

**FEDERAL TRADE COMMISSION
BUREAU OF COMPETIT**



DEPARTMENT OF JUSTICE

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act" or the "Act"), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission (the "Commission") and the Antitrust Division of the Departme

injunctive relief in one matter. The Commission challenged the proposed merger of Chevron Corporation and Unocal Corporation.² The proposed merger would have likely imposed additional costs on California consumers for California Air Resources Board reformulated gasoline (“CARB RFG”). The Commission also challenged the proposed acquisition by Valero L.P. for certain assets of Kaneb Services LLC and Kaneb Pipe Line Partners L.P.,³ which would have eliminated direct competition between Valero and Kaneb, which likely would have resulted in an increase in the wholesale price of light petroleum products in certain areas of Pennsylvania, Colorado, and Northern California.

The Antitrust Division challenged four merger transactions, leading to three consent decrees and one other transaction that was restructured after the Division informed the parties of its antitrust concerns relating to the transaction. The Division’s notable merger challenges included the acquisition of AT&T Wireless by Cingular Wireless.⁴ The Division filed a complaint alleging that the merger would reduce competition for mobile wireless telecommunications service in ten geographic areas and that it would reduce competition for mobile wireless broadband services in three additional markets.

In fiscal year 2005, the Commission’s Premerger Notification Office (“PNO”) continued to respond to thousands of telephone calls seeking information concerning the reportability of transactions under the HSR Act and the details involved in completing and filing the Notification and Report Form (“the filing form”). The HSR website, www.ftc.gov/bc/hsr/hsr.htm, continued to provide improved access to information necessary to the notification process. The website includes such information as introductory guides that provide an overview of the premerger notification program and review process. It also provides access to the filing form and instructions, the premerger notification statute and rules, notices of grants of early termination, filing fee instructions, scheduled HSR events, training materials for new HSR practitioners, tips for completing the filing form, procedures for submitting post-consummation filings, frequently asked questions regarding the HSR filing requirements, and other useful information. The website is the primary source of information for HSR practitioners seeking information on changes to the Act and amendments to the premerger rules, including speeches, press releases, summaries and highlights, and Federal Register notices about the amendments. The website also includes a database of informal interpretation letters, giving the public ready access to PNO staff interpretations of the premerger notification rules and the Act. As always, PNO staff continues its efforts to assist HSR practitioners and readily provides them with needed information.

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.

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 need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

This is the 28th annual report to Congress pursuant to this provision. It covers fiscal year 2005 -- October 1, 2004 through September 30, 2005.

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.

If either agency determ

several occasions over the years to improve the program's effectiveness and to lessen the burden of complying with the rules.⁵

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, 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.⁶ Appendix A also shows for fiscal years 1996 through 2005 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 1996 through 2005.

The statistics set out in these appendices show that the number of transactions reported in fiscal year 2005 increased approximately 17 percent from the number of transactions reported in fiscal year 2004. In fiscal year 2005, 1,695 transactions were reported, while 1,454 were reported in fiscal year 2004. The statistics in Appendix A also show that the number of merger investigations in which second requests were issued in fiscal year 2005 increased approximately 43 percent from the number of merger investigations in which second requests were issued in fiscal year 2004. Second requests were issued in 50 merger investigations in fiscal year 2005, while second requests were issued in 35 merger investigations in fiscal year 2004. The percentage of transactions resulting in second requests also increased, from 2.5 percent in fiscal year 2004 to 3.1 percent in fiscal year 2005. (See Figure 2 below.)

⁵ 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 Fed. Reg. 34427 (July 29, 1983); 50 Fed. Reg. 46633 (November 12, 1985); 51 Fed. Reg. 10368 (March 26, 1986); 52 Fed. Reg. 7066 (March 6, 1987); 52 Fed. Reg. 20058 (May 29, 1987); 54 Fed. Reg. 214251 (May 18, 1989); 55 Fed. Reg. 31371 (August 2, 1990); 60 Fed. Reg. 40704 (August 9, 1995); 61 Fed. Reg. 13666 (March 28, 1996); 63 Fed. Reg. 34592 (June 25, 1998); 66 Fed. Reg. 8680 (February 1, 2001); 66 Fed. Reg. 8723 (February 1, 2001); 66 Fed. Reg. 16241 (March 23, 2001); 66 Fed. Reg. 23561 (May 9, 2001); 66 Fed. Reg. 35541 (July 6, 2001); 67 Fed. Reg. 11898 (March 18, 2002); 67 Fed. Reg. 11904 (March 18, 2002); 68 Fed. Reg. 2425 (January 17, 2003); 70 Fed. Reg. 4988 (January 31, 2005); 70 Fed. Reg. 11501 (March 8, 2005); 70 Fed. Reg. 11526 (March 8, 2005); 70 Fed. Reg. 47733 (August 15, 2005); 70 Fed. Reg. 73369 (December 12, 2005); 70 Fed. Reg. 77312 (Decem

**PERCENTAGE OF TRANSACTIONS RESULTING
IN SECOND REQUEST**

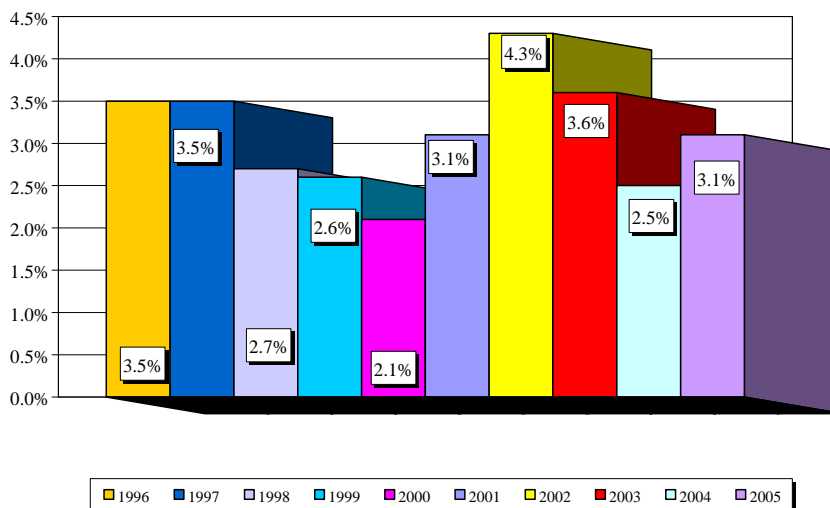


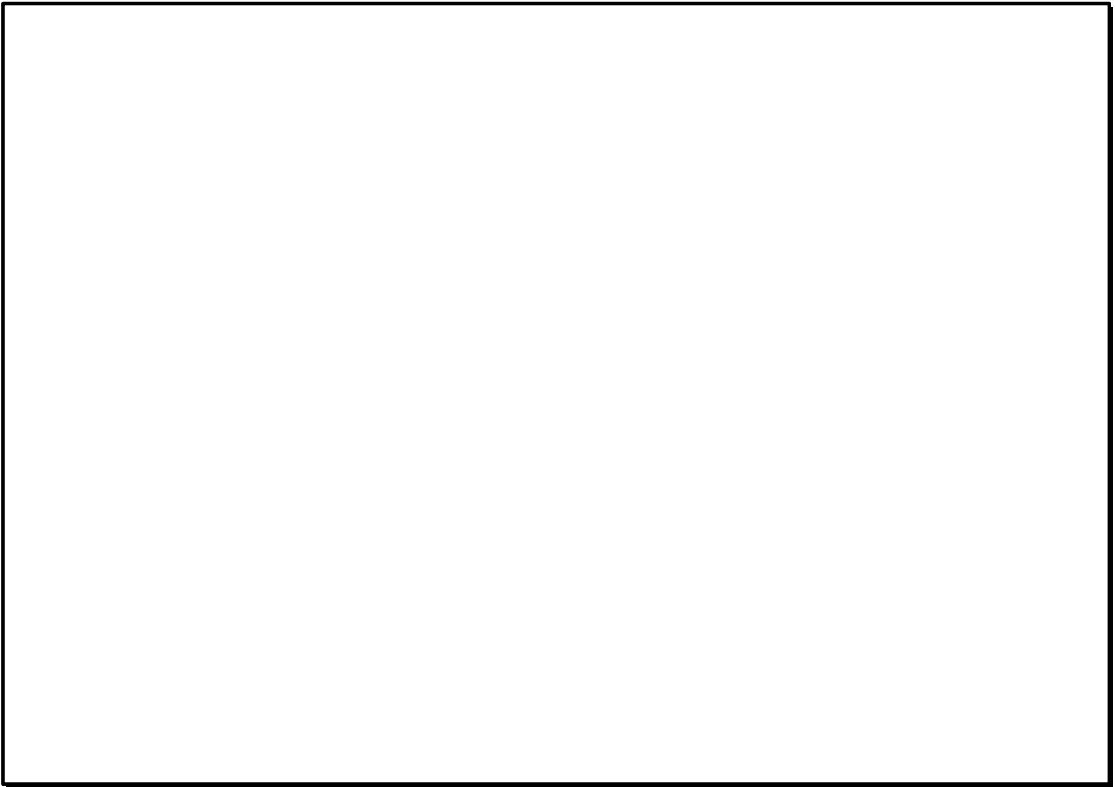
Figure 2

The statistics in Appendix A also show that early termination of the waiting period was requested in the majority of transactions. In fiscal year 2005, early termination was requested in 82 percent (1,385) of the transactions reported, down from fiscal year 2004 where it was requested in 85 percent (1,241) of the transactions reported. Likewise, the percentage of requests granted out of the total requested decreased from 76 percent in fiscal year 2004, to 72 percent in fiscal year 2005.

Statistical tables (Tables I through XI) in Exhibit A contain information about the agencies' enforcement activities for transactions reported in fiscal year 2005. 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. Table III of Exhibit A shows that, in fiscal year 2005, clearance was granted to one or the other of the agencies for the purpose of conducting an initial investigation in 18.9 percent of the total number of transactions in which a second request could have been issued.

The tables also provide the number of transactions based on the dollar value of transactions reported and the reporting threshold indicated in the notification report. The total dollar value of reported transactions rose dramatically from fiscal years 1996 to 2000 from about \$677.4 billion to about \$3 trillion. After the statutory thresholds were raised, the dollar value declined to about \$1 trillion in fiscal year 2001, \$565.4 billion in fiscal year 2002, and \$406.8 billion in fiscal year 2003. During the last two years, there has been an increase in the dollar value of reported transactions rising to about \$630 billion in fiscal year 2004 and to about \$1.1 trillion in fiscal year 2005.

Tables X and XI provide the number of transactions in each industry group in which the acquiring person or the acquired entity derived revenue. Figure 3 illustrates the percentage of



day the violation continues.⁷ The antitrust agencies examine the circumstances of each violation to determine whether penalties should be sought.⁸ During fiscal year 2005, 73 corrective filings for violations were received, and the agencies recovered \$2,350,000 in civil penalties as a result of two enforcement actions.

In *United States v. Smithfield, Inc.*,⁹ Smithfield, the nation's largest hog producer and pork packer, agreed on November 10, 2004 to pay a \$2 million civil penalty to settle charges brought by the Department of Justice in February 2003 that the company twice failed to comply with premerger notification requirements before making acquisitions above the statutory threshold of stock of its competitor, IBP Inc., which was at the time the nation's second largest

areas of formation of these entities, acquisition of interests in them, and the application of certain exemptions. The central thrust of these rules changes is that meaningful antitrust review would occur at the point at which control of an unincorporated entity changes.

The changes to the coverage rules included a revision to Section 801.1(b) to remove the alternate control test for unincorporated entities; an amendment to Section 801.1(f) to define a “non-corporate interest”; a revision to Section 801.2(d) to clarify the consolidation rule; an amendment to Section 801.2(f) to define when acquiring interests in unincorporated entities may constitute an acquisition; a new subsection to Section 801.10 to define how to value such an acquisition; a new subsection to Section 801.13 to address aggregation of non-corporate interests; and a new Section 801.50, which makes certain formations of unincorporated entities a reportable event. There were also ministerial changes to Sections 801.4, 802.40, and 802.41 to adapt their application to both corporations and unincorporated entities. Additionally, there were minor changes to the Notification and Report Form to require that Item 5(d) be completed in connection with the formation of an unincorporated entity, to reflect the applicability of Items 7 and 8 to unincorporated entities and to change the reportable event in Items 1, 2 and 7 with regard to the formation of new entities.

Changes to the exemption rules included expanding Section 802.4 to eliminate the dissimilar treatment of asset and security acquisitions that are substantively the same; codifying in Section 802.10 a longstanding informal interpretation that pro-rata reorganizations (e.g. reincorporation in a new jurisdiction) are exempt transactions; changing Section 802.30 to apply the intraperson exemption to entities that are controlled other than through holdings of securities; and adding a new Section 802.65 to exempt acquisitions of non-corporate interests in entities that are formed in connection with financing transactions.

In addition to amendments concerning unincorporated entities, there were technical corrections to Sections 801.13, 801.15, and 802.2.

We note here that a comment received from the American Bar Association’s Section of Antitrust Law expressed concern that the estimated number of additional filings these rules would entail (as calculated in the Paperwork Reduction Act section of the proposed rules) may not reflect the actual number that may ultimately be required. The Commission agreed that it was difficult to project the impact of these changes and committed to monitoring the number and types of transactions that require notification as a result of these amendments. Between February 23, 2005 (when the Commission announced adoption of the Final Rules) and the end of fiscal year 2005, a total of fifteen transactions that would not have been reportable prior to the implementation of these rules changes required HSR filings.

Of those fifteen transactions made reportable by the non-corporate rule changes, nine of the transactions involved the direct or indirect acquisition of a controlling, but not 100 percent, interest in an existing unincorporated entity. The other six involved the formation of an unincorporated joint venture. Ten of the transactions were granted early termination of the waiting period. One transaction was cleared to the Federal Trade Commission for investigation. No second requests were issued. The transactions involved a broad range of industries: Oil & Gas (3); Healthcare (2); Electronics (2); Media and Telecommunications (2); Entertainment (1); Aerospace (1); Software (1); Restaurants (1); Chemicals (1); and Financial (1). Five of the

transactions involved at least one foreign person.

The Commission has no means to count newly non-reportable transactions to determine the effect of amended and new exemptions introduced by these rules changes. However, with the amendments to the intraperson exemption,¹³ that exemption now applies to all transactions in which the acquiring and the acquired person are the same. Based on an average of 32 such transactions a year having been reported under the Act in the period from fiscal year 1997 through fiscal year 2004, it seems that the expansion of this exemption alone may more than offset the increase in filings due to the introduction of these rules changes.

2. Threshold Adjustments

Effective March 2, 2005, the Commission, with the concurrence of the Assistant Attorney General, amended the premerger notification rules¹⁴ to reflect adjustment and publication of reporting thresholds as required by the 2000 amendments¹⁵ to Section 7A of the Clayton Act, 15 U.S.C. 18a.

The 2000 amendments to Section 7A require the Commission to publish adjustments to the Act's jurisdictional and filing fee thresholds annually, based on the change in the gross national product, in accordance with Section 8(a)(5) for each fiscal year beginning after September 30, 2004. The Commission amended the rules to provide a method for future adjustments as required by the 2000 amendments and to reflect the revised thresholds in the examples contained in the rules. These rules also adjusted references to the notification and filing fee thresholds and other limitations in the rules and the Notification and Report Form and Instructions to remain consistent with the revised jurisdictional and filing fee thresholds. The revised thresholds will be published annually in January to be effective 30 days after publication.¹⁶

3. Other Rules

Finally, on August 15, 2005, the Commission published a Notice of Proposed Rulemaking¹⁷ that would enable filing parties to provide Internet links to certain documents in lieu of paper copies, and to address "stale filing" situations, in which parties make premerger notification filings but then fail to comply with a second request.

The Commission proposed a change to relieve the burden of complying with Items 4(a) and (b) of the Notification and Report Form. Previously, paper copies of annual reports, annual

¹³ 16 C.F.R. § 802.30.

¹⁴ 70 Fed. Reg. 4988 (January 31, 2005).

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

¹⁶ The adjusted thresholds for 2006 were effective February 17, 2006. 71 Fed. Reg. 2943 (January 18, 2006).

¹⁷ 70 Fed. Reg. 47733 (August 15, 2005).

audit reports and regularly prepared balance sheets and copies of certain documents, such as 10Ks filed with the Securities and Exchange Commission, were required in response to these items. The proposed modification of paragraph 803.2(e) would allow filing persons to provide an Internet address linking directly to the documents required by Items 4(a) and (b) in lieu of providing paper copies.

The Commission also proposed an amendment to the rules to specify that an acquiring person's notification, and an acquired person's notification in certain types of transactions, shall expire after eighteen months if a second request to them remains outstanding.

The public comment period for these proposed rules ended on October 14, 2005. No comments were received, and the final rules were published as proposed on December 12, 2005¹⁸ and were effective on January 11, 2006. Several technical corrections required as a result of the rulemaking on non-corporate entities were also included in these final rules.

MERGER ENFORCEMENT ACTIVITY¹⁹

1. *The Department of Justice*

During fiscal year 2005, the Antitrust Division challenged four merger transactions that it concluded might have substantially lessened competition if allowed to proceed as proposed. In three of these challenges, the Antitrust Division filed a complaint in U.S. district court. All three of these cases were settled by consent decree. In the other merger challenge during fiscal year 2005, when apprised of the Antitrust Division's concerns regarding their proposed transaction, the parties restructured it to avoid competitive problems.²⁰ The Antitrust Division also obtained a civil penalty and injunctive relief settling a claim of violation of a consent decree entered in a 2000 merger case and succeeded in convincing the United States Court of Appeals for the Sixth Circuit to reverse a grant of summary judgment for defendants in a merger challenge brought in 2003.

In *United States, et al., v. Cingular Wireless Corporation, et al.*,²¹ the Division challenged the proposed \$41 billion acquisition of AT&T Wireless by Cingular Wireless. The complaint alleged that the transaction, as originally proposed, would have reduced competition for mobile wireless telecommunications service in ten geographic areas, increasing the

¹⁸ 70 Fed. Reg. 73369 (December 12, 2005).

¹⁹ 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.

²⁰ Department of Justice press release issued May 24, 2005 – Proposed Acquisition of Moneyline Telerate by Reuters Ltd. The Division evaluated the transaction and the proposed restructuring in collaboration with the European Commission's Directorate-General for Competition, which was also reviewing the transaction.

²¹ *United States and the State of Connecticut and the State of Texas v. Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services, Inc.*, No. 1:04CV01850 (D.D.C. filed October 25, 2004).

likelihood of unilateral actions by the merged firm to raise prices, diminish the quality or quantity of services provided, refrain from or delay making investments in network improvements, and refrain from or delay launching new services. The transaction also would have lessened competition for mobile wireless broadband services in three additional markets. A proposed consent decree settling the suit was filed simultaneously with the complaint. Under the terms of the decree, the merged firm was required to divest assets in thirteen markets in eleven states: Connecticut, Texas, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Missouri, Michigan, Oklahoma, and Tennessee. The Court entered the consent decree on March 14, 2005.

In *United States v. ALLTEL Corporation, et al.*,²² the Division challenged ALLTEL Corporation's proposed \$6 billion acquisition of Western Wireless Corporation, alleging that the acquisition, as originally proposed, would have resulted in higher prices, lower quality and quantity of services, and diminished investment in network improvements for mobile wireless service consumers in sixteen rural areas in Nebraska, Kansas, and Arkansas. ALLTEL and Western Wireless were regional mobile wireless service providers that served many rural markets. Although the combination of these two regional providers gives the merged firm the benefit of having a larger service area footprint, the proposed transaction would have reduced competition in specific markets where ALLTEL and Western Wireless were each other's most significant competitors. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the consent decree, ALLTEL was required to divest Western Wireless' mobile wireless service business, including spectrum and customers, in nine markets in Nebraska, six markets in Kansas, and one market in Arkansas. ALLTEL was also required to divest the Cellular One service mark under which Western Wireless had operated in the sixteen divestiture markets, as well as in almost all other areas in which it had operated. The Court entered the consent decree on October 12, 2005.

In *United States v. Waste Industries USA, Inc.*,²³ the Division challenged Waste Industries' August 2003 acquisition of waste-hauling assets from Allied Waste Industries, Inc., alleging that the acquisition had lessened competition for small container commercial hauling services in the Southside of Virginia (the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, and Franklin, Virginia and the county of Southampton). Small container commercial hauling involves the collection of waste from commercial establishments, such as retail stores, offices and restaurants, as well as the shipment of the collected waste to disposal sites. The complaint alleged the August 2003 transaction reduced the number of significant firms competing in the collection of small container commercial waste in the Southside of Virginia from four to three, giving Waste Industries control over approximately 43 percent of that market. The Division filed a proposed consent decree simultaneously with the complaint, settling the suit. Under the terms of the decree, Waste Industries was required to divest small container commercial hauling assets on certain routes in the Southside and to alter its existing and future contracts for small container commercial waste-hauling services. The

²² *United States v. ALLTEL Corporation and Western Wireless Corporation*, No. 1:05CV01345 (D.D.C. filed July 6, 2005).

²³ *United States v. Waste Industries USA, Inc.*, No. 2:05CV468 (E.D. Va. filed August 8, 2005).

contract modifications were to promote competition by making it easier for customers in the area to switch to other small container commercial waste haulers. The Court entered the consent decree on November 4, 2005.

Additionally, on November 30, 2004, the Division petitioned the Court to enter a settlement agreement and enforcement order against Republic Services, Inc. for violating a decree that was entered by the Court in 2000, in *United States v. Allied Waste Industries, Inc. and Republic Services, Inc.*²⁴ The Division alleged that Republic's operations in both Lakeland, Florida and Louisville, Kentucky used contracts with terms less favorable to customers than the terms mandated by the 2000 decree. The purpose of that contract relief had been to make it easier for Republic's customers to switch to competing waste collection services. The settlement agreement and enforcement order, which the Court entered on December 1, 2004, required Republic to pay a \$1.5 million civil penalty and to replace all of its existing customer contracts involving terms exceeding those required by decree with contracts containing terms no more restrictive than those required by decree.

In October 2004, the Division filed an appeal in *United States and the Commonwealth of Kentucky v. Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC.*²⁵ Oral argument took place in the Sixth Circuit on July 19, 2005. On October 25, 2005, the Court reversed the District Court's grant of summary judgment to defendants and remanded the case for trial.

2. *The Federal Trade Commission*

The Commission challenged fourteen transactions that it concluded would have lessened competition if allowed to proceed as proposed during fiscal year 2005,²⁶ leading to nine consent orders and four abandonments.²⁷ In one matter, the Commission authorized staff to seek injunctive relief in district court, which the court dismissed at the Commission's request prior to a preliminary injunction hearing.

In *Federal Trade Commission v. Aloha Petroleum Ltd., and Trustreet Properties, Inc.*,²⁸ the Commi

assets of Truststreet Properties, alleging that the acquisition would have substantially lessened competition in the marketing of gasoline by bulk suppliers in Hawaii and in the retail sale of gasoline on Oahu, resulting in higher prices to consumers. According to the complaint, Aloha already owned a 50 percent interest in the Barbers Point petroleum importing terminal on Oahu and, under the proposed transaction, would have acquired the other half interest from Truststreet. The Barbers Point terminal was the newest on the island and could take full cargoes of gasoline, which was the most economical way to bring in low-cost bulk supply to Hawaii. The proposed transaction likely would have reduced the number of gasoline marketers with ownership of, or guaranteed access to, a refinery or an import-capable terminal from five to four. It would have also reduced from three to two the number of bulk suppliers who had been willing to sell to unintegrated retailers. Subsequent to the Commission filing its complaint, Aloha announced it would enter into a 20-year throughput agreement giving Mid Pac Petroleum LLC substantial rights to use the Barbers Point terminal. The agreement essentially substituted Mid Pac for Truststreet as a bulk supply gasoline marketer in Hawaii, making it a significant competitor in the relevant market. As a result, the Commission filed a motion asking the district court to dismiss the FTC's complaint seeking an injunction.

In fiscal year 2005, the Commission accepted consent agreements for public comment in nine merger cases. Eight of the consent agreements became final in fiscal year 2005; one became final in fiscal year 2006.

In *Genzyme Corporation/ILEX Oncology, Inc.*,²⁹ the complaint alleged that Genzyme's proposed \$1 billion acquisition of ILEX would have substantially lessened competition in the U.S. market for the research, development, manufacture, and sale of solid organ transplant ("SOT") acute therapy drugs. According to the complaint SOT acute therapy drugs are used to suppress a recipient's immune system in solid organ transplants. The U.S. market for SOT acute therapy drugs was highly concentrated and Genzyme was the leading supplier with its product, Thymoglobulin. ILEX's Camp

Source: FTC, *Genzyme/ILEX*, 2006.

would have been forced to pay higher prices and receive diminished service. The consent order required Cemex to divest RMC's Tucson area ready-mix concrete assets.

In *Cytec Industries Inc.*,³¹ the complaint alleged that Cytec's proposed \$1.8 billion acquisition of the Surface Specialties business of UCB S.A. would have substantially lessened competition in the market for the research, development, manufacture, and sale of amino resins for industrial liquid coatings and adhesion promotion in rubber in North America. According to the complaint, the amino resins were used as cross-linking agents in thermoset surface coatings for a range of applications, including automotive coatings, coil coatings, can coatings, appliance coatings, and general maintenance coatings. They were also used to promote the adhesion of rubber to materials in tires, thereby enhancing the performance and durability of tires. The complaint asserted that for many years Cytec and UCB had been direct and substantial competitors in the market for amino resins, and absent relief from the consent order this competition likely would have been lost and not easily replaced, resulting in higher prices for consumers. Under the order, Cytec was required to divest UCB's amino resins business.

In *Occidental Petroleum Corporation/Vulcan Materials Company*,³² the complaint alleged that the proposed \$359 million acquisition by Occidental Petroleum Corporation for the chemicals business of Vulcan Materials Company would have substantially lessened competition in the U.S. market for the production and sale of the following products: (1) potassium hydroxide ("KOH"), a raw material used in the production of many potassium chemicals such as food additives for low-sodium foods; (2) potassium carbonate ("potcarb"), used as a nutrition supplement for dairy cattle; and (3) anhydrous potassium carbonate ("APC"), the solid form of potcarb. According to the complaint, Occidental, through its subsidiary Occidental Chemical Company ("OxyChem"), and Vulcan were the primary U.S. competitors in the relevant markets for many years and the only producers of APC in the country. The complaint also asserted that each market was highly concentrated and consumers relied on the com

enforcement of the patents, Chevron's ownership of Unocal likely would have enabled it to position itself to coordinate with its downstream competitors, to the detriment of consumers. In order to remedy the anticompetitive effects of the proposed merger, the consent order required Chevron and Unocal to cease from enforcing Unocal's relevant patents, undertaking any new enforcement efforts related to the patents, and to cease from all attempts to collect damages, royalties, or other payments related to the use of any of the patents. The parties were also required to dismiss all pending legal action related to alleged infringement of the patents.

*In Valero L.P./Valero Energy Corporation/Kaneb Services LLC/Kaneb Pipe Line Partners, L.P.,*³⁴

monopoly in that market. Louisiana law limited the number of licenses to fifteen river boat casinos, four racinos (race tracks with slot machines), and one non-Native American land-based casino. All of these licenses had been granted, and there was no evidence that any of the operating businesses had plans to relocate outside of the state. The consent order required Penn National to sell Argosy's Baton Rouge casino.

In *The Procter & Gamble Company/The Gillette Company*,³⁷ the complaint alleged that Procter & Gamble's proposed \$57 billion acquisition of Gillette would have substantially lessened competition in the U.S. markets for at-home teeth whitening products, adult battery-powered toothbrushes, rechargeable toothbrushes, and men's antiperspirant/deodorant. According to the complaint, the loss of competition between the parties in the relevant markets likely would have resulted in consumers paying higher prices. The consent order required the parties to divest Gillette's Rembrandt at-home teeth whitening business, Procter & Gamble's Crest SpinBrush battery-powered and rechargeable toothbrush business, and Gillette's Right Guard men's antiperspirant/deodorant business. The order also required Procter & Gamble to amend its Crest Sonicare IntelliClean System rechargeable toothbrush joint venture business agreement with Philips Oral Health Care, Inc., allowing Philips to independently market and sell IntelliClean and eliminating all non-compete provisions.

ONGOING REASSESSMENT OF THE EFFECTS OF THE PREMERGER NOTIFICATION PROGRAM

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

Always cognizant of the program's impact and effectiveness, the enforcement agencies continue to seek ways to speed up the review process and reduce burdens for companies. As in past years, the agencies will continue their ongoing assessment of the HSR program to increase

³⁷ *The Procter & Gamble Company/The Gillette Company*, Docket No. C-4151 (issued September 29, 2005).

accessibility, promote transparency, and reduce the burden on the filing parties without compromising the agencies' ability to investigate and interdict proposed transactions that may substantially lessen competition.

LIST OF APPENDICES

- Appendix A - Summary of Transactions, Fiscal Years 1996 - 2005
- Appendix B - Number of Transactions Reported and Filings Received by Month for Fiscal Years 1996 - 2005

LIST OF EXHIBITS

- Exhibit A - Statistical Tables for Fiscal Year 2005, Presenting Data Profiling Hart-Scott-Rodino Premerger Notification Filings and Enforcement Interest

APPENDIX A

SUMMARY OF TRANSACTIONS

FISCAL YEARS 1996- 2005

APPENDIX A

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APPENDIX B

NUMBER OF TRANSACTIONS REPORTED

AND

FILINGS RECEIVED BY MONTH

FOR

FISCAL YEARS 1996 - 2005

APPENDIX

APPENDIX									

EXHIBIT A

STATISTICAL TABLES

FOR

FISCAL YEAR 2005

DATA PROFILING HART-SCOTT-RODINO PREMERGER

NOTIFICATION FILINGS AND ENFORCEMENT INTERESTS

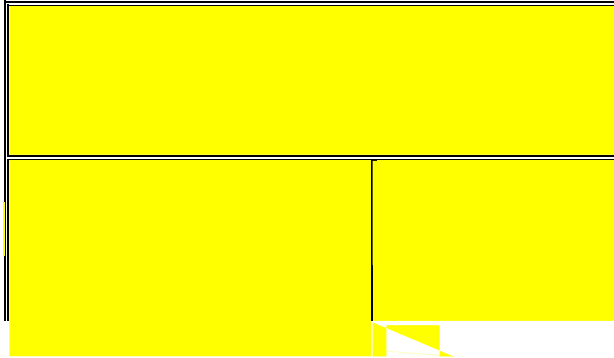
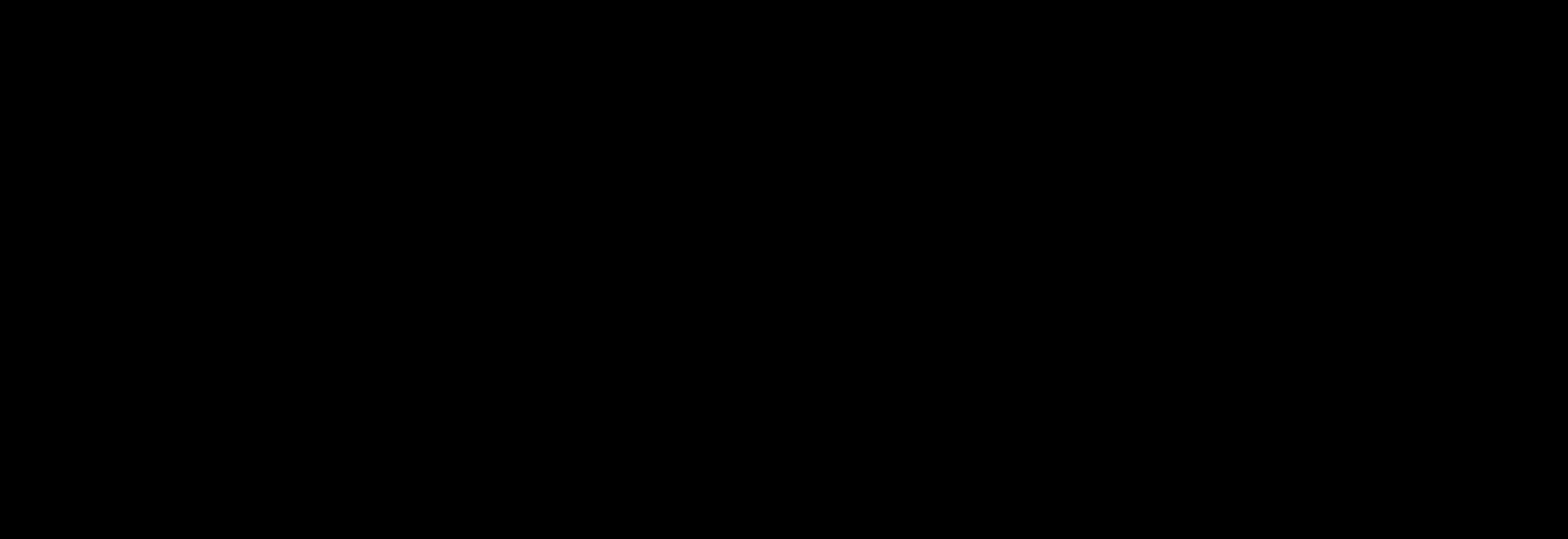
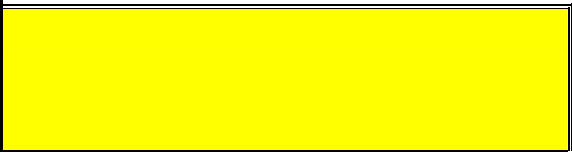
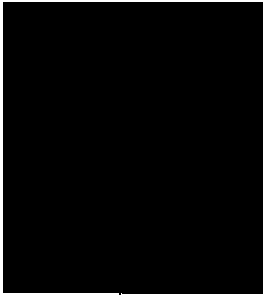
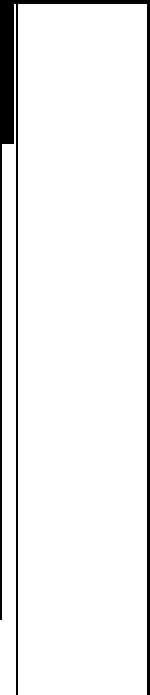


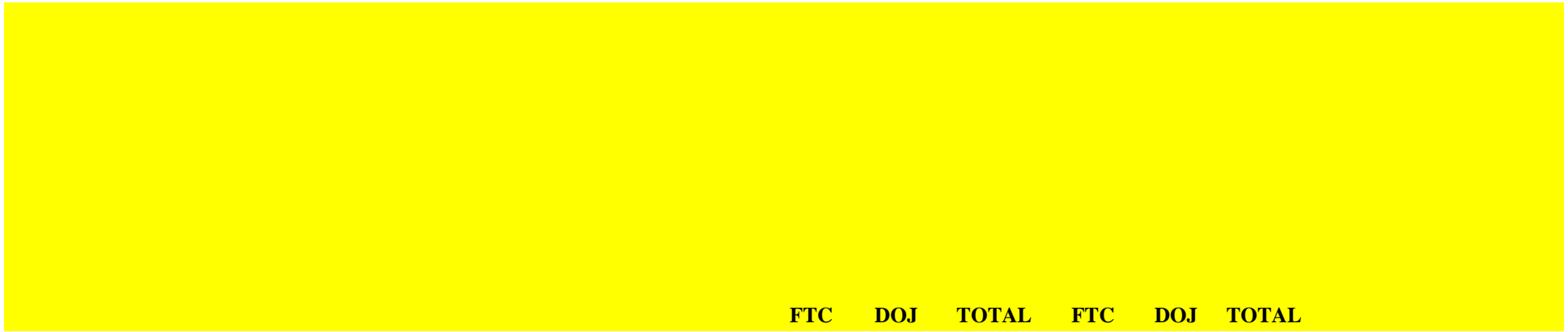
TABLE IV
FISCAL YEAR 2005¹
INVESTIGATIONS IN WHICH SECOND REQUESTS WERE ISSUED

TRANSACTION RANGE (\$MILLIONS)	INVESTIGATIONS IN WHICH SECOND REQUEST WERE ISSUED ³			SECOND REQUESTS ISSUED AS A PERCENTAGE OF:								
				TOTAL NUMBER OF TRANSACTIONS			TRANSACTIONS IN EACH TRANSACTION RANGE GROUP			TOTAL NUMBER OF SECOND REQUEST INVESTIGATIONS		
	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
50M - 100M	0	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
100M - 150M	4	4	8	0.2%	0.2%	0.4%	1.7%	1.7%	3.3%	8.0%	8.0%	16.0%
150M - 200M	2	2	4	0.1%	0.1%	0.2%	1.3%	1.3%	2.5%	4.0%	4.0%	8.0%
200M - 300M	2	4	6	0.1%	0.2%	0.3%	1.1%	2.2%	3.4%	4.0%	8.0%	12.0%
300M - 500M	2	0	2	0.1%	0.0%	0.1%	1.1%	0.0%	1.1%	4.0%	0.0%	4.0%
500M - 1000M	3	4	7	0.2%	0.2%	0.4%	2.1%	2.8%	4.9%	6.0%	8.0%	14.0%
Over 1000M	12	11	23	0.7%	0.7%	1.4%	7.5%	6.9%	14.4%	24.0%	22.0%	46.0%
ALL TRANSACTIONS	25	25	50	1.6%	1.6%	3.2%	1.6%	1.6%	3.2%	50.0%	50.0%	100.0%









111	Agricultural Production - Crops	0	0.0%	-0.1%
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FTC	DOJ	TOTAL	FTC	DOJ	TOTAL
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Table XI

FISCAL YEAR 2005¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2004 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3 DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁵ <i>(the data series for this column was revised in April, 2008)</i>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
316	Leather and Leather Products	2	0.1%	0.1%	0	1	1	0	0	0	1
321	Sawmills	9	0.6%	NC	0	1	1	0	0	0	5
322	Paper and Allied Products	10	0.6%	-0.2%	0	1	1	0	1	1	5
324	Petroleum Refining and Related Industries	10	0.6%	1.4%	3	0	3	1	0	1	4
325	Chemicals and Allied Products	76	4.7%	0.4%	24	1	25	4	1	5	55
326	Rubber and Misc. Plastics Products	24	1.5%	0.5%	5	0	5	1	0	1	16
327	Stone, Clay, Glass and Concrete Products	20	1.2%	0.5%	2	2	4	1	0	1	7
331	Iron and Steel Mills	24	1.5%	0.8%	4	2	6	0	0	0	9
332	Fabricated Metal Products, Except Machinery and Transportation Equipment	31	1.9%	-0.1%	2	4	6	1	2	3	10
333	Industrial and Commercial Machinery and Computer Equipment	21	1.3%	1.0%	2	4	6	0	0	0	11
334	Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	69	4.3%	1.4%	8	12	20	0	1	1	47
335	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	21	1.3%	-0.4%	2	3	5	0	2	2	11
336	Transportation Equipment	34	2.1%	1.8%	5	3	8	1	0	1	18
337	Home Furniture, Furnishings and Equipment Stores	4	0.2%	-0.1%	0	0	0	0	0	0	2

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					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
339	Miscellaneous Manufacturing Industries	24	1.5%	-0.4%	6	0	6	0	0	0	13
421	Wholesale Trade - Durable Goods	97	6.0%	1.9%	10	0	10	0	0	0	49
422	Wholesale Trade - Nondurable Goods	72	4.5%	1.7%	14	3	17	3	0	3	49
423	Automobile and other Motor Vehicle Merchant Wholesalers	2	0.1%	-0.2%	0	0	0	0	0	0	1
424	Printing and Writing Paper Merchant Wholesalers	5	0.3%	0.2%	2	0	2	0	0	0	0
441	Automotive Dealers and Gasoline Service Stations	2	0.1%	0.6%	0	0	0	0	0	0	2
443	Miscellaneous Repair Services	2	0.1%	NC	0	0	0	0	0	0	1
444	Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	2	0.1%	NC	1	0	1	0	0	0	1
445	Supermarkets and Other Grocery (except Convenience) Stores	3	0.2%	-0.1%	0	0	0	0	0	0	1
446	Miscellaneous Retail	8	0.5%	0.1%	3	0	3	0	0	0	4
447	Food Stores	10	0.6%	0.4%	1	0	1	0	0	0	6
448	Apparel and Accessory Stores	10	0.6%	0.1%	0	0	0	0	0	0	3
451	Sporting Goods Stores	8	0.5%	0.4%	0	0	0	0	0	0	4
452	General Merchandise Stores	14	0.9%	0.7%	4	0	4	0	0	0	3
453	Stationery and Office Supplies	2	0.1%	0.1%	0	0	0	0	0	0	1
454	Heating Oil Dealers and Liquefied Petroleum Gas	14	0.9%	NC	3	0	3	0	0	0	10
481	Transportation by Air	10	0.6%	0.2%	0	5	5	0	0	0	6
482	Railroad Transportation	0	0.0%	0.3%	0	0	0	0	0	0	0

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3-DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2004 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3 DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁵ <i>(the data series for this column was revised in April, 2008)</i>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
483	Water Transportation	0	0.0%	-0.4%	0	0	0	0	0	0	0
484	Motor Freight Transportation and Warehousing	7	0.4%	0.2%	0	1	1	0	0	0	5
485	Local and Suburban Transit and Interurban Highway Passenger Transportation	1	0.1%	NC	0	0	0	1	0	1	1
486	Pipelines, Except Natural Gas	17	1.1%	0.2%	4	0	4	0	0	0	10
488	Air Traffic Control	11	0.7%	0.2%	0	1	1	0	0	0	4
492	Couriers	0	0.0%	-0.1%	0	0	0	0	0	0	0
493	Warehousing & Storage	2	0.1%	-0.3%	0	0	0	1	0	1	1
511	Printing, Publishing and Allied Industries	89	5.5%	0.9%	3	12	15	1	3	4	63
512	Motion Pictures	12	0.7%	0.3%	0	3	3	0	1	1	4
513	Communications	102	6.3%	1.9%	5	11	16	0	3	3	50
514	On-line Services	32	2.0%	0.3%	0	3	3	0	0	0	18
517	Telecommunications	1	0.1%	NC	0	0	0	0	0	0	0
518	Internet Service Providers, Web Search Portals, and Data Processing Services	1	0.1%	0.1%	1	0	1	0	0	0	0
521	Depository Institutions	0	0.0%	NC	0	0	0	0	0	0	0
522	Nondepository Credit Institutions	48	3.0%	0.3%	0	3	3	0	1	1	27
523	Security and Commodity Brokers, Dealers, Exchanges and Services	120	7.4%	4.5%	1	7	8	0	2	2	72
524	Insurance Carriers	48	3.0%								

Table XI

FISCAL YEAR 2005¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

**3-DIGIT
NAICS
CODE¹¹**

FTC DOJ TOTAL FTC DOJ TOTAL

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FISCAL YEAR 2005¹ INDUSTRY GROUP OF ACQUIRED ENTITIES

3-DIGIT NAICS CODE ¹¹	INDUSTRY DESCRIPTION	NUMBER ⁴	PERCENT OF TOTAL	CHANGE FROM FY 2004 ¹²	CLEARANCE GRANTED TO FTC OR DOJ			SECOND REQUEST INVESTIGATIONS ³			NUMBER OF 3 DIGIT INTRA-INDUSTRY TRANSACTIONS ¹⁵ <i>(the data series for this column was revised in April, 2008)</i>
					FTC	DOJ	TOTAL	FTC	DOJ	TOTAL	
812	Personal Services	3	0.2%	0.2%	0	0	0	0	0	0	2
813	Membership Organizations	0	0.0%	NC	0	0	0	0	0	0	0
923	Administration of Human Resource Programs	0	0.0%	NC	0	0	0	0	0	0	0
924	Administration of Environmental Quality and Housing Programs	0	0.0%	NC	0	0	0	0	0	0	0
999	Nonclassifiable Establishments	0	0.0%	-15.8%	0	0	0	0	0	0	0
000	Not Available ¹⁰	39	2.4%	1.7%	7	2	9	0	1	1	1
		1,612	100.0%		183	120	303	25	25	50	869

¹ Fiscal year 2005 figures include transactions reported between October 1, 2004 and September 30, 2005.

² The size of transaction is based on the aggregate total amount of voting securities and/or assets held by the acquiring person as a result of the transaction and is taken from the response to Item 3(b)(ii) and 3(c) of the Notification and Report Form.

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

⁴ During fiscal year 2005, 2004 and 2003, transactions reported under the HSR Premerger Notification program. The smaller number 1,610 reflects the adjustment to eliminate the following types of transactions: (1) transactions reported under Section 7A(c)(6) and (c)(8), (transactions involving certain regulated industries and financial businesses).