Puritan Bennett Medical Gas business from Mallinckrodt, Inc. in January 2000 had an adverse effect on competition in the nitrous oxide market in the United States and Canada. Nitrous oxide is a clear, odorless gas primarily used in dental and surgical procedures as an analgesic agent or as a supplement to anesthesia. At the time of the acquisition, Puritan Bennett was Airgas's only competitor in the production and sale of nitrous oxide. Airgas was the nation's largest distributor of industrial, medical, and specialty gases and the only producer and seller of nitrous oxide in North America. Puritan Bennett, prior to its \$90 million purchase by Airgas, was a leading distributor of medical gases and a producer and seller of nitrous oxide in North America. The acquisition eliminated any competition in this market in North America and increased the likelihood that customers requiring nitrous oxide would pay higher prices. Under the agreement, Airgas was required to divest a nitrous oxide business to Air Liquide America Corporation, a producer of other medical gases, such as medical grade oxygen and nitrogen. The agreement also required Airgas to supply Air Liquide with a sufficient amount

alleged that the proposed acquisition of FAG by INA would have lessened competition and created a monopoly in the worldwide market for the research, development, manufacture and sale of cartridge ball screw support bearings (“CBSSB”), a type of bearing used in manufacturing machine tool equipment. According to the complaint, INA and FAG were the only two suppliers of CBSSB in the world and the proposed acquisition, if consummated, would have resulted in a monopoly in the market. Entry into the market was a difficult process because of, among other things, the time and cost associated with researching and developing a line of CBSSB products, acquiring the necessary production assets, and developing the expertise needed to successfully design, produce, and market these products. The order required INA and FAG to divest FAG’s CBSSB business to Aktiebolaget SKF, the largest supplier of ball and other roller bearings in the world.

In *Solvay S.A.*,³⁹ the complaint alleged that Solvay’s proposed \$1.3 billion acquisition of Ausimont S.p.A. from Italtengieria S.p.A. would have lessened competition in the production and sale of all grades of polyvinylidene fluoride (“PVDF”) and the production and sale of melt-processible grades of PVDF. PVDF is a fluoropolymer used in a wide variety of applications, including highly durable architectural coatings, wire and cable jacketing, fiber optic raceways, chemical processing equipment, semiconductor manufacturing equipment, and other miscellaneous applications. According to the complaint, Solvay and Ausimont were two of only three producers of PVDF in the United States and were two of the three major PVDF producers in the world. The proposed merger would have eliminated Ausimont as a growing competitor in the market for melt-processible grades of PVDF, increasing the likelihood of higher prices and reduced innovation in the relevant market. The order required Solvay to divest its United States PVDF operations, including its Decatur, Alabama PVDF plant and its interest in Alventia LLC, a joint venture that manufactures the main raw material for PVDF.

In *Bayer AG/Aventis S.A.*,⁴⁰ the complaint alleged the proposed \$6.2 billion acquisition by Bayer of Aventis’s subsidiary Aventis CropScience Holdings S.A. would have lessened competition in the United States in the following markets: 1) new generation chemical insecticide products; 2) new generation chemical insecticide active ingredients and related technologies for various insecticide and animal health products; 3) post-emergent grass herbicides for spring wheat; and 4) cool weather cotton defoliant. According to the complaint, all of the relevant markets were highly concentrated. Bayer and Aventis were two of only three firms competing significantly in the market for new generation chemical insecticide active ingredients and products and the only firms that had developed and successfully sold such products for non-repellent liquid termite control and for veterinarian use in controlling fleas. The companies were also the only two suppliers of cool weather cotton defoliant. The merger would have eliminated a significant competitor, increased barriers to entry, reduced innovation competition for certain products, and increased the possibility of coordinated interaction among the remaining competitors in the relevant

³⁹ *Solvay S.A.*, Docket No. C-4046 (issued June 21, 2002).

⁴⁰ *Bayer AG/Aventis S.A.*, Docket No. C-4049 (issued July 24, 2002).

markets. The order required the parties to divest assets relating to their acetamiprid, fipronil, flucarbazono, and folex businesses.

In *Amgen Inc./Immunex Corporation*,⁴¹ the complaint alleged that the proposed \$16 billion acquisition by Amgen of Immunex would have lessened competition in the United States in the research, development and sale of the following: 1) neutrophil (white blood cell) regeneration factors; 2) tumor necrosis factor (“TNF”) inhibitors used in the treatment of rheumatoid arthritis; and 3) interleukin-1 (“IL-1”) inhibitors, also used in the treatment of rheumatoid arthritis. According to the complaint, all three markets in the United States were highly concentrated. Amgen and Immunex were the only two companies competing in the market for neutrophil regeneration products and Immunex was only one of two companies with TNF inhibitors on the market. Amgen’s Kineret was the only IL-1 inhibitor approved for sale in the United States for the treatment of rheumatoid arthritis. Immunex and Regeneron Pharmaceuticals Inc. were the only two companies with IL-1 inhibitor products in clinical trials in the United States, but due to the patent position of Amgen and Immunex, Regeneron would have likely been unable to bring its IL-inhibitor to market. To remedy the anticompetitive effects of the proposed merger, the order required the companies to sell all of Immunex’s assets related to Leukine, a neutrophil regeneration factor, to Schering AG. The order also required the companies to grant a license to certain intellectual property rights related to TNF inhibitors to Serono S.A. and certain intellectual property rights related to IL-1 inhibitors to Regeneron.

In *Phillips Petroleum Company/Conoco Inc.*,⁴² the complaint alleged that the proposed merger of Phillips and Conoco would have lessened competition in the following markets: 1) the bulk supply of light petroleum products in Eastern Colorado and Northern Utah; 2) light petroleum product terminaling services in the metropolitan statistical areas (“MSAs”) of Spokane, Washington, and Wichita, Kansas; 3) the bulk supply of propane in Southern Missouri, the St. Louis MSA, and Southern Illinois; 4) natural gas gathering in more than 50 sections of the Permian Basin in New Mexico a

and raised prices in the United States and Canadian market for Group II paraffinic base oil. Group II base oil is used to produce motor oil and other lubricants, and is needed to meet

LIST OF APPENDICES

- Appendix A - Summary of Transactions, Fiscal Years 1993 - 2002
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1993 - 2002.

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal Year 2002, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest

APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 1993 - 2002

APPENDIX B**TABLE 1. NUMBER OF TRANSACTIONS REPORTED BY MONTHS FOR THE FISCAL YEARS 1993 - 2002**

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
OCTOBER	163	184	273	238	296	424	333	376	360	89
NOVEMBER	184	221	309	273	332	387	359	428	451	105
DECEMBER	160	222	216	249	267	426	394	468	345	95
JANUARY	100	156	180	238	263	306	282	335	245	111
FEBRUARY	110	149	170	231	250	336	330	440	66	87
MARCH	149	167	229	277	315	392	427	455	120	109
APRIL	131	167	177	252	302	384	364	343	94	99
MAY	155	220	281	304	328	401	438	398	153	111
JUNE	151	182	252	253	319	442	445	494	190	88
JULY	172	208	225	265	389	435	444	351	94	121
AUGUST	204	226	237	264	318	427	434	446	163	97
SEPTEMBER	167	203	267	243	323	368	392	392	95	75
TOTAL	1,846	2,305	2,816	3,087	3,702	4,728	4,642	4,926	2,376	1,187

APPENDIX B

TABLE 2. NUMBER OF FILINGS RECEIVED¹ BY MONTH FOR FISCAL YEARS 1993 - 2002

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
OCTOBER	297	332	505	450	561	818	662	777	751	

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2002

DATA PROFILING HART-SCOTT-RODINO PREMERGER

NOTIFICATION FILINGS AND ENFORCEMENT INTEREST

ACQUISITION

TABLE I
FISCAL YEAR 2002¹
PERCENT OF TRANSACTION (BY SIZE RANGE)²

HSR TRANSACTIONS

PERCENT GRANTED TO FTC OR DOJ

SECOND REQUEST INVESTIGATION

PERCENT OF TRANSACTION

CUMULATIVE)

DOJ	SECOND REQUEST INVESTIGATIONS ³				
	NUMBER		PERCENT OF TOTAL SECOND REQUESTS ISSUED		
TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
0%	0	0	0.0%	0.0%	0.0%

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**TABLE IV
FISCAL YEAR 2002¹**

INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

**INVESTIGATIONS IN
WHICH SECOND**

SECOND REQUESTS ISSUED AS A PERCENTAGE OF:

TABLE V
FISCAL YEAR 2002¹
ACQUISITIONS BY REPORTING THRESHOLD

HSR TRANSACTIONS



TABLE VII
FISCAL YEAR 2002¹
TRANSACTIONS BY SALES OF ACQUIRING PERSON

	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ		SECOND REQUEST INVESTIGATIONS ³	
	NUMBER	PERCENTAGE OF SALES	NUMBER	PERCENTAGE OF SALES	NUMBER	PERCENTAGE OF SALES

**TABLE VIII
FISCAL YEAR 2002
TRANSACTIONS BY ASSETS OF ACQUIRED ENTITIES**

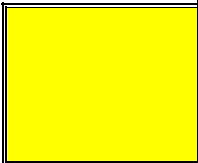
	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ		SECOND REQUEST INVESTIGATIONS	
			NUMBER	PERCENTAGE OF ASSET RANGE GROUP	NUMBER	PERCENTAGE OF ASSET RANGE GROUP

TABLE IX
FISCAL YEAR 2002
TRANSACTIONS BY SALES OF ACQUIRED ENTITIES⁸

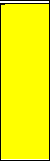
SALES RANGE (\$ MILLIONS)	HSR TRANSACTIONS		CLEARANCE GRANTED TO FTC OR DOJ					SECOND REQUEST INVESTIGATIONS				
	NUMBER	PERCENT	NUMBER		PERCENTAGE OF SAKES RANGE GROUP			NUMBER		PERCENTAGE OF SAKES RANGE GROUP		
			FTC	DOJ	FTC	DOJ	TOTAL	FTC	DOJ	FTC	DOJ	TOTAL
Below 50M	405	35.5%	37	28	9.1%	6.9%	16.0%	3	6	0.7%	1.5%	2.2%
50M - 100M	142	12.4%	15	10	10.6%	7.0%	17.6%	3	1	2.1%	0.7%	2.8%
100M - 150M	81	7.1%	5	7	6.2%	8.6%	14.8%	0	2	0.0%	2.5%	2.5%
150M - 200M	63	5.5%	2	10	3.2%	15.9%	19.1%	0	0	0.0%	0.0%	0.0%
200M - 300M	89	7.8%	12	7	13.5%	7.9%	21.4%	1	2	1.1%	2.2%	3.4%
300M - 500M	98	8.6%	20	8	20.4%	8.2%	28.6%	5	1	5.1%	1.0%	6.1%
500M - 1000M	131	11.5%	13	7	9.9%	5.3%	15.2%	2	4	1.5%	3.1%	4.6%
OVER 1000M	87	7.6%	10	7	11.5%	8.0%	19.5%	13	5	14.9%	5.7%	20.7%
<i>Sales Not Available⁹</i>	46	4.0%	10	1	21.7%	2.2%	23.9%	0	1	0.0%	2.2%	2.2%
ALL TRANSACTIONS	1,142	100.0%	124	85	10.9%	7.4%	18.3%	27	22	2.4%	1.9%	4.3%

**TABLE X
FISCAL YEAR 2002¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

<u>3-DIGIT NAICS CODE</u> ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2001 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³
					FTC	DOJ		



3-DIGIT
NAICS
CODE¹⁰



311

FO
PR
BO
SO

312

**TABLE X
FISCAL YEAR 2002¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

**CLEARANCE
GRANTED TO FTC
OR DOJ**

**SECOND REQUEST
INVESTIGATIONS³**

**TABLE X
FISCAL YEAR 2002¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

<u>3-DIGIT NAICS CODE</u> ¹⁰	INDUSTRY DESCRIPTION				CLEARANCE GRANTED TO FTC OR DOJ	SECOND REQUEST INVESTIGATIONS ³
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**TABLE X
FISCAL YEAR 2002¹
INDUSTRY GROUP OF ACQUIRING PERSONS**

<u>3-DIGIT NAICS CODE</u> ¹⁰	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2001 ¹¹	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³		
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
622	GENERAL MEDICAL AND SURGICAL; PSYCHIATRIC AND SUBSTANCE ABUSE HOSPITALS	16	1.4%	0.8%	3	0	3	0	0	0
624	SOCIAL SERVICES	1	0.1%	0.1%	0	0	0	0	0	0
711	REAL ESTATE	4	0.4%	-0.1%	0	0	0	0	0	0
713	AMUSEMENT AND RECREATION SERVICES	5	0.4%	-3.1%	1	0	1	0	0	0

Table XI**FISCAL YEAR 2002¹**

					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
111	Agricultural Production - Crops	0	0.0%	NC	0	0	0	0	0	0	0
112	Agricultural Production - Livestock and Animal Specialties	1	0.1%	NC	0	0	0	0	0	0	1
113	Lumber and Wood Products, Except Furniture	3	0.3%	0.1%	0	0	0	0	0	0	1
114	Fishing, Hunting and Trapping	0	0.0%	NC	0	0	0	0	0	0	0
211	Oil and Gas Extraction	11	1.0%	NC	0	0	0	0	0	0	9
212	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	9	0.8%	0.6%	0	0	0	0	0	0	3
221	Electric, Gas and Sanitary Services	58	5.1%	1.4%	1	8	9	0	1	1	44
233	Building Construction – General Contractors and Operative Builders	0	0.0%	-0.2%	0	0	0	0	0	0	0
234	Heavy Construction Other Than Building Construction - Contractors	8	0.7%	0.1%	1	0	1	0	0	0	4
235	Construction - Special Grade Contractors	10	0.9%	0.5%	0	0	0	0	0	0	4
311	Food and Kindred Products	36	3.2%	0.6%	7	6	13	2	2	4	26
312	Bottled and Canned Soft Drinks and Carbonated Drinks; and Cigarette Manufacturing	6	0.5%	0.3%	0	0	0	0	0	0	6
313	Textile Mill Products	2	0.2%	-0.2%	0	0	0	0	0	0	1
315	Apparel and Other Finished Products Made From Fabrics and Similar Materials	1	0.1%	NC	0	0	0	0	0	0	1
316	Leather and Leather Products	0	0.0%	NC	0	0	0	0	0	0	0

Table XI

FISCAL YEAR 2002¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2001 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3 DIGIT INTRA-INDUSTRY TRANSACTIONS ¹³ <i>(the data series for this column was revised in April, 2008)</i>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
322	Paper and Allied Products	11	1.0%	0.1%	0	4	4	0	0	0	6
324	Petroleum Refining and Related Industries	4	0.4%	NC	1	0	1	1	0	1	4
325	Chemicals and Allied Products	67	5.9%	1.6%	22	1	23	6	0	6	44
326	Rubber and Misc. Plastics Products	18	1.6%	0.3%	2	1	3	0	0	0	14
327	Stone, Clay, Glass and Concrete Products	18	1.6%	1.2%	3	2	5	0	1	1	11
332	Fabricated Metal Products, Except Machinery and Transportation Equipment	20	1.8%	-0.1%	4	2	6	0	0	0	16
333	Industrial and Commercial Machinery and Computer Equipment	24	2.1%	-0.9%	2	5	7	0	2	2	16
334	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	76	6.7%	2.4%	11	13	24	1	3	4	51
335	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	10	0.9%	-3.9%	0	4	4	0	0	0	7
336	Transportation Equipment	23	2.0%	0.3%	5	1	6	1	0	1	13
337	Home Furniture, Furnishings and Equipment Stores	3	0.3%	0.2%	2	0	2	0	0	0	2
339	Miscellaneous Manufacturing Industries	13	1.1%	0.5%	3	0	3	0	0	0	7
421	Wholesale Trade - Durable Goods	55	4.8%	0.5%	7	4	11	2	0	2	32
422	Wholesale Trade - Nondurable Goods	49	4.3%	1.5%	10	0	10	3	0	3	30

Table XI

FISCAL YEAR 2002¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2001 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3 DIGIT INTRA-INDUSTRY TRANSACTIONS ¹³ <i>(the data series for this column was revised in April, 2008)</i>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	

441 Automotive Dealers and
Gasoline Service Stations

FTC DOJ TOTAL FTC DOJ TOTA

¹ Fiscal Year 2002 figures include transactions