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MERGER ENFORCEMENT STATISTICS: 2001–2020

LOGAN BILLMAN & STEVEN C. SALOP*

This article analyzes merger enforcement data for 2001–2020 using a database created by the authors. The database lists the identity and outcome of every transaction that received a second request during this 20-year period. The database also lists the identity and outcome of every challenge to an already-consummated merger during the period. The database was populated using case dockets, FTC and DOJ dockets, press releases, and Hart-Scott-Rodino annual reports (fiscal years 2000 to 2020). The goal of creating the database is to provide further information on merger enforcement, which we hope can inform policy and spur additional analysis.¹

We have focused on the 2001–2020 period. It is the most recent period. But it also differs substantially from the previous 20 years. Those two decades were a period of transition, beginning with the 1982 Merger Guidelines.² Those Guidelines were based on an explicit economic framework and adopted a new approach to market definition. They replaced concentration ratios with the Herfindahl-Hirschman Index (HHI) and created a concentration safe harbor as well as a critical HHI level for applying the structural presumption.³ The presumption level was roughly consistent with the concentration level in *Philadelphia National Bank*.⁴ But it clearly was much higher than the levels in

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¹ With this goal in mind, the authors intend to provide open-source access to the database to users willing to grant back access to data they collect and use in their work using our database. Requests for access to the database may be sent to salop@georgetown.edu.

² U.S. DEP'T OF JUSTICE, 1982 MERGER GUIDELINES (1982), [justice.gov/archives/atr/1982-merger-guidelines](https://www.justice.gov/archives/atr/1982-merger-guidelines).

³ *Id.* § III.A.

⁴ *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 364–66 (1963).

*Vons*⁵ or the 1968 Merger Guidelines.⁶ The 1982 Merger Guidelines also treated entry and coordination impediments as rebuttal factors.⁷

The legal and economic approach to mergers went through significant developments in these two decades. The 1982 Merger Guidelines suggested that easy entry could justify even a merger to monopoly.⁸ *Waste Management* (1984)⁹ and *Syufy* (1990)¹⁰ then used a finding of easy entry to permit those mergers. *Baker Hughes* (1990)¹¹ used findings of easy entry and coordination impediments to permit that merger.¹²

Following these government losses, the 1992 Merger Guidelines created an explicit framework for evaluating ease of entry.¹³ They also added a more detailed approach to potential impediments to coordinated effects.¹⁴ Most importantly, they also took the large step of introducing a new economic analysis of unilateral competitive effects.¹⁵ A unilateral effects theory was used by New York in *Kraft General Foods* (1993),¹⁶ though it failed on the facts. By contrast, the FTC prevailed on a unilateral effects theory in *Staples* (1997).¹⁷ The 1990s also saw the introduction of a more detailed approach to evaluating efficiency claims. The parties' efficiency claims failed in *Staples*, and the 1997 Merger Guidelines developed the modern approach to merger efficiency claims. All of these changes increased the sophistication and complexity of merger analysis.

Merger law also made significant developments. In contrast to *Philadelphia National Bank* (1963)¹⁸ or Judge Posner's opinion in *Hospital Corporation of America* (1986),¹⁹ *Baker Hughes* downplayed the role of concentration evidence and the structural presumption, going so far as stating that concentra-

⁵ *United States v. Von's Grocery Co.*, 384 U.S. 270, 290 (1966) (Stewart, J., dissenting).

⁶ U.S. DEP'T OF JUSTICE, MERGER GUIDELINES ¶¶ 5–6 (1968), justice.gov/archives/atr/1968-merger-guidelines.

⁷ See 1982 MERGER GUIDELINES, *supra* note 2, §§ III(B)–(C).

⁸ See *id.* § III(B).

⁹ *United States v. Waste Mgmt., Inc.*, 743 F.2d 976, 978, 983–84 (2d Cir. 1984).

¹⁰ *United States v. Syufy Enters.*, 903 F.2d 659, 665–69 (9th Cir. 1990).

¹¹ *United States v. Baker Hughes Inc.*, 908 F.2d 981, 987–89, 992 (D.C. Cir. 1990).

¹² For a critique of the entry analysis in *Syufy* and *Baker Hughes*, see Jonathan B. Baker, *The Problem with Baker Hughes and Syufy: On the Role of Entry in Merger Analysis*, 65 ANTITRUST L.J. 353 (1996).

¹³ See U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, MERGER GUIDELINES § 3 (1992), justice.gov/archives/atr/1992-merger-guidelines.

¹⁴ See *id.* § 2.1.

¹⁵ See *id.* § 2.2.

¹⁶ *New York v. Kraft Gen. Foods, Inc.*, 862 F. Supp. 1030, 1034–35 (S.D.N.Y. 1993).

¹⁷ *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1093 (D.D.C. 1997).

¹⁸ *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 363 (1963).

¹⁹ *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986).

tion is merely a “convenient starting point.”²⁰ However, by contrast, the decade ended with the *Heinz* decision in early 2001 adopting a sliding-scale approach, such that the strength of the presumption depended on the level of concentration.²¹

By 2001, the basic economic and legal framework achieved some stability. This is not to say that the period since 2001 has been devoid of change. While there were only 38 cases (about 2 per year) that reached an outcome at trial during the 2001–2020 period, there were 367 (about 18 per year) consent decrees that can be studied among the 969 (about 48 per year) second requests. The number of cases, case selection and outcomes exhibit some significant developments. There was also considerable complexity.

First, since 2001, almost all litigated cases have focused on unilateral effects rather than (or in addition to) coordinated effects. *H & R Block* (2011)²² is a good example of the theories being successfully pursued by the government. The DOJ surprisingly lost *Oracle* (2004)²³ when the court arguably defined an unreasonably overbroad market. And the FTC lost *Lunbeck* (2011)²⁴ when the court arguably defined an unreasonably narrow market. But most other recent opinions have appeared within the mainstream.

Second, this 20-year period witnessed a rebirth and focus on successful challenges to hospital mergers by the FTC. While the FTC lost a number of cases in the 1990s, the successful case brought against the already-consummated *Evanston Northwestern/Highland Park* merger in 2004 (and decided by the Commission in 2007)²⁵ revitalized the program. The FTC subsequently challenged nine other hospital mergers. Of these, seven went to trial and the FTC won six, while losing only one. Of the remaining two, one was abandoned after the complaint and one was resolved with a consent decree.

Third, the 2010 Horizontal Merger Guidelines²⁶ were a major update. On one hand, the Guidelines could be seen as loosening enforcement standards by raising the HHI levels for the safe harbor and structural presumption.²⁷ On the other hand, they tightened standards by updating unilateral effects analysis (introducing the Gross Upward Pricing Pressure Index (GUPPI) measure and

²⁰ *United States v. Baker Hughes Inc.*, 908 F.2d 981, 984 (D.C. Cir. 1990).

²¹ *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001).

²² *United States v. H & R Block, Inc.*, 833 F. Supp. 2d 36, 71–73, 77–80, 85, 86–92 (2011).

²³ *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098, 1158–65 (N.D. Cal. 2004).

²⁴ *FTC v. Lundbeck, Inc.*, 650 F.3d 1236, 1240–43 (8th Cir. 2011).

²⁵ Opinion of the Commission, *Evanston Nw. Healthcare Corp.*, FTC Docket No. 9315 (Aug. 6, 2007), [ftc.gov/sites/default/files/documents/cases/2007/08/070806opinion.pdf](https://www.ftc.gov/sites/default/files/documents/cases/2007/08/070806opinion.pdf).

²⁶ U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES (2010), [justice.gov/atr/horizontal-merger-guidelines-08192010](https://www.justice.gov/atr/horizontal-merger-guidelines-08192010).

²⁷ *See id.* § 5.3.

extending the analysis to negotiation and innovation markets), updating coordinated effects analysis (focusing on the role of mavericks and working to reduce the agencies' burden of showing likely coordinated effects), and contemplating the adoption of rigorously derived targeted customer sub-markets.²⁸ The 2010 Guidelines also took a more holistic approach to the evidence and came close to adopting anticompetitive presumptions based on GUPPIs and mavericks.²⁹ Like the agencies' prior merger guidelines, the 2010 Guidelines have achieved significant acceptance in the courts.³⁰

Fourth, the idea of asking a district court to adjudicate a defendant's voluntary remedy proposal ("litigating the fix") became common.³¹ While this trial strategy failed in *Libbey* (2002),³² it succeeded in *Arch Coal* (2004).³³ Since then, defendants proposed fixes in a significant number of FTC and DOJ cases, including *CCC* (2009),³⁴ *Polypore* (2012),³⁵ *H&R Block* (2011),³⁶ *Ardagh* (2013),³⁷ *Sysco* (2015),³⁸ *Advocate* (2016),³⁹ *Aetna* (2017),⁴⁰ *Staples* (2016),⁴¹ *AT&T/Time Warner* (2018),⁴² *Otto Bock* (2019),⁴³ and *Evonik/PeroxyChem* (2020),⁴⁴ as well as the *T-Mobile* (2020)⁴⁵ case brought by a number of States. This strategy has cascaded more recently with fixes in decided cases or

²⁸ See *id.* §§ 6–7.

²⁹ See generally *id.*

³⁰ Carl Shapiro & Howard Shelanski, *Judicial Response to the 2010 Horizontal Merger Guidelines*, 58 REV. IND. ORG. 51, 53 (2021).

³¹ For further discussion of "litigating the fix" cases, see Steven C. Salop & Jennifer E. Sturiale, *Fixing "Litigating the Fix"*, 85 ANTITRUST L.J. (forthcoming 2023) (on file with the authors).

³² *FTC v. Libbey, Inc.*, 211 F. Supp. 2d 34, 41 (D.D.C. 2002).

³³ *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 114 (D.D.C. 2004).

³⁴ *FTC v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 51 (D.D.C. 2009).

³⁵ Initial Decision, *Polypore Int'l, Inc.*, FTC Docket No. 9327 (Mar. 1, 2010), ftc.gov/sites/default/files/documents/cases/2010/03/100305polyporeindecision.pdf.

³⁶ *United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36, 82 (D.D.C. 2011).

³⁷ Transcript of Pre-Hearing Conference at 18–21, *FTC v. Ardagh Grp., S.A.*, No. 13-1021 (D.D.C. Sept. 24, 2013), ftc.gov/sites/default/files/documents/cases/130924ardaghtranscript.pdf.

³⁸ *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 15 (D.D.C. 2015).

³⁹ Defendants' Post-Hearing Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 19, *FTC v. Advoc. Health Care Network*, 2016 WL 3387163 (June 20, 2016) (No. 1:15-cv-11473), 2016 WL 2956389, *rev'd*, 841 F.3d 460 (7th Cir. 2016).

⁴⁰ *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 8 (D.D.C. 2017).

⁴¹ *FTC v. Staples, Inc.*, 190 F. Supp. 3d 100, 137 n.15 (D.D.C. 2016).

⁴² *United States v. AT&T Inc.*, 310 F. Supp. 3d 161, 184, 217, 241–42 n.51 (D.D.C. 2018); see also *id.* at 164 (discussing the landscape of how the parties claim the merger will increase not only innovation but also competition).

⁴³ Opinion of the Commission at 4, 9–10, 34–35, 61–63, *Otto Bock HealthCare N. Am., Inc.*, FTC Docket No. 9378 (Nov. 1, 2019), ftc.gov/system/files/documents/cases/d09378commissionfinalopinion.pdf.

⁴⁴ *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 304 (D.D.C. 2020).

⁴⁵ *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 197, 225, 230 (S.D.N.Y. 2020).

under consideration in 2022: *Illumina*,⁴⁶ *UHG*,⁴⁷ *Booz Allen*,⁴⁸ *Penguin*,⁴⁹ and *Assa Abloy*.⁵⁰

Fifth, the 2001–2020 period showed increasing concern with mergers that had vertical elements. Over the 20-year period, about 45% (i.e., 33) of the 74 challenges involved mergers that were either purely vertical or a combination of vertical and horizontal.⁵¹ However, a closer look at these challenges would indicate that where there were both horizontal and vertical issues, the agency often focused only on the horizontal. For example, the *St. Luke's*⁵² merger case in Idaho had a vertical element, but the FTC focused only on the horizontal aspect at trial, while the private plaintiff focused on the vertical.⁵³ The breakdown among the three administrations also reveals the increase in the number of such challenges over time. There were 6 such challenges during eight years of the Bush administration, 16 during the eight years of the Obama administration, and 13 during the four years of the Trump administration. Only one purely vertical merger, *AT&T/Time Warner* (2018), reached trial, and it was a case that the DOJ lost.

⁴⁶ Initial Decision at 1–2, *Illumina, Inc.*, FTC Docket No. 9401 (Sept. 9, 2022), ftc.gov/system/files/ftc_gov/pdf/D09401InitialDecisionPublic.pdf.

⁴⁷ *United States v. UnitedHealth Grp. Inc.*, No. 1:22-cv-0481, 2022 WL 4365867, at *1 (D.D.C. Sept. 21, 2022).

⁴⁸ *United States v. Booz Allen Hamilton Inc.*, No. 1:22-cv-01603, 2022 WL 9976035, at *7–8 & n.19 (D. Md. Oct. 17, 2022).

⁴⁹ *United States v. Bertelsmann SE & Co.*, No. 21-2886, 2022 WL 16949715, at *31–32 (D.D.C. Nov. 15, 2022).

⁵⁰ Pretrial Brief of Plaintiff United States of America at 1, *United States v. Assa Abloy AB*, 1:22-cv-02791 (D.D.C. Jan. 13, 2023).

⁵¹ For further details, see Steven C. Salop & Daniel P. Culley, *Vertical Merger Enforcement Actions: 1994 – April 2020* (Apr. 15, 2020) (unpublished article), scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2541&context=Facpub [hereinafter Salop & Culley (Update)]. These counts update the earlier enforcement statistics cited in Steven C. Salop & Daniel P. Culley, *Revising the U.S. Vertical Merger Guidelines: Policy Issues and an Interim Guide for Practitioners*, 4 J. Antitrust Enforcement 1 (2016). The counts in this paper do not include three transactions addressed in Salop & Culley (Update), *supra*: one was a private case (*Steves and Sons, Inc. v. Jeld-Wen, Inc.*, 345 F.Supp.3d 614 (E.D. Va. 2018)) and the other two were abandoned without complaint being filed (*Lam/KLA*, see Press Release, U.S. Dep't of Justice, *Lam Research Corp. and KLA-Tencor Corp. Abandon Merger Plans* (Oct. 5, 2016), justice.gov/opa/pr/lam-research-corp-and-kla-tencor-corp-abandon-merger-plans; *Comcast/Time Warner*, see Press Release, U.S. Dep't of Justice, *Comcast Corporation Abandons Proposed Acquisition of Time Warner Cable After Justice Department and the Federal Communications Commission Informed Parties of Concerns* (Apr. 24, 2015), justice.gov/opa/pr/comcast-corporation-abandons-proposed-acquisition-time-warner-cable-after-justice-department). The counts in this paper do, however, include the FTC's challenge in *St. Luke's*, see *infra* note 52, which was inadvertently omitted from Salop & Culley (Update), *supra*.

⁵² *Saint Alphonsus Med. Ctr.–Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 781 (9th Cir. 2015).

⁵³ Thomas L. Greaney & Douglas Ross, *Navigating Through the Fog of Vertical Merger Law: A Guide to Counselling Hospital-Physician Consolidation Under the Clayton Act*, 91 WASH. L. REV. 199, 211 n.52, 221–22 (2016).

These developments illustrate significant aspects of merger enforcement by the agencies during the 2001–2020 period. Quantitative analysis of the database reveals considerable volatility and complexity, as shown in the tables that follow. However, some key points can be extracted from the database.

The most striking observation about merger enforcement during this period involves the fact that the government almost always wins in court. Of the 26 litigated outcomes during the period, the government won 17 and lost 9, a win rate of 65%.⁵⁴ In addition, the merging parties abandoned their transaction in the face of litigation in another 34 matters. Including abandonments, the government prevailed in 51 (i.e., 17+34) of its complaints, which implies a win rate of 85% (i.e., 51/60).⁵⁵ Even among the government's 9 losses in court, judges accepted the parties' proposed remedies in 2, so the government arguably received a partial win.⁵⁶

Another relevant fact is that among Hart-Scott-Rodino Act (HSR) transactions receiving second requests, only 28% were cleared as is. About 40% of the rest were settled with consent decrees, another 30% (i.e., (254+34)/969) were abandoned during the HSR investigation or after a complaint was filed, and the rest proceeded to trial.⁵⁷ The situation facing the parties was even more dire if their consummated merger was challenged. For those 44 resolved matters, the government prevailed in 42 (35 consent decrees and 7 wins at trial). The parties escaped without a remedy in less than 5% (i.e., 2/44) of the matters.

This evidence may seem to suggest that parties propose mergers at their peril. They may appear to be dramatically outmatched by agencies in court and so need to submit to the consent decrees or orders demanded by the agencies, regardless of how draconian the remedies are. However, this view ignores a key piece of the puzzle. In our view, the reason the agencies appear to have such a strong position is that they issue so few second requests. This

⁵⁴ These include only challenged unconsummated mergers. During the same period, the government litigated 9 challenged consummated mergers before an Article III court, winning 7 challenges and losing 2 for a 77% win rate. Taking consummated and unconsummated challenges together, the government achieved a 68% win rate.

⁵⁵ Including consummated mergers, the government achieved an 84% win rate (58/69).

⁵⁶ David Gelfand & Leah Brannon, *A Primer on Litigating the Fix*, ANTITRUST, Fall 2016, at 10.

⁵⁷ Complaints may be withdrawn if they are mooted. For example, the FTC withdrew its complaint against Cabell Huntington Hospital and St. Mary's Medical Center after the West Virginia legislature passed a statute which protected the transaction under the state action doctrine. Press Release, Fed. Trade Comm'n, FTC Dismisses Complaint Challenging Merger of Cabell Huntington Hospital and St. Mary's Medical Center (July 6, 2016), [ftc.gov/news-events/news/press-releases/2016/07/ftc-dismisses-complaint-challenging-merger-cabell-huntington-hospital-st-marys-medical-center](https://www.ftc.gov/news-events/news/press-releases/2016/07/ftc-dismisses-complaint-challenging-merger-cabell-huntington-hospital-st-marys-medical-center).

selection effect makes it impossible to conclude whether the agencies are advantaged.⁵⁸

The agencies issued so few second requests because they were budget constrained during this entire period.⁵⁹ Under these circumstances, the agencies were forced to engage in a type of triage process.⁶⁰ Being limited in the number of second requests they can issue and cases they can afford to litigate in court, the agencies target only the limited number of most problematical looking mergers for second requests. Not surprisingly, they generally discover evidence of potential anticompetitive effects. And not surprisingly, the firms generally consider the validity of the concerns, and most are then willing to accept a consent decree or abandon the transaction. Indeed, about 26% (i.e., 254/969) of the firms that receive second requests choose to abandon the transaction even *before* a complaint is issued.

While there is considerable volatility, a very simple trend line discussed below indicates that the fraction of filings that lead to second requests has fallen over time. The predicted rate in 2001 was 3.49%, whereas it fell to 2.92% in 2020, which is a reduction of about 16.3% (i.e., 0.57/3.49). However, this reduction was not statistically significant. Of course, this trend line fails to account for potential causal factors such as the number of filings, agency budgets, Presidential administration, and so on.⁶¹

A budget-constrained agency cannot afford to litigate too many cases in any year. Indeed, on average, fewer than two cases per year reached litigated outcomes during the 2001–2020 period. The agencies must engage in a simi-

⁵⁸ For a general analysis of selection bias, see George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984); Joel Waldfogel, *The Selection Hypothesis and the Relationship Between Trial and Plaintiff Victory*, 103 J. POL. ECON. 229 (1995). For application to private antitrust litigation, see, for example, Steven C. Salop & Lawrence J. White, *Economic Analysis of Private Antitrust Litigation*, 74 GEO. L.J. 1001 (1986).

⁵⁹ See, e.g., Michael Kades, *The State of U.S. Federal Antitrust Enforcement*, WASH. CTR. FOR EQUITABLE GROWTH (Sept. 17, 2019), equitablegrowth.org/research-paper/the-state-of-u-s-federal-antitrust-enforcement/?longform=true (Figures 7–9); *Appropriation Figures for the Antitrust Division: Fiscal Years 1903–2023*, U.S. DEP'T OF JUSTICE (Feb. 2023), justice.gov/atr/appropriation-figures-antitrust-division; John E. Kwoka, Jr., *Commitment to Competition: An Assessment of Antitrust Agency Budgets Since 1970*, 14 REV. INDUS. ORG. 295 (1999); *FTC Appropriation and Full-Time Equivalent (FTE) History*, FED. TRADE COMM'N, ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation.

⁶⁰ Robert B. Bell & Amanda L. Butler, *Institutional Factors Contributing to the Under-Enforcement of Merger Law*, ANTITRUST SOURCE 7–8 (Oct. 2020).

⁶¹ For example, the number of filings increased over the period. For a far more sophisticated attempt to estimate the relationship between merger enforcement intensity and agency budgets, a formidable task in light of all the complexity discussed here, see Jeffrey T. Macher & John W. Mayo, *The Evolution of Merger Enforcement Intensity: What Do the Data Show?*, 17 J. COMPETITION LAW & ECON. 708 (2021); Jeffrey T. Macher et al., *The Evolution of Judicial Standards: Evidence from Litigated Merger Trials* (Georgetown McDonough Sch. of Bus. Research Paper No. 3809741, 2022), papers.ssrn.com/sol3/papers.cfm?abstract_id=3809174.

lar triage process in deciding whether to accept a consent decree settlement. In the presence of triage, the agencies are likely to focus limited resources on highly anticompetitive mergers. Thus, it is not surprising that most cases settle or that the government prevails in most of the complaints that are not settled simultaneously with a consent decree. A simple linear trend (that does not consider other causal factors) indicates that the number of second requests cleared “as is” decreased from about 35.6% in 2001 to 23.3% in 2020—a reduction of 34.5%. This decline, however, is consistent with agency triage.

Nor does this record imply that the agencies have the power to demand extremely strong consent decrees.⁶² An FTC report found that only 66% of the studied consent decrees in horizontal mergers were successes in the sense that competition was restored within 2 to 3 years.⁶³ Another 15% were considered only “qualified successes” in the sense of it taking longer than 2 to 3 years to restore competition, and the remaining 19% were considered failures in the sense that competition was not restored.⁶⁴ Thus, 34% lead to some consumer harm.

The 2001–2020 period included three presidential administrations with different political agendas and different antitrust leaders. Thus, it is interesting to see how enforcement differed across administrations. However, this is not a simple task. Economic conditions over any 20-year period exhibit considerable volatility. This period is no different. 2001 marked the ending of the dot-com boom. The Great Recession hit in 2008 and held down merger activity for several years.

This volatility in economic conditions muddies the water. It may be difficult to determine whether observed differences over time represent differences among the leadership versus luck of the draw. As reported in this article, there were 70 second requests in 2001, while there were only 31 in 2009. But using those observations to support a claim that merger enforcement was lower in 2009 would be fallacious. At the very least, it would be important to take it into account that there may have been more HSR filings cleared to the agencies in 2001 than 2009 (indeed, there were: 2237 in 2001

⁶² For controversy over which side has the relative bargaining leverage, compare Joe Sims & Michael McFalls, *Negotiated Merger Remedies: How Well Do They Solve Competition Problems*, 69 GEO. WASH. L. REV. 932, 932–33, 942–43 (2001); Lawrence M. Frankel, *The Flawed Institutional Design of U.S. Merger Review: Stacking the Deck Against Enforcement*, 2008 UTAH L. REV. 159, 190; Steven C. Salop, *Merger Settlement and Enforcement Policy for Optimal Deterrence and Maximum Welfare*, 81 FORDHAM L. REV. 2647, 2654 (2013).

⁶³ FED. TRADE COMM’N, THE FTC’S MERGER REMEDIES 2006–2012: A REPORT OF THE BUREAU OF COMPETITION AND ECONOMICS 18 (2017), [ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf](https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf).

⁶⁴ *Id.*

versus only 684 in 2009).⁶⁵ Taking that ratio, the second-request rate in 2009 was higher, 4.5% of the HSR filings versus only 3.1% in 2001.

If there were complete triage, identical budgets in real terms each year, and no increase in litigation costs, one might expect the number of second requests to be constant over time. This constancy is not the case. However, the data does exhibit less dramatic effects of triage flowing from budget constraints. We compared the deviations around the mean for total HSR filings versus HSR filings cleared to the agencies and second requests. We found that annually, there were 1,576 HSR filings (i.e., 31,530/20), 246.5 filings cleared to an agency (i.e., 4921/20), and 48.7 second requests (i.e., 969/20). The average absolute deviation from the mean was 13.8% for agency clearances and 14.1% for second requests. Both of these deviations are substantially lower than the average absolute deviation from the mean in HSR filing rates, which was 20%.

This volatility in economic conditions does make it difficult to discern differences over time and between the agencies, as discussed in more detail below. Analyzing differences across Presidential administrations is more difficult for a number of reasons, including the following ones. First, the agencies report HSR data by fiscal years, which run through September of the calendar year. A new presidential administration takes over on January 21st of the calendar year. Second, there is the question of whether to carry out the analysis over time on the basis of when complaints were filed versus when complaints were resolved. We analyze the data in both ways. Third, since economic conditions vary over time, there is always the question of whether differences reflect policy shifts or just luck of the draw. Fourth, the agencies have inherently different caseloads. For example, one broad tendency observed in the data is that the FTC litigates more cases than the DOJ. However, this result could reflect the fact that the FTC handles hospital mergers, and there has been considerable consolidation there.

Fifth, while the number of mergers that reach trial has increased over time, the increase has not been continuous. The number of these cases fell significantly between 2005 and 2014, but then increased between 2015 and 2020. Whether the change in litigation rates was driven by economic conditions, political pressure, or the balance of incentives between the agencies and parties is unclear and worthy of further study.

⁶⁵ Not every HSR filing is reviewed by an FTC or DOJ staff attorney team. Rather, only those HSR filings “cleared” to an agency by the Premerger Notification Office are investigated. Typically, mergers are “cleared to an agency” if the HSR filing indicates that further investigation is warranted.

Going deeper would require more sophisticated econometric analysis than contained in this article. However, the interaction of the economic volatility, budget constraints at each agency, developing legal standards, agency caseloads, and policy differences across administrations create enormous complexity. This complexity will make it more difficult to discern causality and draw strong conclusions. Recent articles have begun this process.⁶⁶

We next turn to a more detailed description and quantitative analysis of the data. Our database includes the number of total HSR filings, the number of clearances to the two agencies, the identification of transactions that received second requests, and the outcomes of those transactions. These outcomes may be: cleared as is, complaints, consent decrees, abandonments, and trial outcomes. Part I provides analysis of aggregate results over the entire period. Part II analyzes the results over time when the transactions are listed by date of outcome. These include comparisons across presidential administrations and between the FTC and DOJ. Part III analyzes the results over time when the transactions are organized by date of complaint rather than by date of outcome. Part IV concludes. The tables in the Appendix provide detailed lists of transactions that identify parties, dates, and outcomes.

I. AGGREGATE ENFORCEMENT STATISTICS

In light of the overview, we now report and discuss the properties of the database in detail. Table 1 reports the aggregate results over the 20-year period. There were 31,530 HSR filings.⁶⁷ Of these total HSR filings, 4,850 were cleared to an agency and 969 received second requests, a rate of about 3.1%. Only 274 (28.3%) of these 969 second requests were cleared as is. Another 254 (26.2%) of the 969 second requests were abandoned or restructured before receiving a complaint, and 367 (37.9%) were resolved by a consent decree reported simultaneously with the issuance of a complaint. This accounts for about 92% of the second requests.

Only 74 (7.6%) of these HSR matters proceeded further, and very few of these reached a litigated decision. Of the 74 matters, 34 (45.9%) were abandoned or restructured by the merging parties after the complaint, 11 (14.9%) led to a negotiated settlement, and 3 (4.1%) were withdrawn by the agency.⁶⁸ Over the 20-year period, only 26 of the 74 matters reached a litigated deci-

⁶⁶ *Supra* note 61.

⁶⁷ This is the number of “transactions in which a Second Request could have been issued.” *See, e.g.*, FED. TRADE COMM’N & U.S. DEP’T OF JUSTICE, HART-SCOTT-RODINO ANNUAL REPORT: FISCAL YEAR 2020, 6 n.10 (2020), ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf [hereinafter FTC/DOJ 2020 HSR REPORT].

⁶⁸ After a superseding event mooted or voided the challenge, agencies have historically withdrawn a complaint. *See supra* note 57.

sion. This is 35.1% of the 74 matters, or only 2.6% of the 969 second requests. Among the cases that reached a litigated decision, the government ultimately won 17 (65.3%) and lost 9 (12.2%).⁶⁹

Another way to characterize these results is as follows: of the 969 second requests, only 286 (29.5%) ultimately survived the process without a remedy,⁷⁰ 378 were settled with consent decrees,⁷¹ and 305 were never completed.⁷² Thus, the government prevailed in 681 (70.3%) of the matters.⁷³

⁶⁹ That is, these results reflect the results post-appeal. Note also that we date the outcomes by the decision at trial, not the date of the appeal. For this reason, we do not include *Heinz* in our database; although the appeal decision was rendered in 2001, its trial decision was in 2000. *See* *FTC v. H.J. Heinz Co.*, 246 F.3d 708 (D.C. Cir. 2001).

⁷⁰ That is, 274 were cleared as is, 3 had complaints withdrawn, and 9 were won at trial by the merging parties.

⁷¹ That is, 367 consent decrees were entered simultaneous with the complaint and 11 were post-complaint settlements.

⁷² That is, 254 were abandoned or restructured before a complaint, 34 were abandoned or restructured after the complaint, and 17 were lost by the merging parties at trial.

⁷³ Even this is a slight understatement. In *Arch Coal* and *RAG-Stiftung*, the firms prevailed at trial, but the firms provided remedies to the court and succeeded in “litigating the fix.” *FTC v. Arch Coal*, 329 F. Supp. 2d 109, 114–15 (D.D.C. 2004); *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 304 (D.D.C. 2020).

TABLE 1. TOTAL HSR OUTCOMES (2001 TO 2020)⁷⁴

Outcomes	Total	Percentage
Total HSR filings	31,530	
HSR Filing Outcomes		
Agency clearances	4,850	15.3%
Total second requests	969	3.1%
Second Request Outcomes		
Cleared as is	274	28.3%
Abandoned/restructured pre-complaint	254	26.2%
Settled simultaneously with complaint	367	37.9%
Unresolved complaints (litigation)	74	7.6%
Litigation Outcomes		
Abandoned post-complaint	34	45.2%
Settled post-complaint	11	14.9%
Withdrawn by agency	3	4.1%
Litigated to a decision	26	37.9%
Percentage of Wins/Losses		
Government wins at trial	17	65.3%
Government losses at trial	9	34.7%

The fact that only 28% of transactions were cleared as is makes it appear that merging firms must be prepared for a consent decree or litigation. And they must anticipate that if they litigate, statistically they are likely to lose. Assuming that the merging firms are well counseled, these results also suggest that the firms are playing the odds when they propose arguably anticompetitive mergers in the hope that they will be able to slip through without a challenge. Either that, or they anticipate that they can negotiate a sufficiently weak consent decree. This conclusion is supported by the high rate of abandonments. About 26% of transactions that received second requests were abandoned even before a complaint. Among the 85 deals that received second requests but were not settled simultaneously or subsequently with a consent decree, 40% (i.e., 34/85) were abandoned or restructured. In all, merging parties won at trial on only 9 of the 74 complaints not resolved simultaneously with consent decrees.

⁷⁴ Table 1 does not include challenges to consummated mergers.

The data also can explain why playing the odds makes business sense. It has been recognized that the agencies have suffered declining budgets relative to the increased magnitude and size of merger transactions.⁷⁵ In this situation, the agencies are forced to engage in some triage. Triage is manifest in the HSR data. Insofar as the FTC and DOJ are challenging only the most problematic mergers, one would expect that few mergers targeted for a second request would be cleared as is. This is consistent with only 28.3% of second requests being cleared as is. The fact that such a high percentage of complaints not resolved by simultaneous consent decrees are abandoned or settled before trial is also consistent with triage. The fact that the government wins more than half the cases that go to trial (65.3%), despite the high returns to the parties of completing the merger, also is consistent with triage. Finally, as discussed below, the low variance in the number of mergers and second requests, relative to the annual number of mergers cleared to the agencies, also indicates that the agencies are operating at the limits of their investigative capacity.

Table 2 reports the outcomes of challenges to consummated mergers over the 20-year period. During this time, the government challenged 46 previously consummated mergers.⁷⁶ At the end of 2020, two of these were still pending in the FTC administrative process, *Axon/Safariland* and *Altria/JUUL Labs*.⁷⁷ Of the 44 resolved challenges, 24 were settled by consent decrees simultaneously with the complaint, 11 were settled post-complaint, and nine reached trial. Of these nine, the government won seven (77.8%) and lost only two (22.2%). Thus, the government prevailed in some manner in 42 (95.4%) of its 44 con-

⁷⁵ HSR filings grew at a far faster rate than agency budgets. By 2019, premerger filings increased by over 75% compared to 2010. Yet the FTC budget increased by only 20% (\$56 million “from FY 2010 (\$276 million) to FY 2020 (\$332 million).” FED. TRADE COMM’N, AGENCY FINANCIAL REPORT: FISCAL YEAR 2020, 48 (2020), [ftc.gov/system/files/documents/reports/agency-financial-report-fy2020/ftc_fy2020_agency_financial_report.pdf](https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2020/ftc_fy2020_agency_financial_report.pdf). During the same period, the DOJ Antitrust Division total appropriation increased by only 2% (from \$163.170 million in FY 2010 to \$166.755 million in FY 2020). U.S. DEP’T OF JUSTICE, *supra* note 59; *see also* Kades, *supra* note 59 (Figures 7–9). We note, however, that the FTC does not break out the budget into competition versus consumer protection missions, and the DOJ does not break out criminal and civil.

⁷⁶ There can be two types of such challenges. There are transactions where the agencies obtained hold-separate agreements (*e.g.*, *LabCorp/Westcliff*) and those where the agency brings a case after the parties integrated their operations (*e.g.*, *Evanston Northwestern/Highland Park*). Press Release, Fed. Trade Comm’n, FTC Challenges LabCorp’s Acquisition of Rival Clinical Laboratory Testing Company (Dec. 1, 2010), [ftc.gov/news-events/news/press-releases/2010/12/ftc-challenges-labcorps-acquisition-rival-clinical-laboratory-testing-company](https://www.ftc.gov/news-events/news/press-releases/2010/12/ftc-challenges-labcorps-acquisition-rival-clinical-laboratory-testing-company); Opinion of the Commission 4, *Evanston Nw. Healthcare Corp.*, FTC Docket No. 9315 (Aug. 6, 2007), [ftc.gov/sites/default/files/documents/cases/2007/08/070806opinion.pdf](https://www.ftc.gov/sites/default/files/documents/cases/2007/08/070806opinion.pdf).

⁷⁷ *Axon Enter.*, FTC Docket No. 9389 (filed Jan. 3, 2020), [ftc.gov/legal-library/browse/cases-proceedings/1810162-axon-enterprise-safariland-matter](https://www.ftc.gov/legal-library/browse/cases-proceedings/1810162-axon-enterprise-safariland-matter); *Altria Grp.*, FTC Docket No. 9393 (filed Apr. 1, 2020), [ftc.gov/legal-library/browse/cases-proceedings/191-0075-altria-groupjuul-labs-matter](https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0075-altria-groupjuul-labs-matter).

summated merger challenges.⁷⁸ Combining trials of both consummated and unconsummated mergers, the government dominated at trial. It won 24 (i.e., 7+17) and lost only 11 (i.e., 2+9), an overall trial win rate of 68.5%.

TABLE 2. CONSUMMATED MERGER CHALLENGES (2001 TO 2020)

Outcomes	Total	Percentage
Challenges	46	
Complaint Outcomes		
Outcome pending	2	4.34%
Settled simultaneously with complaint	24	54.5%
Settled post-complaint	11	25.0%
Litigated to a decision	9	19.5%
Percentage of Wins/Losses		
Government wins at trial	7	77.8%
Government losses at trial	2	22.2%

II. MERGER ENFORCEMENT OUTCOMES OVER TIME

Analysis of the evolution of merger enforcement over time presents an inherent complication because the economy is dynamic. The transactions presented to the agencies and their competitive concerns may differ over time. Thus, differences could result from variations in economic conditions or even random variations, rather than merger policy.

Analysis of the evolution of merger enforcement over time also presents inherent complications. The agencies' annual reports only reveal transaction-level information about enforcement actions against challenged transactions, not HSR filings.⁷⁹ Consequently, we only have visibility into when the challenge was made, not when the HSR filing was made.⁸⁰ The agencies also identify the number of second requests for each year, but not the identity of the transactions. These data limitations complicate the assignment of transactions to specific years. A merger with an HSR filing in one fiscal year may not

⁷⁸ That is, 24 consent decrees with a complaint, 11 consent decrees post-complaint, and 11 victories in court.

⁷⁹ See generally Fed. Trade Comm'n, *Annual Competition Reports: Annual Reports to Congress Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (2021), [ftc.gov/policy/reports/annual-competition-reports](https://www.ftc.gov/policy/reports/annual-competition-reports).

⁸⁰ There is a similar lack of visibility for those transactions against which no enforcement action is ultimately taken. While the agencies report aggregated information about transactions against which no enforcement action was taken (i.e., cleared "as is"), the agencies do not report transaction-level data.

receive a second request until the next.⁸¹ Similarly, a second request in one fiscal year may not be resolved until a later fiscal year. Appendix Table A4 provides the master list of all the outcomes in fiscal years 2000 to 2020. However, our analysis begins with fiscal year 2001.

In this Part, we organize the data based on the year in which the merger outcomes were resolved.⁸² Tables 3–9 apply the convention of assigning a transaction that receives a complaint to the fiscal year in which the transaction was settled with a consent decree, abandoned by the parties, or reached a trial outcome, *regardless of when the HSR filing was made or when the complaint was filed*. This convention tracks the agencies’ annual HSR reports. For this reason, the counts and rates of second requests we list for a given fiscal year must be interpreted with caution. While the tables accurately report the number of HSR filings and second requests in the years in which they were made, decisive enforcement actions that occurred within each year do not accurately gauge the rates at which the agencies issued complaints in those years, only the rates at which the complaints were resolved.⁸³ For example, an HSR submission in (say) 2015 that received a second request and complaint in 2016 and was resolved at trial in 2017 would be assigned to 2017, not 2016 or 2015. Assigning cases by the year of the outcome is useful. The agencies do not report the date at which HSR filings are made. But most mergers are cleared or settle in the same year as the filing of the HSR, which is captured by this convention. For mergers that lead to complaints that go to litigation, a listing by year of outcome presents a picture of agency litigation intensity. This is useful because the outcomes in the most recent years likely would be most salient for expectation formation for firms contemplating mergers.

However, this methodology does not capture the distribution of outcomes of mergers *proposed* in a particular year. Nor does it accurately represent an administration’s policy choices—an administration may get credit for its predecessor’s enforcement decisions. To address these questions, it would be useful to apply the convention of assigning matters to the date of the complaint rather than the date of outcome. In the example above, this would assign the challenged transaction to 2016, not 2017. We apply this alternative

⁸¹ The FTC and DOJ report HSR data according to fiscal years. The fiscal year begins on October 1 and concludes on September 30. FTC/DOJ 2020 HSR REPORT, *supra* note 67, at 45 n.1.

⁸² Merger outcomes are produced by the FTC and DOJ in annual reports to Congress pursuant to the Hart-Scott-Rodino Act. *See* Fed. Trade Comm’n, *supra* note 79.

⁸³ This also means that the number of transactions cleared as is can only be calculated by subtracting the number of complaints and abandonments from the number of second requests. This is not entirely accurate in that some of the complaints originated from second requests in the previous year. And some second requests in the current year lead to complaints or clearances in the following year. To some extent, these two effects will offset one another. But the offset cannot be assumed to be perfect.

convention in the tables in Part III, which list cases by year of the complaint, not year of the outcome.

With this convention, if an agency brought a weak case in one year (under one administration or leadership group) and lost the case at trial in a later year (under a different administration or leadership group), the loss would be attributed to the year in which the case was brought, not the year in which the case was lost. Part III also differs in that cases are categorized by calendar year, while Part IV lists the cases by fiscal year. While fiscal years are used in the agency annual reports, calendar years are more useful for comparing enforcement intensity across presidential administrations.⁸⁴

Tables 3 and 4 report the outcome results on an annual basis, subject to these caveats.⁸⁵ Table 3 reports the counts and Table 4 reports the percentages.

⁸⁴ The front office leadership group may change mid-year, so neither method can perfectly capture the differences among leadership groups. However, our database could be used to capture that information.

⁸⁵ The entries in the two top panels (“HSR Filing Outcomes” and “Second Request Outcomes”) come from the annual reports. Fed. Trade Comm’n, *supra* note 79. The entries in the bottom panel (“Post-Complaint Outcomes”) come from our additional data gathering.

TABLE 3. HSR FILINGS, SECOND REQUEST OUTCOMES, AND POST-COMPLAINT OUTCOMES BY FISCAL YEAR

Fiscal year	HSR Filing Outcomes		Second Request Outcomes				Post-Complaint Outcomes			
	HSR filings	Total second requests issued	Cleared as is	Abandoned pre-complaint	Settled with complaint	Unresolved (to litigation)	Settled, abandoned, or withdrawn	To trial	Government win	Government loss
2001	2237	70	16	28	25	1	1	0	0	0
2002	1142	49	18	13	13	5	3	2	1	1
2003	968	35	2	16	12	5	4	1	1	0
2004	1377	35	12	6	14	3	1	2	0	2
2005	1610	50	33	5	11	1	1	0	0	0
2006	1746	45	15	13	15	2	2	0	0	0
2007	2108	63	32	13	16	2	0	2	1	1
2008	1656	41	6	7	27	1	1	0	0	0
2009	684	31	4	8	14	5	4	1	1	0
2010	1128	42	9	11	22	0	0	0	0	0

Post-Complaint Outcomes	Fiscal year	HSR Filing Outcomes									
		HSR filings	Total second requests issued	Cleared as is	Abandoned pre-complaint	Settled with complaint	Unresolved (to litigation)	Settled, abandoned, or withdrawn	To trial	Government win	Government loss
	2011	1414	55	21	12	18	4	3	1	1	0
	2012	1400	49	6	18	21	4	3	1	1	0
	2013	1286	47	17	10	14	6	6	0	0	0
	2014	1618	51	19	12	19	1	1	0	0	0
	2015	1754	47	5	12	25	5	3	2	1	1
	2016	1772	54	9	11	23	11	6	5	0	0
	2017	1992	51	12	13	23	3	1	2	0	0
	2018	2028	45	8	13	19	5	2	2	1	1
	2019	2030	61	23	15	19	4	2	0	2	2
	2020	1580	48	7	18	17	6	4	2	1	1

As shown in Table 3, the largest number of HSR filings (2,237) and second requests (70) was in 2001, the year after the dot-com meltdown. Not surpris-

ingly, the lowest number of HSR filings (684) and second requests (31) was in 2009 during the Great Recession. Putting aside those two years, the number of HSR filings ranged from 968 to 2108, while the number of second requests was 35 to 61. That is, the high end of the HSR filings range was about 118% of the low end of that range, but the high end of the second requests range was only about 74% of the low end of that range. This relative stability of second requests over time is consistent with triage. Calculations based on Table 3 also show that the average absolute deviation from the mean for agency clearances (13.8%) and second requests (14.1%) are substantially lower than the average absolute deviation from the mean in total HSR filing rates (20%).⁸⁶

The data also suggests that the agencies engaged in triage. Table 3 shows that the number of cases reaching trial is very small, usually only one or two a year. This is also consistent with triage in that the government lacks the resources to litigate many cases simultaneously.

Table 4 reports the same data as Table 3 in percentage terms, which provides a somewhat different lens. The percentage of HSR filings leading to second requests ranges from 2.2% to 4.5%. The fact that the percentage of second requests in 2009 (4.5%) was the highest for the 20-year period when the number of adjusted filings was the lowest is additional evidence of triage.⁸⁷ However, there is certainly not strict proportionality. For example, in 2008, the rate was only 2.5%, though the number of adjusted filings was in the mid-range.

Table 4 shows that the estimated percentage of second requests cleared as is exhibits a very large range. At the low end, the rate was 5.7% in 2003 and 10.6% in 2015. At the high end, the rate was 66% in 2005 and 50.8% in 2007. The percentage of mergers resolved by simultaneous consent decrees also had a wide range, from a low of 22% in 2005 to a high of 65.9% in 2008. The complaint rate also shows a large range, from 1.4% in 2001 and 2.0% in 2005 and 2015, up to 16.1% in 2009 and 22.2% in 2016.

⁸⁶ Average absolute deviation measures the degree to which annual HSR filing, agency clearance, and second request issuance rates vary versus their average rate.

⁸⁷ By contrast, the 3.1% rate in 2001 is low, but not abnormally so.

TABLE 4. HSR FILINGS, SECOND REQUEST OUTCOMES, AND
POST-COMPLAINT OUTCOMES BY FISCAL YEAR
(PERCENTAGES)

Fiscal year	HSR Filing Outcomes		Second Request Outcomes			Post-Complaint Outcomes				
	HSR filings	Total second requests issued	Cleared as is	Abandoned pre-complaint	Settled with complaint	Unresolved (to litigation)	Settled, abandoned, or withdrawn	To trial	Government win	Government loss
2001	2237	3.1%	22.9%	40%	35.7%	1.4%	100%	0%	0%	0%
2002	1142	4.3%	36.7%	26.5%	26.5%	10.2%	60%	40%	20%	20%
2003	968	3.6%	11.4%	45.7%	34.3%	8.6%	66.7%	33.3%	33.3%	0%
2004	1377	2.5%	34.3%	17.1%	40%	8.6%	33.3%	66.7%	0%	66.7%
2005	1610	3.1%	66%	10%	22%	2%	100%	0%	0%	0%
2006	1746	2.6%	33.3%	28.9%	33.3%	4.4%	100%	0%	0%	0%
2007	2108	3%	50.8%	20.6%	25.4%	3.2%	0%	100%	50%	50%
2008	1656	2.5%	14.6%	17.1%	65.9%	2.4%	100%	0%	0%	0%
2009	684	4.5%	12.9%	25.8%	45.2%	16.1%	80%	20%	20%	0%
2010	1128	3.7%	21.4%	26.2%	52.4%	0%	0%	0%	0%	0%

Figure 1 shows the evolution of the annual number of second requests, plotting the percentage of HSR filings that lead to second requests each year. Over the 20-year period, there was considerable volatility. The trend line in Figure 1 (the dashed black line) shows a measurable reduction over time in the average number of second requests. The solid grey line represents the average percentage of second request issued (3.19%). Along the trend line, the predicted rate in 2001 was 3.49%, whereas it fell to 2.92% in 2020, a reduction of about 16.3% (i.e., $0.57/3.49$). However, this decline was not significantly different from zero. In addition, this trend line fails to account for the number of filings, budget level, and other causal factors.⁸⁸

FIGURE 1. SECOND REQUESTS ISSUED AS A PERCENTAGE OF TOTAL HSR FILINGS (2001–2020)

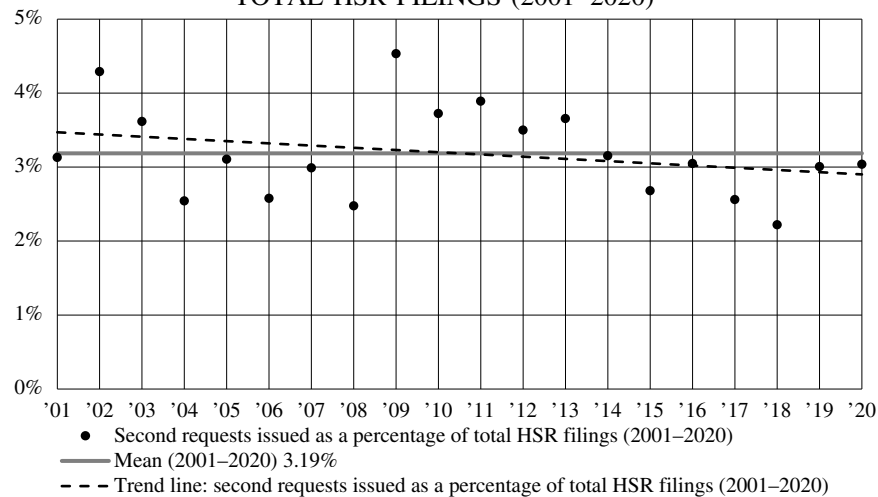
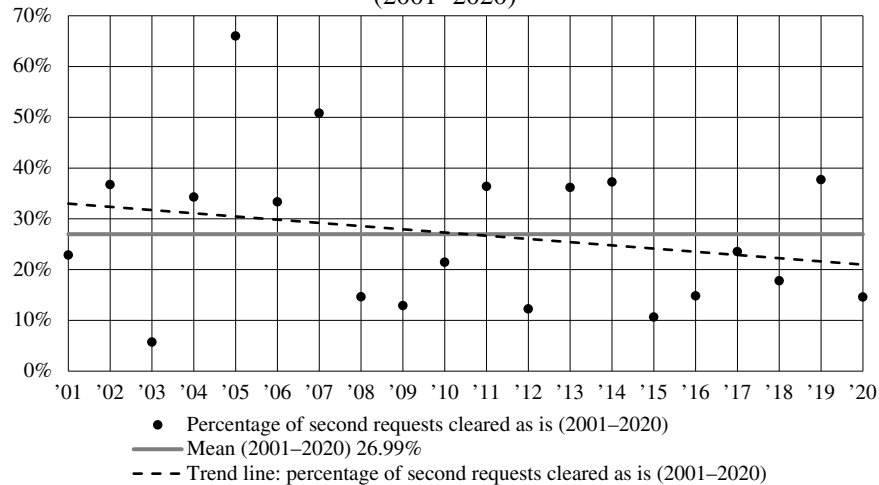


Figure 2 shows the trend line of as-is clearances over time, plotting the fraction of second requests that were cleared as is as a percentage of total second requests. While there is considerable volatility, a simple trend line (the dashed black line) shows a measurable reduction in the average number of second requests. The trend line estimates that the predicted rate decreased from about 35.6% in 2001 to 23.3% in 2020, a reduction of 34.5%. The solid grey line represents the average number of second requests cleared as is (26.99%). Excluding the two outlier years during the Bush Administration's second term (2005 and 2007), the predicted rate decreased from 20.6% to 17.31%, a reduction of 14.9%. However, the time variable was not statistically significant at even the 90% level.

⁸⁸ See generally Macher & Mayo, *supra* note 61; Macher et al., *supra* note 61.

FIGURE 2. PERCENTAGE OF SECOND REQUESTS CLEARED AS IS
(2001–2020)



Comparing presidential administrations' second request issuance rates against the mean second request issuance rate (3.19%) yields some possibly interesting results, subject to the caveat that the data is classified by fiscal year, so that the 2009 and 2017 fiscal years each involve two administrations. Overall, there were 10% more second requests per year during the Obama administration (3.41% rate) than during the Trump administration (3.09% rate) and 26% more than during Bush administration (2.71% rate). This suggests that an administration's political orientation has a small but significant effect on second request issuance rates. In both the Bush and Obama administrations, second request rates were higher in the first term than the second term. However, it is noteworthy that the first terms of each had fewer filings. The rate also was lower during the Trump administration, when the filing rates were higher.

For completeness, Table 5 provides the annual data, including consummated merger challenges.

TABLE 5. TOTAL MERGER CHALLENGES AND OUTCOMES
(INCLUDING CONSUMMATED MERGER CHALLENGES)
BY FISCAL YEAR

Fiscal year	HSR Filing Outcomes		Second Request Outcomes			Post-Complaint Outcomes				
	HSR filings	Total second requests issued	Cleared as is	Abandoned pre-complaint	Settled with complaint	Unresolved (to litigation)	Settled, abandoned, or withdrawn	To trial	Government win	Government loss
2001	2237	70	16	28	25	2	1	1	1	0
2002	1142	49	18	13	13	8	4	4	2	2
2003	968	35	4	16	12	5	4	3	3	0
2004	1377	35	12	6	14	4	1	3	0	3
2005	1610	50	33	5	11	2	2	0	0	0
2006	1746	45	15	13	15	4	4	0	0	0
2007	2108	63	32	13	16	5	1	4	3	1
2008	1656	41	6	7	27	3	2	1	0	1
2009	684	31	4	8	14	9	6	3	3	0
2010	1128	42	9	11	22	7	6	1	1	0

	Fiscal year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
	HSR Filing Outcomes	HSR filings	1414	1400	1286	1618	1754	1772	1992	2028	2030
Second Request Outcomes	Total second requests issued	55	49	47	51	47	54	51	45	61	48
	Cleared as is	21	6	17	19	5	10	12	8	23	7
	Abandoned pre-complaint	12	18	10	12	12	11	13	13	15	18
	Settled with complaint	18	21	14	19	25	23	23	19	19	17
	Unresolved (to litigation)	7	5	14	2	5	11	5	7	4	8
Post-Complaint Outcomes	Settled, abandoned, or withdrawn	5	4	11	2	3	7	2	3	2	4
	To trial	2	1	3	0	2	5	3	4	2	2
	Government win	1	1	1	0	1	5	3	2	0	1
	Government loss	1	0	2	0	1	0	0	2	2	1

Tables 6 and 7 provide some comparisons of outcomes across presidential administrations, subject to the caveats discussed above with respect to as-

signing matters to particular years. Table 6 provides the counts of clearance and challenge rates. These indicate substantial stability in clearance rates to each of the two enforcement agencies across the administrations. Challenge rates also are relatively stable, though the G.W. Bush administration's challenge rates are somewhat lower for both agencies, an issue that will be discussed in more detail below.

TABLE 6. AGENCY CLEARANCE AND CHALLENGE TRENDS

Outcome	Bush Admin.		Obama Admin.		Trump Admin.	
	Total	%	Total	%	Total	%
Mergers cleared to an agency	257	17%	228	17%	242	13%
Mergers cleared to the FTC (and as a percentage of mergers cleared to an agency)	163	63%	153	67%	167	68%
Mergers challenged by the FTC (and as a percentage of cleared mergers)	19	13%	21	14%	24	16%
Mergers cleared to the DOJ (and as a percentage of mergers cleared to an agency)	94	37%	75	33%	75	32%
Mergers challenged by the DOJ (and as a percentage of cleared mergers)	14	16%	18	25%	17	22%

Table 7 provides more detail for transactions with HSR filings (i.e., unsummed mergers only).⁸⁹ During the eight years of the G.W. Bush administration, there were 388 second requests, a rate of about 3.0%. During the eight years of the Obama administration, there were 376 second requests, a rate of about 3.4%. And during the four years of the Trump administration, there were 205 second requests, a rate of about 2.7%. These do not seem like significant enough differences to clearly indicate policy changes. But they may signal some triage. The Obama administration has the lowest number of filings, an average of about 5,500 for each of the four-year terms. By contrast, the average number of filings during each of the four-year terms of the Bush administration was about 6,400, and there were about 7,600 during the Trump administration's four-year term. Thus, during the Obama administration, the average of number of transactions was lowest and the average second request rate was the highest.

⁸⁹ As noted above, Table 7 allocates merger challenges based on fiscal year (October 1 through September 30).

TABLE 7. HSR FILINGS AND OUTCOMES BY ADMINISTRATION

Outcome	Bush Admin.		Obama Admin.		Trump Admin.	
	Total	%	Total	%	Total	%
HSR Filings	12,844		11,056		7630	
HSR Filing Outcomes						
Agency clearances	2,056	16.0%	1825	16.5%	969	12.7%
Total second requests	388	3.0%	376	3.4%	205	2.7%
Second Request Outcomes						
Cleared as is	134	34.5%	88	23.4%	50	24.4%
Abandoned or restructured before complaint	101	26.0%	94	25.0%	59	28.8%
Settled simultaneously with complaint	133	34.3%	156	41.5%	78	38%
Unresolved complaints (litigation)	20	5.2%	38	10.1%	18	8.8%
Complaint Outcomes						
Abandoned post-complaint	8	40.0%	18	47.4%	8	42.1%
Settled post-complaint	3	15.0%	7	18.4%	1	5.3%
Government wins at trial	3	15.0%	9	23.7%	5	31.6%
Government losses at trial	4	20.0%	1	2.6%	4	21.1%
Withdrawn by agencies	2	10.0%	1	2.6%	0	0.0%

Among these second requests, 133 (34.5%) were settled by consent decree during the Bush administration, 156 (41.5%) during the Obama administration, and 78 (38%) during the Trump administration, all in the same range. The more significant differences come in the other outcomes. During the Bush administration, 34.5% of matters with a second request were cleared as is, a much higher percentage than the 23.4% during the Obama administration and the 24.4% during the Trump administration. During the Bush administration, only 5.2% of the second requests proceeded to a litigation posture.⁹⁰ The Bush administration also had about half as many complaints that went on to litigation (i.e., 5.2% versus 10.1% and 9.3%). During the Bush years, only seven cases reached trial, and the government won only three, a win rate of about

⁹⁰ As discussed in Part III, the Bush administration issued a complaint in January 2009 but abandoned it later that same month. For purposes of Part II, this merger outcome is assigned to the Obama administration. In Part III, which lists matters by date of complaint and uses calendar years, this matter is assigned to the Bush administration.

43%. By contrast, there were 12 trials during the Obama years, and the government won nine, a win rate of 75%. During the Trump administration, there were ten trials—in only four years—and the government won six, a win rate of 60%.⁹¹ Thus, the Bush administration had the fewest number of trials and the worst win–loss record. It also had the fewest number of complaints not settled by consent decrees. Of course, there is always the question of whether these different win rates reflect policy differences or whether they are simply the luck of the draw.

Table 8 is a companion for Table 7 but also reports the number of challenges of both consummated and unconsummated mergers during each of the administrations' terms and separately for each agency. During the Bush years, there were 33 (i.e., 13+20) mergers of both types that went to litigation. During the Obama years, the total rose to 43 (i.e., 17+26) matters. During the four Trump years, 23 (i.e., 7+26) went to litigation, a slightly higher annual rate than the Obama administrations.

Table 8 also breaks out the results for the FTC and DOJ. The FTC litigated more cases than the DOJ. One cause may be the fact that FTC's case load includes hospital mergers, where the law has been in flux, leading to the potential for diverse expectations between the FTC and the merging parties. The FTC also has a higher win rate than the DOJ, which may reflect its somewhat more favorable legal standard.⁹²

Comparing the FTC and DOJ during the three administrations does provide some interesting additional information. During the Trump years, the FTC had more than twice as many cases than the DOJ that were not settled (i.e., 16 versus 7). This was a higher ratio than during the previous administrations. The FTC rate was only about 50% higher than DOJ during the Obama administration (i.e., 26 versus 17) and the Bush administration (i.e., 20 versus 13).⁹³ The Trump FTC also settled no cases post-complaint. All the unresolved matters either were abandoned or went to trial. Thus, the data may indicate that the Trump FTC under Chair Simons was more litigious, subject to the various caveats.

⁹¹ Table 6 includes only challenges to unconsummated HSR transactions. Table 7 includes both unconsummated and consummated merger challenges.

⁹² When ruling on the FTC's request for a preliminary injunction pursuant to Section 13(b) (of the Federal Trade Commission Act, 15 U.S.C. § 53(b)), "[t]he district court is not authorized to determine whether the antitrust laws have been or are about to be violated. That adjudicatory function is vested in FTC in the first instance." *FTC v. Food Town Stores, Inc.*, 539 F.2d 1339, 1342 (4th Cir. 1976); *see also* *FTC v. Whole Foods Mkt., Inc.*, 548 F.3d 1028, 1035 (D.C. Cir. 2008) (explaining that, in a Section 13(b) preliminary injunction proceeding, "a district court must not require the FTC to prove the merits" of its underlying antitrust claim); *FTC v. OSF Healthcare Sys.*, 852 F. Supp. 2d 1069, 1073–74 (N.D. Ill. 2012).

⁹³ We have not checked to see whether any of these consummated merger complaints were issued in one administration and resolved in the next administration.

TABLE 8. TOTAL AGENCY RESULTS UNDER EACH ADMINISTRATION BY AGENCY (ABSOLUTE COUNT)⁹⁴

	Bush Admin.		Obama Admin.		Trump Admin.	
	DOJ	FTC	DOJ	FTC	DOJ	FTC
Challenges (including consummated mergers)	57	117	76	138	39	63
Consent decrees	44	97	59	112	32	47
Unresolved complaints (litigation)	13	20	17	26	7	16
Settled post-complaint	5	4	6	4	2	0
Abandoned post-complaint	3	6	7	10	1	7
Trial wins	3	7	4	8	2	4
Trial losses	2	2	0	3	2	2

Table 8 also reports the number of matters (consummated plus unconsummated deals) that went to trial. For DOJ, the number of matters reaching trial outcomes was 5, 4, and 4 across the three administrations, whereas the number of FTC challenges reaching trial outcomes was 9, 11, and 6. The Trump administration served for one term (as compared to the Bush and Obama administrations' two terms). Taking this into account, both the DOJ and FTC in the Trump administration had the highest annual rates of litigated trials.

Table 8 also shows the large differences in agency win-loss records.⁹⁵ During the three administrations, the DOJ win-loss records were 3-2, 4-0, and 2-2 respectively. By contrast, the FTC record was 7-2, 8-3 and 4-2 respectively. Any comparison also must account for the fact that complaints issued in one administration might be litigated in the following administration. For these, a loss might reflect a weak complaint issued by the prior administration rather than weak litigation skills by the second administration.

Any comparison also must account for selection bias. An agency that brings fewer challenges against only the most egregious matters will have a higher win rate. However, during the Bush and Trump years, the FTC both brought more cases and had a better win rate than the DOJ. This might weakly suggest that the Bush DOJ was less litigious and less skillful. Still, this data does not reveal whether this greater caution by the DOJ reflects differential resource

⁹⁴ Table 8 includes challenges to consummated and unconsummated mergers.

⁹⁵ Again, note that the data in Table 8 is based on the year of the trial outcome, not the year in which the complaint was issued.

constraints, the FTC's more favorable legal standard, the FTC's hospital case load, or possibly even agency DNA.⁹⁶

Table 9 provides further information by breaking down these results between the two terms of both the Bush and Obama administrations. The notable comparison is the large enforcement drop during Bush's second term, where the FTC and DOJ *combined* brought 64 challenges (i.e., 16+48) versus 110 (i.e., 41+69) in the first term. However, the DOJ experienced a 60% decline (i.e., 16 versus 41), which is twice the 30% decline of the FTC (i.e., 48 versus 69).⁹⁷ This difference cannot be accounted for by hospital mergers since the FTC had only one. By comparison, the numbers for the FTC and DOJ remained relatively consistent between Obama's first and second terms, though the FTC became slightly more litigious in the second term. Thus, the slow-down in enforcement at the DOJ in the second Bush term does seem to reflect a policy change at the DOJ during that term.⁹⁸

TABLE 9. COMPARISON OF DOJ AND FTC TOTAL RESULTS
ACROSS ADMINISTRATIONS

Agency	Bush Admin.				Obama Admin.				Trump Admin.	
	DOJ		FTC		DOJ		FTC		DOJ	FTC
Term	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	1st
Challenges	41	16	69	48	38	38	63	75	39	63
Consent decree	30	14	55	42	32	27	51	61	32	47
Proceeded to litigation	11	2	14	6	6	11	12	14	7	16
Settled post-complaint	4	1	4	0	3	3	2	2	2	0
Abandoned post-complaint	3	0	5	1	2	5	5	5	1	7
Trial wins	3	0	4	3	1	3	3	5	2	5
Trial losses	1	1	0	2	0	0	2	1	2	2

⁹⁶ Further analysis might investigate the extent to which these differences are primarily the result of the FTC caseload of hospital and pharmaceutical mergers.

⁹⁷ As noted earlier, this assigns to the Obama administration the two complaints issued and resolved in January 2009. Assigning these to the Bush second term would mean that it had 18 matters, not 16. However, this would not change the qualitative comparison.

⁹⁸ See also Jonathan B. Baker & Carl Shapiro, *Reinvigorating Horizontal Merger Enforcement*, in *HOW THE CHICAGO SCHOOL OVERSHOT THE MARK: THE EFFECT OF CONSERVATIVE ECONOMIC ANALYSIS ON U.S. ANTITRUST* 235 (Robert Pitofsky ed., 2008).

III. MERGER CHALLENGES OVER TIME

The results reported above list the enforcement outcomes by the fiscal year of the outcome, not the year of the complaint.⁹⁹ By contrast, the tables in this Part are based on the alternative convention of listing the cases by the calendar year of the complaint *decision*. This alternative listing sheds light on enforcement *decisions* rather than *outcomes*. That is, it attributes outcomes (i.e., wins, losses, settlements, or abandonments) to the year and administration making the enforcement decision, even if a different administration otherwise litigated the case. The cases are all listed by calendar year, not fiscal year. Accounting by calendar year facilitates comparisons between administrations because calendar years (January 1 through December 31) better align with presidential terms (January 20 through January 19). The notable exception is *CRH/Robert Schlegel*, which the FTC challenged in January 2009 before Obama's inauguration.¹⁰⁰ In order to facilitate comparisons across administrations, we have assigned that complaint to 2008 rather than 2009. Table 10 contains the HSR enforcement data, so it is parallel to Table 3. The complaints are listed in the years in which they were filed, and the outcomes apply to those complaints. The complaints are listed for each administration in Appendix Tables A1, A2, and A3.

⁹⁹ The articles by Macher and his coauthors, *supra* note 61, list the cases by the year of complaint.

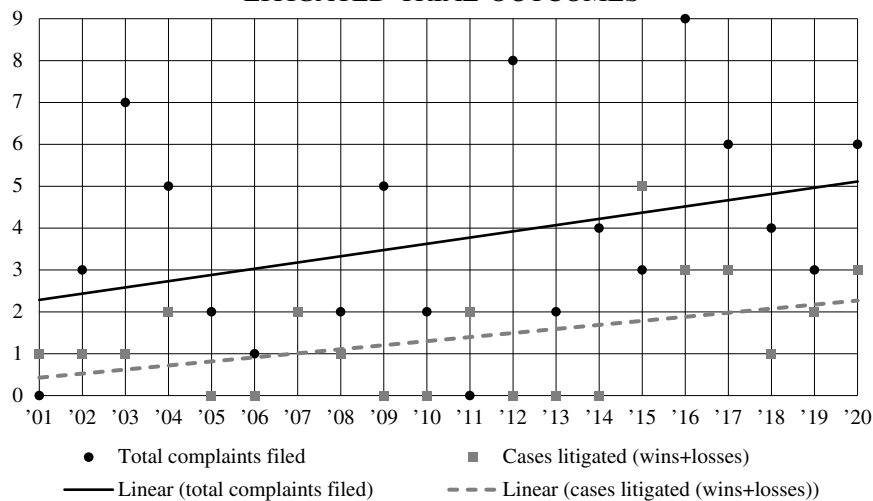
¹⁰⁰ Complaint, CRH plc, FTC Docket No. 9335 (Jan. 14, 2009), ftc.gov/sites/default/files/documents/cases/2009/01/090114administrativecomplaint.pdf.

TABLE 10. HSR ENFORCEMENT ACTIONS AND OUTCOMES (BY CALENDAR YEAR OF COMPLAINT)

Calendar year (20__)	Total complaints filed	Settled with complaint	Unresolved (to litigation)	Government wins	Government losses	Settled	Abandoned	Withdrawn
01	18	15	3	0	1	1	1	0
02	17	10	7	1	0	0	4	0
03	18	13	5	1	0	1	0	2
04	12	12	2	0	2	0	0	0
05	17	16	1	0	0	1	0	0
06	18	16	2	0	0	0	2	0
07	18	16	2	1	1	0	0	0
08	33	28	4	1	0	0	3	0
09	13	13	3	0	0	0	3	0
10	19	19	0	0	0	0	0	0
11	29	21	8	2	0	3	3	0
12	21	19	2	0	0	0	2	0
13	16	12	4	0	0	4	0	0
14	25	22	3	0	0	0	3	0
15	34	25	9	4	1	0	3	1
16	30	24	6	3	0	0	3	0
17	28	24	4	2	1	0	1	0
18	20	17	3	1	0	0	2	0
19	20	14	6	0	2	0	4	0
20	20	15	5	2	1	1	1	0

Figure 3 shows trend lines for the number of complaints that proceeded to litigation and the number of complaints resolved in court, regardless of whether the government won or lost. The trend lines show a 246% increase in complaints between 2001 and 2020 (based on a projected value of 2.12 in 2001 to 5.238 in 2020) and a 542% increase in cases litigated (based on a projected value of .42 in 2001 and 2.29 in 2020). Taken together, the trend lines suggest an increased willingness to proceed to court.

FIGURE 3. NUMBER OF COMPLAINTS PROCEEDING TO LITIGATED TRIAL OUTCOMES



While trend lines are useful, it must be noted that litigation frequency has not increased at a linear rate. Of the 27 cases litigated between 2001 and 2020, 62% (17) were litigated between 2015 and 2020—an average rate of 2.8 litigations per year (17/6). By comparison, between 2001 and 2014, the average rate was 0.7 litigations per year (10/14).

Notably, the settlement rate collapsed during the 20-year period. Of the 11 cases to settle between 2001 and 2020, 91% (10) of settlements happened between 2001 and 2014. The decline in settlement rates was not accompanied by a change in abandonment rates. Between 2001 and 2020, the rate at which transactions were abandoned remained fairly constant—46% (19) of deals were abandoned between 2001 and 2014, and 42% (14) were abandoned between 2015 and 2020. Taking these trends together suggests that, starting in 2015, parties' willingness to proceed to court substantially increased. Of course, what is less clear is whether the increased aggressiveness is driven by the agencies, the parties, or both.

For completeness, Table 11 provides the comparable data for all enforcement actions, including challenges to consummated merger transactions, so it is parallel to Table 5.

TABLE 11. ALL ENFORCEMENT ACTIONS AND OUTCOMES (BY CALENDAR YEAR OF COMPLAINT)

Calendar year (20__)	Total complaints filed	Settled with complaint	Unresolved (to litigation)	Government wins	Government losses	Settled	Abandoned	Withdrawn
01	22	16	6	1	1	3	1	0
02	15	10	5	1	0	0	4	0
03	20	13	7	2	0	3	0	2
04	15	12	3	0	2	1	0	0
05	18	17	1	0	0	1	0	0
06	20	18	2	0	0	0	2	0
07	21	17	4	2	1	1	0	0
08	36	29	6	1	1	1	3	0
09	18	15	4	0	0	1	3	0
10	26	24	2	0	1	1	0	0
11	30	22	8	2	0	3	3	0
12	24	21	3	0	0	1	2	0
13	21	16	5	1	0	4	0	0
14	26	23	3	0	0	0	3	0
15	35	26	9	4	1	0	3	1
16	30	24	6	3	0	0	3	0
17	31	25	6	3	1	1	1	0
18	21	18	3	1	0	0	2	0
19	20	14	6	0	2	0	4	0
20	20	15	5	2	1	1	1	0

Table 12 reports the litigated trial outcomes for the unconsummated mergers and the percentage of complaints resolved by post-complaint settlements for the agencies by administration and term, as reported in Table 10. These results are generally very similar to those reported in Table 7. However, this reclassification does lead to some changes. Table 12 indicates more litigation by the Bush administration: 22 matters challenged (and not settled or abandoned) versus 20 matters reported in Table 7, which classified outcomes by fiscal year. With Table 12, the Bush administration win–loss record also improves from 3–4 to 4–4, while the Obama and Trump administrations’ win–loss rates remain steady at 9–1 and 5–4, respectively.

By settling cases with a higher risk of losing at trial, an administration’s trial win–loss record might be improved. This is consistent with the results in Table 12. The Obama administration achieved a better win–loss record than the Trump and Bush administrations. Both of those administrations settled fewer cases post complaint but lost more cases. The counts are shown on Table 10. Table 12 reports post-complaint settlements as a percentage of the total number of unsettled complaints. The Obama administration stopped settling cases in 2014. Consequently, the Obama administration’s higher win–loss record in the later period cannot be attributed to its higher pre-2014 settlement rate.

However, evaluating both terms of the Bush and Obama administrations together may hide differences between the two terms. Two changes are indicated. First, trial rates fell significantly between 2005 and 2012. This decline occurred under Assistant Attorney General (AAG) Thomas Barnett (2005–2008), AAG Christine Varney (2009–2011), and FTC Chair Jon Leibowitz (2009–2013). Trial rates substantially increased under AAG William Baer (2013–2017) and FTC Chair Edith Ramirez (2013–2017). The increased trial litigation rates continued under FTC Chair Joseph Simons (2018–2021) and AAG Makan Delrahim (2017–2021). Again, whether the increased rate of litigation is driven by the agencies, the parties, or both is a topic for future examination.

TABLE 12. NUMBER OF LITIGATED TRIAL OUTCOMES OF UNCONSUMMATED MERGER MATTERS (BY AGENCY AND ADMINISTRATION)

	FTC	DOJ	Total	Settlement Rate	Win-Loss Rate
Bush (first term)	3	2	5	12%	2–3
Bush (second term)	3	0	3	11%	2–1
Obama (first term)	1	1	2	23%	2–0
Obama (second term)	5	3	8	18%	7–1
Trump (first term)	6	3	9	6%	5–4

IV. BIDEN ADMINISTRATION ENFORCEMENT

In fiscal year 2021, there were 3,413 HSR merger transactions, the most HSR filings recorded since 2000.¹⁰¹ Of these, 270 transactions were cleared to the agencies. The number of transactions cleared (270) is above average (the average number of transactions cleared to an agency between 2001 to 2021 is 247.2) but lower than average as a percentage of HSR filings. Between 2001 and 2021, an average of 15.9% of HSR filings were cleared to agencies, but in 2021 only 7.9% of HSR transactions were cleared to agencies. This is consistent with triage.

In fiscal year 2021, the DOJ challenged 14 transactions.¹⁰² Of these, two were abandoned, three were resolved after restructuring, and there were nine consent decrees. The FTC challenged 18 transactions. Of these, five were settled with consent decrees, seven were abandoned, and the remaining six led to either administrative or federal court litigation. The ALJ rejected the FTC complaint in *Illumina/Grail* and the case is now pending before the Commission.¹⁰³ All of this 2001 data is summarized in Table 13.

¹⁰¹ See FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, HART-SCOTT-RODINO ANNUAL REPORT: FISCAL YEAR 2021 (2023). The data for fiscal year 2022 will not be released for another year.

¹⁰² In the 2021 HSR Report, *id.*, the FTC and DOJ now characterize threatened litigation that results in merger abandonment pre-complaint as a “challenge,” in addition to transactions with complaints.

¹⁰³ See *infra* note 119 and accompanying text.

TABLE 13. MERGER OUTCOMES (2021)

	FTC	DOJ	Total
HSR Filings	3,413	3,413	3,413
Second requests issued	42	23	65
Cleared as is	24	9	33
Abandoned pre-complaint	7	3	10
Settled with complaint	5	9	14
Unresolved (to litigation)	6	2	8
Settled, abandoned, or withdrawn	4	2	6
To trial	2	0	2
Government win	1	0	1
Government loss	0	0	0
Pending litigation outcomes	1	0	1

The number of HSR filings in 2021 is noteworthy. The 3,520 HSR filings are more filings than in any year since 2000 and 227% more filings than the 1576 average number of annual filings between 2001 and 2020. The agencies issued 65 second requests, which was surpassed only in 2001, when there were 70. Expressed as a percentage of HSR filings, the 2021 second request issuance rate was only 1.8%. This is below the average Second Request issuance rate for the Bush (3%), Obama (3.4%) and Trump (2.7%) administrations. This can be viewed as strong evidence of agency triage: despite increasing the number of merger investigations, the Agencies' investigative and litigation capacity remains capped.

It is also noteworthy that the 2021 fiscal year was a transition year. It includes four months of the Trump administration; Jonathan Kanter did not become AAG until October 2021, the beginning of the 2022 fiscal year; Lina Khan only became Chair in July 2021. Looking forward to 2022 and beyond, it is clear that the merger enforcement policy has been changing during the Biden administration, since Jonathan Kanter became AAG and Lina Khan became FTC Chair. The DOJ has been litigating more cases, including a number in which the parties have convinced courts to "litigate the fix."¹⁰⁴ The DOJ has requested an increased budget so it also can afford to litigate more cases.¹⁰⁵ At the time of this writing, the DOJ has lost a number of its recent

¹⁰⁴ See Salop & Sturiale, *supra* note 31.

¹⁰⁵ U.S. DEP'T OF JUSTICE, FY 2023 BUDGET REQUEST (2022), justice.gov/media/1215646/dl?inline.

cases, notably *UHG*,¹⁰⁶ *Booz Allen*,¹⁰⁷ and *U.S. Sugar*,¹⁰⁸ while winning *Penguin*.¹⁰⁹ The *Assa Abloy*¹¹⁰ merger litigation is in process, as is litigation concerning the *American Airlines/Jet Blue* agreement.¹¹¹

The FTC settled the *Tractor Supply* merger with a divestiture package that involved divestiture of half of the acquired stores.¹¹² The FTC also accepted a consent decree involving veterinary clinics acquired by *JAB Consumer Partners*.¹¹³ In both cases, the FTC also has been demanding certain prior approval rights in consent orders. And most significantly, the FTC recently lost its merger case against Meta's proposed acquisition of Within.¹¹⁴ The FTC issued vertical merger complaints in the *Nvidia/ARM*,¹¹⁵ *Lockheed Martin/Aerojet Rocketdyne*,¹¹⁶ and *Illumina/Grail*.¹¹⁷ While the merging parties abandoned the first two transactions,¹¹⁸ Illumina chose to litigate. The FTC ALJ dismissed

¹⁰⁶ *United States v. UnitedHealth Grp. Inc.*, No. 1:22-cv-0481, 2022 WL 4365867, at *1 (D.D.C. Sept. 21, 2022).

¹⁰⁷ Stipulation of Voluntary Dismissal at 1, *United States v. Booz Allen Hamilton Holding Corp.*, 1:22-cv-01603 (D. Md. Dec. 23, 2022).

¹⁰⁸ *United States v. U.S. Sugar Corp.*, No. CV 21-1644, 2022 WL 4544025, at *1 (D. Del. Sept. 28, 2022).

¹⁰⁹ *United States v. Bertelsmann SE & Co.*, No. 21-2886, 2022 WL 16949715, at *2 (D.D.C. Nov. 15, 2022) (*Random House/Simon & Schuster*).

¹¹⁰ Pretrial Brief of Plaintiff United States of America, *United States v. Assa Abloy AB*, 1:22-cv-02791 (D.D.C. Jan. 13, 2023).

¹¹¹ Plaintiff's Closing Arguments, *United States v. Am. Airlines Grp. Inc.*, 1:21-cv-11558 (D. Mass. Nov. 18, 2022) (decision pending), justice.gov/atr/case-document/file/1552921/download.

¹¹² Decision and Order, *Tractor Supply Co.*, FTC Docket No. C-4776 (Dec. 2, 2022), ftc.gov/system/files/ftc_gov/pdf/2110083C4776TractorSupplyDecisionOrder.pdf.

¹¹³ Decision and Order, *JAB Consumer Partners SCA*, FTC Docket No. C-4770 (Oct. 10, 2022), ftc.gov/system/files/ftc_gov/pdf/C-4770%20211%200174%20-%20JAB%20Consumer%20Fund-VIPW%20Final%20Order%28NoSig%29.pdf.

¹¹⁴ Order Denying Plaintiff's Motion for Preliminary Injunction, *FTC v. Meta Platforms Inc.*, No. 5:22-cv-04325 (N.D. Cal. Jan. 31, 2023); Order Withdrawing Matter from Adjudication, FTC Docket No. 9411 (Feb. 10, 2023), ftc.gov/system/files/ftc_gov/pdf/d09411-order-withdrawing-adjudication.pdf.

¹¹⁵ Press Release, Fed. Trade Comm'n, *FTC Sues to Block \$40 Billion Semiconductor Chip Merger* (Dec. 2, 2021), ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger.

¹¹⁶ Press Release, Fed. Trade Comm'n, *FTC Sues to Block Lockheed Martin Corporation's \$4.4 Billion Vertical Acquisition of Aerojet Rocketdyne Holdings Inc.* (Jan. 25, 2022), ftc.gov/news-events/news/press-releases/2022/01/ftc-sues-block-lockheed-martin-corporations-44-billion-vertical-acquisition-aerojet-rocketdyne.

¹¹⁷ Press Release, Fed. Trade Comm'n, *FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail* (Mar. 30, 2021), ftc.gov/news-events/news/press-releases/2021/03/ftc-challenges-illumina-proposed-acquisition-cancer-detection-test-maker-grail.

¹¹⁸ Press Release, Fed. Trade Comm'n, *Statement Regarding Termination of Nvidia Corp.'s Attempted Acquisition of Arm Ltd.* (Feb. 14, 2022), ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-nvidia-corps-attempted-acquisition-arm-ltd; Press Release, Fed. Trade Comm'n, *Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc.* (Feb. 15, 2022), ftc.gov/news-

the FTC's complaint in *Illumina*, and it is now on appeal to the Commission.¹¹⁹

Two key issues now are how this more aggressive enforcement has and will affect deterrence and whether the courts will support the changes. The agencies have promised revised Horizontal Merger Guidelines that likely will synthesize both horizontal and merger issues. These may serve to help convince the courts to follow the agencies' preferred policies.

V. CONCLUSION

What makes antitrust exciting are these changes. We are looking forward to analyzing them.

events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet.

¹¹⁹ Complaint Counsel's Appeal of the Initial Decision, *Illumina, Inc.*, FTC Docket No. 9401 (Oct. 4, 2022), ftc.gov/system/files/ftc_gov/pdf/D09401%20-%20COMPLAINT%20COUNSEL_S%20APPEAL%20OF%20THE%20INITIAL%20DECISION%20-%20PUBLIC%20%281%29.pdf.

APPENDIX

Tables A1, A2, and A3 identify all the merger transactions where complaints were issued without a simultaneous consent decree. These tables list 36 transactions in the Bush administration, 43 in the Obama administration, and 21 in the Trump administration. Table A4 provides the master list of all the merger transactions that received second requests by year, along with their outcomes.

Each of the tables identifies whether the transaction ultimately was abandoned after the complaint was filed (“abandoned”), settled after the complaint was filed (“settled”), withdrawn by the agency (“withdrawn”), or resolved at trial (“gov’t win” or “gov’t loss”). These tables list the month and year of both the complaint and the outcome. The HSR reports do not report on transaction level data for transactions cleared as is.

TABLE A1. ALL COMPLAINT OUTCOMES (2001–JANUARY 2009)

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
3D Systems / DTM	DOJ	2001	June 2001	May 2002	No	Settled
Hearst Trust / Medi-Span Intl.	FTC	2001	Apr. 2001	Dec. 2001	Yes	Settled
SunGard Data Systems / Comdisco	DOJ	2002	Oct. 2001	Nov. 2001	No	Gov't loss
General Dynamics / Newport News Shipbuilding	DOJ	2002	Oct. 2001	Oct. 2001	No	Abandoned
Libbey / Newell Rubbermaid	FTC	2002	Jan. 2002	Oct. 2002	No	Gov't win
Meade Instruments / Tasco Holdings	FTC	2002	May 2002	May 2002	No	Abandoned
Cytec / Digene	FTC	2002	June 2002	June 2002	No	Abandoned
MSC Software / Universal Analytics / CSAR	FTC	2002	Oct. 2001	Nov. 2002	Yes	Settled
Chicago Bridge & Iron / Pitt-Des Moines	FTC	2002	Oct. 2001	Jan. 2005	Yes	Gov't win
Echostar Communications / Hughes Electronics	DOJ	2003	Oct. 2002	Dec. 2002	No	Abandoned
UPM-Kymmene Oyj / Bemis MACtac	DOJ	2003	Apr. 2003	July 2003	No	Gov't win
SGL Carbon / Carbide/Graphite Group	DOJ	2003	Apr. 2003	May 2003	No	Settled
Dairy Farmers of America / Southern Belle Dairy	DOJ	2003	Apr. 2003	Mar. 2007	Yes	Settled
Hicks, Muse, Tate, & Furst Equity Fund / Claussen	FTC	2003	Oct. 2002	Oct. 2002	No	Abandoned
Aspen Technology / Hyprotech	FTC	2003	Aug. 2003	Dec. 2004	Yes	Settled
First Data / Concord EFS	DOJ	2004	Oct. 2003	May 2004	No	Settled
Oracle / Peoplesoft	DOJ	2004	Feb. 2004	Sep. 2004	No	Gov't loss
Arch Coal / Triton Coal Company	FTC	2004	Apr. 2004	June 2005	No	Gov't loss
Evanston Northwestern / ENH Medical Group	FTC	2004	Feb. 2004	Apr. 2008	Yes	Gov't win
Aloha Petroleum / Trustreet Properties	FTC	2005	July 2005	Sep. 2005	No	Settled
Daily Gazette / MediaNews Group	DOJ	2007	May 2007	July 2010	Yes	Settled
Equitable Resources / People's Natural Gas Company	FTC	2007	Mar. 2007	Feb. 2008	No	Gov't win
Western Refining / Giant Industries	FTC	2007	Apr. 2007	May 2007	No	Gov't loss

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Whole Foods / Wild Oats Market	FTC	2007	June 2007	Mar. 2009	Yes	Settled
Inova Health System / Prince William Health System	FTC	2008	May 2008	June 2008	No	Abandoned
Polypore International / Microporous Products	FTC	2008	Sep. 2008	Dec. 2013	Yes	Gov't win
Microsemi Corp / Semicoa	DOJ	2009	Dec. 2008	Jan. 2010	Yes	Settled
Red Sky Holdings / Newpark Resources	FTC	2009	Oct. 2008	Dec. 2008	No	Abandoned

TABLE A2. ALL COMPLAINT OUTCOMES (2009–2016)

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
CCC Information Services / Mitchell International	FTC	2009	Nov. 2008	Mar. 2009	No	Gov't win
CRH / Robert Schlegel	FTC	2009	Jan. 2009	Jan. 2009	No	Abandoned
CSL / Talecris Biotherapeutics	FTC	2009	May 2009	June 2009	No	Abandoned
Thoratec / HeartWare International	FTC	2009	July 2009	Aug. 2009	No	Abandoned
Ovation Pharmaceuticals	FTC	2009	Dec. 2008	Oct. 2011	Yes	Gov't loss
Dean Foods / Foremost Farms	DOJ	2010	Jan. 2010	July 2011	Yes	Settled
VeriFone Systems / Hypercom Corporation / Ingenico	DOJ	2011	May 2011	Aug. 2011	No	Settled
H&R Block / 2SS Holdings	DOJ	2011	May 2011	Oct. 2011	No	Gov't win
AT&T / T-Mobile	DOJ	2011	Aug. 2011	Dec. 2011	No	Abandoned
ProMedica / St. Luke's Hospital	FTC	2011	Jan. 2011	Mar. 2012	Yes	Gov't win
Phoebe Putney / Palmyra	FTC	2011	Apr. 2011	June 2013	No	Settled
LabCorp / Westcliff Medical Laboratories	FTC	2011	Dec. 2010	Mar. 2011	Yes	Gov't loss
Deutsche Boerse / NYSE Euronext	DOJ	2012	Dec. 2011	Feb. 2012	No	Abandoned
OSF Healthcare System / Rockford Health System	FTC	2012	Nov. 2011	Apr. 2012	No	Gov't win
Graco / Illinois Tool Works	FTC	2012	Dec. 2011	Jan. 2012	No	Settled
Omnicare / PharMerica	FTC	2012	Dec. 2011	Feb. 2012	No	Abandoned
Twin America / Coach USA / City Sights	DOJ	2013	Dec. 2012	Nov. 2015	Yes	Settled
Bazaarvoice / PowerReviews	DOJ	2013	Jan. 2013	Apr. 2014	Yes	Gov't win
Anheuser-Busch InBev / Grupo Modelo	DOJ	2013	Jan. 2013	Oct. 2013	No	Settled
US Airways Group / AMR Corporation	DOJ	2013	Aug. 2013	Apr. 2014	No	Settled
Reading Health System / Surgical Institute of Reading	FTC	2013	Nov. 2012	Nov. 2012	No	Abandoned
Integrated Device Technology / PLX Technology	FTC	2013	Dec. 2012	Dec. 2012	No	Abandoned
Pinnacle Entertainment / Ameristar Casinos	FTC	2013	May 2013	Dec. 2013	No	Settled
Ardagh Group / Saint-Gobain Containers	FTC	2013	July 2013	June 2014	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
St. Luke's Health System / Saltzer Medical Group	FTC	2013	Mar. 2013	Feb. 2015	Yes	Gov't win
Jostens / American Achievement	FTC	2014	Apr. 2014	Apr. 2014	No	Abandoned
National Cinemedia / Screenvision	DOJ	2015	Nov. 2014	Mar. 2015	No	Abandoned
AB Electrolux / General Electric	DOJ	2015	Jul. 2015	Dec. 2015	No	Abandoned
Verisk Analytics / EagleView Technology	FTC	2015	Dec. 2014	Dec. 2014	No	Abandoned
Sysco / US Foods	FTC	2015	Feb. 2015	June 2015	No	Gov't win
Steris / Synergy Health	FTC	2015	May 2015	Oct. 2015	No	Gov't loss
Anthem / Cigna	DOJ	2016	Jul. 2016	Feb. 2017	No	Gov't win
Aetna / Humana	DOJ	2016	Jul. 2016	Feb. 2017	No	Gov't win
Deere & Company / Precision Planting	DOJ	2016	Nov. 2015	May 2017	No	Abandoned
Tribune Publishing / Freedom Communications	DOJ	2016	Mar. 2016	Mar. 2016	No	Abandoned
Halliburton / Baker Hughes	DOJ	2016	Apr. 2016	May 2016	No	Abandoned
Staples / Office Depot	FTC	2016	Dec. 2015	May 2016	No	Gov't win
Penn State Hershey Medical Center / Pinnacle Health System	FTC	2016	Dec. 2015	Oct. 2016	No	Gov't win
Advocate Health / NorthShore University Health System	FTC	2016	Dec. 2015	Mar. 2017	No	Gov't win
Superior / Canexus	FTC	2016	Jun. 2016	Jun. 2016	No	Abandoned

TABLE A3. ALL COMPLAINT OUTCOMES (2017–2020)

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
EnergySolutions / Waste Control Specialists	DOJ	2017	Nov. 2016	June 2017	No	Gov't win
Parker-Hannifin / CLARCOR	DOJ	2017	Sep. 2017	Apr. 2018	Yes	Settled
Sanford Health / Mid Dakota Clinic	FTC	2017	June 2017	July 2019	No	Gov't win
DraftKings / FanDuel	FTC	2017	July 2017	July 2017	No	Abandoned
AT&T / Time Warner	DOJ	2018	Nov. 2017	Feb. 2019	No	Gov't loss
Wilhelmsen Maritime Services / Drew Marine	FTC	2018	Feb. 2018	July 2018	No	Gov't win
Tronox / Cristal	FTC	2018	Dec. 2017	May 2018	No	Gov't win
J.M. Smucker / Conagra	FTC	2018	Mar. 2018	Mar. 2018	No	Abandoned
CDK / Auto/Mate	FTC	2018	Mar. 2018	Mar. 2018	No	Abandoned
Otto Bock / Freedom Innovations	FTC	2018	Dec. 2017	Nov. 2019	Yes	Gov't win
QuadGraphics / LSC Communications	DOJ	2019	Jun. 2019	Jul. 2019	No	Abandoned
Sabre / Farelogix	DOJ	2019	Aug. 2019	Apr. 2020	No	Gov't loss
Novelis / Aleris	DOJ	2019	May 2020	May 2020	No	Gov't win
Evonik / PeroxyChem	FTC	2019	Aug. 2019	Jan. 2020	No	Gov't loss
Fidelity National Financial / Stewart Information Services	FTC	2019	Sep. 2019	Sep. 2019	No	Abandoned
Geisinger Health / Evangelical Community Hospital	DOJ	2020	Aug. 2020	Mar. 2021	No	Settled
Post / TreeHouse Foods	FTC	2020	Dec. 2019	Dec. 2019	No	Abandoned
Illumina / Pacific Biosciences	FTC	2020	Dec. 2019	Dec. 2019	No	Abandoned
Edgewell / Harry's	FTC	2020	Feb. 2020	Feb. 2020	No	Abandoned
Peabody Energy / Arch Coal	FTC	2020	Feb. 2020	Sep. 2020	No	Gov't win
Jefferson Health / Einstein Healthcare Network	FTC	2020	Feb. 2020	Dec. 2020	No	Gov't loss

TABLE A4. MASTER APPENDIX OF ALL MERGER COMPLAINTS
(2000–2020)

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consummated	Outcome
Harsco Rail / Pandrol	DOJ	2000	Oct. 1999	Mar. 2000	No	Settled
Compuware / Viasoft	DOJ	2000	Oct. 1999	Jan. 2000	No	Gov't win
New Holland / Case	DOJ	2000	Nov. 1999	Mar. 2000	No	Settled
Alcoa / Golden Aluminum	DOJ	2000	Nov. 1999	June 2000	No	Settled
AlliedSignal / Honeywell	DOJ	2000	Nov. 1999	Mar. 2000	No	Settled
CBS / Outdoor Systems	DOJ	2000	Dec. 1999	June 2000	No	Settled
Miller / Vulcan / Chevron	DOJ	2000	Feb. 2000	Dec. 2000	Yes	Settled
Earthgrains / Metz	DOJ	2000	Mar. 2000	July 2000	No	Settled
Dairy Farmers of America / Societe de Diffusion	DOJ	2000	Mar. 2000	Nov. 2000	No	Settled
Alcoa / Reynolds Metals	DOJ	2000	May 2000	July 2001	No	Settled
Allied Waste / Superior Services	DOJ	2000	May 2000	Dec. 2000	No	Settled
AT&T / MediaOne	DOJ	2000	May 2000	Sep. 2000	No	Settled
Franklin Electric / United Dominion	DOJ	2000	May 2000	Aug. 2000	No	Gov't win
Allied Waste / Republic Services	DOJ	2000	June 2000	Dec. 2000	No	Settled
JDS Uniphase / E-Tek Dynamics	DOJ	2000	June 2000	Oct. 2000	No	Settled
Worldcom / Sprint	DOJ	2000	June 2000	June 2000	No	Abandoned
Flowserve / Ingersoll-Dresser Pump	DOJ	2000	July 2000	Jan. 2001	No	Settled
L'Oréal USA / Carson	DOJ	2000	July 2000	Nov. 2000	No	Settled
SBC Communications / BellSouth	DOJ	2000	Aug. 2000	Dec. 2000	No	Settled
Republic Services / Allied Waste	DOJ	2000	Sep. 2000	Jan. 2001	No	Settled
BP Amoco / Atlantic Richfield	FTC	2000	Feb. 2000	Aug. 2000	No	Settled
Kroger Company / Winn-Dixie	FTC	2000	June 2000	June 2000	No	Abandoned
Swedish Match / National Tobacco	FTC	2000	June 2000	Dec. 2000	No	Gov't win
H.J. Heinz / Milnot Holding (Beech-Nut)	FTC	2000	July 2000	Apr. 2000	No	Gov't win
Conso International / McCall Pattern	FTC	2000	Aug. 2000	Aug. 2000	No	Abandoned
El Paso Energy / Sonat	FTC	2000	Oct. 1999	Jan. 2000	No	Settled
VNU N.V. / Nielsen Media Research	FTC	2000	Oct. 1999	Dec. 1999	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Dominion Resources / Consolidated Natural Gas	FTC	2000	Nov. 1999	Sep. 2000	No	Settled
Precision Castparts / Wyman Gordon	FTC	2000	Nov. 1999	Dec. 1999	No	Settled
Reckitt & Colman / Benckiser	FTC	2000	Nov. 1999	Jan. 2000	No	Settled
Exxon / Mobil	FTC	2000	Nov. 1999	Jan. 2001	No	Settled
Hoechst / Rhone-Poulenc	FTC	2000	Dec. 1999	Jan. 2000	No	Settled
Macdermid / Polyfibron Technologies	FTC	2000	Dec. 1999	Dec. 1999	No	Settled
RHI / Global Industrial Technologies	FTC	2000	Dec. 1999	Mar. 2001	No	Settled
Fidelity National / Chicago Title	FTC	2000	Jan. 2000	Feb. 2000	No	Settled
Rhodia Donau Chemie / Albright & Wilson	FTC	2000	Mar. 2000	Apr. 2000	No	Settled
Duke Energy / Phillips Petroleum	FTC	2000	Mar. 2000	May 2000	No	Settled
FMC / Solutia	FTC	2000	Apr. 2000	Dec. 2000	No	Settled
Service Corporation International / LaGrone Funeral Home	FTC	2000	May 2000	June 2000	Yes	Settled
Pfizer / Warner-Lambert	FTC	2000	June 2000	July 2000	No	Settled
Delhaize / Hannaford	FTC	2000	July 2000	June 2001	No	Settled
Agrium / Union Oil Company of California	FTC	2000	Sep. 2000	Nov. 2000	No	Settled
Boeing / Hughes Space Communication	FTC	2000	Sep. 2000	Mar. 2001	No	Settled
WorldCom / Intermedia Communications	DOJ	2001	Nov. 2000	June 2001	No	Settled
Georgia-Pacific / Fort James	DOJ	2001	Nov. 2000	May 2001	No	Settled
Aktiebolaget Volvo / Renault V.I.	DOJ	2001	Dec. 2000	Apr. 2001	No	Settled
Fox Television / Chris-Craft Industries	DOJ	2001	Apr. 2001	Apr. 2001	No	Settled
3D Systems / DTM	DOJ	2001	June 2001	May 2002	No	Settled
Signature Flight Support / Ranger Aerospace	DOJ	2001	June 2001	Oct. 2001	No	Settled
Thomson / Harcourt	DOJ	2001	June 2001	Oct. 2001	No	Settled
Premdor / Masonite	DOJ	2001	Aug. 2001	Apr. 2002	No	Settled
Hearst Trust / Medi-Span	FTC	2001	Apr. 2001	Dec. 2001	Yes	Settled
Manheim Auctions / ADT Automotive	FTC	2001	Oct. 2000	Nov. 2000	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Tyco International / Mallinckrodt	FTC	2001	Dec. 2000	Dec. 2000	No	Settled
Novartis / AstraZeneca	FTC	2001	Nov. 2000	Dec. 2000	No	Settled
Philip Morris / Nabisco	FTC	2001	Dec. 2000	Feb. 2001	No	Settled
AOL Online / Time Warner	FTC	2001	Dec. 2000	Apr. 2001	No	Settled
SmithKline / Glaxo Wellcome	FTC	2001	Dec. 2000	Jan. 2001	No	Settled
Valspar / Lilly Industries	FTC	2001	Dec. 2000	Jan. 2001	No	Settled
Computer Sciences / Mynd	FTC	2001	Dec. 2000	Jan. 2001	No	Settled
El Paso Energy / PG&E Gas Transmission Texas	FTC	2001	Dec. 2000	Feb. 2001	No	Settled
Winn-Dixie Stores / Jitney Jungle Stores of America	FTC	2001	Jan. 2001	Feb. 2001	No	Settled
El Paso Energy / The Costal Corp	FTC	2001	Jan. 2001	Mar. 2001	No	Settled
Koch Industries / Entergy-Koch	FTC	2001	Jan. 2001	Jan. 2001	No	Settled
Dow Chemical / Union Carbide	FTC	2001	Feb. 2001	Mar. 2001	No	Settled
DTE Energy / MCN Energy Group	FTC	2001	Mar. 2001	May 2001	No	Settled
Siemens AG / Atecs Mannesmann	FTC	2001	Apr. 2001	May 2001	No	Settled
Lafarge / Blue Circle Industries	FTC	2001	June 2001	June 2001	No	Settled
Chevron / Texaco	FTC	2001	Sep. 2001	Jan. 2002	No	Settled
Metso Oyi / Svedala Industri	FTC	2001	Sep. 2001	Oct. 2001	No	Settled
SunGard Data Systems / Comdisco	DOJ	2002	Oct. 2001	Nov. 2001	No	Gov't loss
General Dynamics / Newport News Shipbuilding	DOJ	2002	Oct. 2001	Oct. 2001	No	Abandoned
Manitowoc Company / Grove Investors	DOJ	2002	July 2002	Dec. 2002	No	Settled
Archer-Daniels-Midland / Minnesota Corn Processors	DOJ	2002	Sep. 2002	July 2003	No	Settled
Diageo / Vivendi	FTC	2002	Dec. 2001	Feb. 2002	No	Settled
Libbey / Newell Rubbermaid	FTC	2002	Jan. 2002	Oct. 2002	No	Gov't win
Deutsche Gelatine-Fabriken Stoess / Goodman Fielder	FTC	2002	Mar. 2002	Apr. 2002	No	Settled
Meade Instruments / Tasco Holdings	FTC	2002	May 2002	May 2002	No	Abandoned
Cytec / Digene	FTC	2002	June 2002	June 2002	No	Abandoned

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
MSC Software / Universal Analytics / CSAR	FTC	2002	Oct. 2001	Nov. 2002	Yes	Settled
Chicago Bridge & Iron / Water Division Pitt-Des Moines	FTC	2002	Oct. 2001	Jan. 2005	Yes	Gov't win
Airgas / Puritan Bennett Medical Gas	FTC	2002	Oct. 2001	Dec. 2001	Yes	Settled
Koninklijke Ahold / Bruno's Supermarkets	FTC	2002	Dec. 2001	Jan. 2002	No	Settled
Nestle Holdings / Ralston Purina	FTC	2002	Dec. 2001	Feb. 2002	No	Settled
Valero Energy / Ultramar Diamond Shamrock	FTC	2002	Dec. 2001	Feb. 2002	No	Settled
INA-Holding Schaeffler / FAG Kugelfischer Georg Schafer	FTC	2002	Dec. 2001	Feb. 2002	No	Settled
Solvay SA / Ausimont S.p.A.	FTC	2002	May 2002	June 2002	No	Settled
Bayer / Aventis	FTC	2002	May 2002	Aug. 2002	No	Settled
Amgen / Immunex	FTC	2002	July 2002	Sep. 2002	No	Settled
Phillips Petroleum / Conoco	FTC	2002	Aug. 2002	Feb. 2003	No	Settled
Shell Oil / Pennzoil-Quaker State	FTC	2002	Sep. 2002	Nov. 2002	No	Settled
Echostar Communications / Hughes Electronics	DOJ	2003	Oct. 2002	Dec. 2002	No	Abandoned
UPM-Kymmene Oyj / Bemis MACtac	DOJ	2003	Apr. 2003	July 2003	No	Gov't win
SGL Carbon / Carbide/Graphite Group	DOJ	2003	Apr. 2003	May 2003	No	Settled
Dairy Farmers of America / Southern Belle	DOJ	2003	Apr. 2003	Mar. 2007	Yes	Settled
Northrop Grumman / TRW	DOJ	2003	Dec. 2002	Jun. 2003	No	Settled
Univision Communications / Hispanic Broadcasting	DOJ	2003	Mar. 2003	Dec. 2003	No	Settled
Waste Management / Allied Waste	DOJ	2003	June 2003	Dec. 2003	No	Settled
General Electric / Instrumentarium	DOJ	2003	Sep. 2003	Feb. 2004	No	Settled
Alcan / Pechiney	DOJ	2003	Sep. 2003	Feb. 2004	No	Settled
Nestle Holdings / Dreyer's Grand Ice Cream Holdings	FTC	2003	June 2003	Nov. 2003	No	Settled
Hicks, Muse, Tate, & Furst Equity Fund / Claussen	FTC	2003	Oct. 2002	Oct. 2002	No	Abandoned
Kroger / Raley's	FTC	2003	Nov. 2003	Nov. 2003	No	Withdrawn
Aspen Technology / Hyprotech	FTC	2003	Aug. 2003	Dec. 2004	Yes	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Wal-Mart Stores / Supermercados Amigo	FTC	2003	Nov. 2002	Feb. 2003	No	Settled
Baxter International / Wyeth	FTC	2003	Dec. 2002	Dec. 2002	No	Settled
Dainippon Ink / Bayer	FTC	2003	Jan. 2003	Mar. 2003	No	Settled
Quest Diagnostics Incorporated / Unilab	FTC	2003	Feb. 2003	Apr. 2003	No	Settled
Pfizer / Pharmacia Corporation	FTC	2003	Apr. 2003	May 2003	No	Settled
Southern Union / CMS Energy	FTC	2003	May 2003	July 2003	No	Settled
Waste Management / Allied Waste	DOJ	2004	Oct. 2003	Mar. 2004	No	Settled
First Data / Concord EFS	DOJ	2004	Oct. 2003	May 2004	No	Settled
DNH International Sar / El Paso	DOJ	2004	Dec. 2003	May 2004	No	Settled
Syngeta / Advanta	DOJ	2004	Aug. 2004	Dec. 2004	No	Settled
Connor Bros. Income Fund / Bumble Bee Seafoods	DOJ	2004	Aug. 2004	Apr. 2005	No	Settled
Oracle / Peoplesoft	DOJ	2004	Feb. 2004	Sep. 2004	No	Gov't loss
Arch Coal / Triton Coal Company	FTC	2004	Apr. 2004	June 2005	No	Gov't loss
Evanston Northwestern / ENH Medical Group	FTC	2004	Feb. 2004	Apr. 2008	Yes	Gov't win
Gencorp / Atlantic Research	FTC	2004	Oct. 2003	Dec. 2003	No	Settled
General Electric / Agfa-Gevaert	FTC	2004	Dec. 2003	Jan. 2004	No	Settled
American Air Liquide / Messer Giesheim	FTC	2004	Apr. 2004	June 2004	No	Settled
Itron / Schlumberger Electricity	FTC	2004	June 2004	Aug. 2004	No	Settled
Sanofi-Synthelabo / Aventis	FTC	2004	July 2004	Sep. 2004	No	Settled
Cephalon / Cima Labs	FTC	2004	Aug. 2004	Sep. 2004	No	Settled
General Electric / InVision Technologies	FTC	2004	Sep. 2004	Oct. 2004	No	Settled
Buckeye Partners / Shell Oil	FTC	2004	Sep. 2004	Dec. 2004	No	Settled
Magellan Midstream Partners / Shell Oil	FTC	2004	Sep. 2004	Nov. 2004	No	Settled
Enterprise Products Partnership / Dan L. Duncan	FTC	2004	Sep. 2004	Nov. 2004	No	Settled
Cingular Wireless / AT&T Wireless	DOJ	2005	Oct. 2004	Mar. 2005	No	Settled
ALLTEL / Western Wireless	DOJ	2005	July 2005	Oct. 2005	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Waste Industries / Allied Waste	DOJ	2005	Aug. 2005	Nov. 2005	Yes	Settled
Aloha Petroleum / Trustreet Properties	FTC	2005	July 2005	Sep. 2005	No	Settled
Genzyme / ILEX Oncology	FTC	2005	Dec. 2004	Feb. 2005	No	Settled
Cytec Industries / Surface Specialties UCB	FTC	2005	Mar. 2005	Apr. 2005	No	Settled
Cemex S.A. De C.V. / RMC Group	FTC	2005	Feb. 2005	Mar. 2005	No	Settled
Occidental Petroleum Corp / Vulcan Materials	FTC	2005	June 2005	July 2005	No	Settled
Chevron / Unocal	FTC	2005	June 2005	Aug. 2005	No	Settled
Valero / Kaneb Services	FTC	2005	June 2005	Sep. 2005	No	Settled
Novartis / Eon Labs	FTC	2005	July 2005	Sep. 2005	No	Settled
Penn National Gaming / Argosy Gaming	FTC	2005	July 2005	Nov. 2005	No	Settled
Procter & Gamble / Gillette	FTC	2005	Sep. 2005	Dec. 2005	No	Settled
Cal Dive International / Stolt Offshore	DOJ	2006	Oct. 2005	Jan. 2006	No	Settled
SBC Communications / AT&T	DOJ	2006	Oct. 2005	Mar. 2007	No	Settled
Verizon Communications / MCI	DOJ	2006	Oct. 2005	Mar. 2007	No	Settled
UnitedHealth Group / PacifiCare	DOJ	2006	Dec. 2005	May 2006	No	Settled
Marquee Holdings / LCE Holdings	DOJ	2006	Dec. 2005	June 2006	No	Settled
Exelon / Public Service Enterprise Group	DOJ	2006	June 2006	Sep. 2006	No	Settled
Inco Limited / Falconbridge Limited	DOJ	2006	June 2006	Sep. 2006	No	Settled
The McLatchy Company / Knight Ridder	DOJ	2006	June 2006	Nov. 2006	No	Settled
Mittal Steel / Arcelor	DOJ	2006	Aug. 2006	Mar. 2007	No	Settled
ALLTEL / Midwest Wireless Holdings	DOJ	2006	Sep. 2006	Jan. 2007	No	Settled
DaVita / Gambro Healthcare	FTC	2006	Oct. 2005	Nov. 2005	No	Settled
Johnson & Johnson / Guidant	FTC	2006	Nov. 2005	Dec. 2005	No	Settled
Teva Pharmaceutical Industries / IVAX	FTC	2006	Jan. 2006	Mar. 2006	No	Settled
Allergan / Inamed	FTC	2006	Mar. 2006	Apr. 2006	No	Settled
Fresenius / Renal Care Group	FTC	2006	Mar. 2006	July 2006	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Boston Scientific / Guidant	FTC	2006	Apr. 2006	July 2006	No	Settled
Hologic / Fischer Imaging	FTC	2006	July 2006	Aug. 2006	Yes	Settled
Linde / The BOC Group	FTC	2006	July 2006	Sep. 2006	No	Settled
Dan L. Duncan / TEPPCO Partners	FTC	2006	Aug. 2006	Nov. 2006	Yes	Settled
CEMEX / Rinker Group	DOJ	2007	Apr. 2007	Aug. 2007	No	Settled
Amsted Industries / FMI	DOJ	2007	Apr. 2007	July 2007	Yes	Settled
Daily Gazette / MediaNews Group	DOJ	2007	May 2007	July 2010	Yes	Settled
Monsanto / Delta & Pine Land Company	DOJ	2007	May 2007	Nov. 2008	No	Settled
Equitable Resources / People's Natural Gas Company	FTC	2007	Mar. 2007	Feb. 2008	No	Gov't win
Western Refining / Giant Industries	FTC	2007	Apr. 2007	May 2007	No	Gov't loss
Whole Foods / Wild Oats Market	FTC	2007	June 2007	Mar. 2009	Yes	Settled
Boeing / Lockheed Martin	FTC	2007	Oct. 2006	May 2007	No	Settled
Thermo Electron / Fisher Scientific International	FTC	2007	Oct. 2006	Dec. 2006	No	Settled
Barr Pharmaceuticals / Pliva	FTC	2007	Oct. 2006	Dec. 2006	No	Settled
Watson Pharmaceuticals / Andrx	FTC	2007	Oct. 2006	Dec. 2006	No	Settled
Service Corporation International / Alderwoods Group	FTC	2007	Nov. 2006	Jan. 2007	No	Settled
Johnson & Johnson / Pfizer	FTC	2007	Dec. 2006	Jan. 2007	No	Settled
General Dynamics / SNC Technologies	FTC	2007	Dec. 2006	Feb. 2007	No	Settled
Hospira / Mayne Pharma Limited	FTC	2007	Jan. 2007	Mar. 2007	No	Settled
Carlyle Group / Kinder Morgan	FTC	2007	Mar. 2006	Jan. 2007	No	Settled
Actavis / Abrika Pharmaceuticals	FTC	2007	Apr. 2007	May 2007	No	Settled
Rite Aid / The Jean Coutu Group	FTC	2007	June 2007	Sep. 2007	No	Settled
Jarden / K2	FTC	2007	Aug. 2007	Sep. 2007	No	Settled
American Renal Associates / Fresenius Medical Care Holdings	FTC	2007	Sep. 2007	Oct. 2007	No	Settled
Mylan Laboratories / Merck	FTC	2007	Sep. 2007	Nov. 2007	No	Settled
Abitibi / Bowater	DOJ	2008	Oct. 2007	Nov. 2008	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
AT&T / Dobson Communications	DOJ	2008	Oct. 2007	Mar. 2008	No	Settled
Vulcan Materials / Florida Rock Industries	DOJ	2008	Nov. 2007	Apr. 2008	No	Settled
CommScope / Andrew Corp	DOJ	2008	Dec. 2007	Apr. 2008	No	Settled
Pearson / Harcourt Assessment	DOJ	2008	Jan. 2008	June 2008	No	Settled
Thomson / Reuters	DOJ	2008	Feb. 2008	June 2008	No	Settled
UnitedHealth Group / Sierra Health Services	DOJ	2008	Feb. 2008	Sep. 2008	No	Settled
Cookson Group / Foseco	DOJ	2008	Mar. 2008	May 2008	No	Settled
Altivity Packaging / Graphic Packaging International	DOJ	2008	Mar. 2008	July 2008	No	Settled
Regal Cinemas / Consolidated Theatres	DOJ	2008	Apr. 2008	Oct. 2008	No	Settled
Cengage Learning / Houghton Mifflin Harcourt	DOJ	2008	May 2008	Sep. 2008	No	Settled
Verizon Communications / Rural Cellular	DOJ	2008	June 2008	Apr. 2009	No	Settled
Signature Flight Support / Hawker Beechcraft Services	DOJ	2008	July 2008	Oct. 2008	No	Settled
Raycom Media / Lincoln Fiscal	DOJ	2008	Aug. 2008	Dec. 2008	No	Settled
Inova Health System / Prince William Health System	FTC	2008	May 2008	June 2008	No	Abandoned
Polypore International / Microporous Products	FTC	2008	Sep. 2008	Dec. 2013	Yes	Gov't win
Kypon / Disc-O-Tech Medical Technologies	FTC	2008	Oct. 2007	Dec. 2007	No	Settled
Owens Corning / Compagnie de Saint Gobain	FTC	2008	Oct. 2007	Dec. 2007	No	Settled
Schering-Plough / Organon Biosciences	FTC	2008	Nov. 2007	Jan. 2008	No	Settled
Great Atlantic & Pacific Tea / Pathmark Stores	FTC	2008	Nov. 2007	Jan. 2008	No	Settled
TALX	FTC	2008	Apr. 2008	Aug. 2008	Yes	Settled
Agrium / UAP Holding	FTC	2008	June 2008	Oct. 2008	No	Settled
PQ / INEOS Group	FTC	2008	Sep. 2008	June 2008	No	Settled
Flow International / OMAX	FTC	2008	July 2008	Aug. 2008	No	Settled
Pernod Richard / V&S Vin & Spirt	FTC	2008	July 2008	Oct. 2008	No	Settled
McCormick & Company / Lawry's & Adolph's	FTC	2008	July 2008	Sep. 2008	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Sun Pharmaceutical Industries / Taro Pharmaceuticals	FTC	2008	Aug. 2008	Sep. 2008	No	Settled
Fresenius Medical Care / Daiichi Sankyo	FTC	2008	Sep. 2008	Oct. 2008	No	Settled
Reed Elsevier / ChoicePoint	FTC	2008	Dec. 2008	June 2009	No	Settled
Manitowoc Company / Endonis	DOJ	2009	Oct. 2008	Feb. 2009	No	Settled
JBS / National Beef Packing Company	DOJ	2009	Oct. 2008	Feb. 2009	No	Settled
Verizon Communications / Alltel	DOJ	2009	Oct. 2008	Apr. 2009	No	Settled
InBev / Anheuser-Busch	DOJ	2009	Nov. 2008	Aug. 2009	No	Settled
Republic Services / Allied Waste	DOJ	2009	Dec. 2008	July 2010	No	Settled
Microsemi Corp / Semicoa	DOJ	2009	Dec. 2008	Jan. 2010	Yes	Settled
Sapa Holding / Indalex Holdings	DOJ	2009	July 2009	Jan. 2010	No	Settled
Red Sky Holdings / Newport Resources	FTC	2009	Oct. 2008	Dec. 2008	No	Abandoned
CCC Information Services / Mitchell International	FTC	2009	Nov. 2008	Mar. 2009	No	Gov't win
CRH / Robert Schlegel	FTC	2009	Jan. 2009	Jan. 2009	No	Abandoned
Talecris Biotherapeutics / CSL	FTC	2009	May 2009	June 2009	No	Abandoned
Thoratec / HeartWare International	FTC	2009	July 2009	Aug. 2009	No	Abandoned
Ovation Pharmaceuticals	FTC	2009	Dec. 2008	Oct. 2011	Yes	Gov't loss
Huntsman / Hexcion Specialty Chemicals	FTC	2009	Oct. 2008	June 2009	No	Settled
Teva Pharmaceutical Industries / Barr Pharmaceuticals	FTC	2009	Oct. 2008	Feb. 2009	No	Settled
Inverness Medical Innovations	FTC	2009	Dec. 2008	Jan. 2009	No	Settled
King Pharmaceuticals / Alparma	FTC	2009	Dec. 2008	Feb. 2009	No	Settled
Dow Chemical / Rohm & Haas	FTC	2009	Jan. 2009	Apr. 2009	No	Settled
Getinge / Datascope	FTC	2009	Jan. 2009	Mar. 2009	No	Settled
Lubrizol / Lockhart Chemical	FTC	2009	Feb. 2009	Apr. 2009	Yes	Settled
BASF / Ciba Specialty Chemicals	FTC	2009	Apr. 2009	May 2009	No	Settled
K&S / Dow Chemical	FTC	2009	Sep. 2009	Nov. 2009	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
AT&T / Centennial Communications	DOJ	2010	Oct. 2009	Feb. 2010	No	Settled
Cameron International / NATCO Group	DOJ	2010	Nov. 2009	May 2010	Yes	Settled
Stericycle / Medserve	DOJ	2010	Nov. 2009	Apr. 2010	No	Settled
Dean Foods / Foremost Farms	DOJ	2010	Jan. 2010	July 2011	Yes	Settled
Ticketmaster Entertainment / Live Nation	DOJ	2010	Jan. 2010	July 2010	No	Settled
Bemis Company / Alcan Packaging Foods Americas	DOJ	2010	Feb. 2010	July 2010	No	Settled
Election Systems and Software / Premier Election Solutions	DOJ	2010	Mar. 2010	June 2010	Yes	Settled
Baker Hughes / BJ Services	DOJ	2010	Apr. 2010	July 2010	No	Settled
AMC Entertainment Holdings / Kerasotes Showplace Theaters	DOJ	2010	May 2010	Aug. 2009	No	Settled
Amcor / Alcan Packaging Medical Flexibles	DOJ	2010	June 2010	Oct. 2010	No	Settled
Dun & Bradstreet / QED	FTC	2010	May 2010	Sep. 2010	Yes	Settled
Pfizer / Wyeth	FTC	2010	Oct. 2009	Jan. 2010	No	Settled
Schering-Plough / Merck & Co.	FTC	2010	Oct. 2009	Oct. 2009	No	Settled
Panasonic Corp / Sanyo Electric	FTC	2010	Nov. 2009	Jan. 2010	No	Settled
Service International / Palm Mortuary	FTC	2010	Nov. 2009	Jan. 2010	No	Settled
Watson Pharmaceuticals / Robin Hood Holdings	FTC	2010	Dec. 2009	Jan. 2010	No	Settled
Agrium / CF Industries	FTC	2010	Dec. 2009	Feb. 2010	No	Settled
Danaher / MDS Analytical Technologies	FTC	2010	Jan. 2010	Mar. 2010	No	Settled
PepsiCo / Pepsi Bottling	FTC	2010	Feb. 2010	Sep. 2010	No	Settled
Service International / Keystone	FTC	2010	Mar. 2010	May 2010	No	Settled
Agilent Technologies / Varian	FTC	2010	May 2010	June 2010	No	Settled
Pilot / Flying J	FTC	2010	June 2010	Nov. 2010	No	Settled
AEA Investors / D.A. Stuart	FTC	2010	July 2010	Aug. 2010	Yes	Settled
Fidelity National Fiscal	FTC	2010	July 2010	Sep. 2010	Yes	Settled
Nufarm / Marks Holding	FTC	2010	July 2010	Sep. 2010	Yes	Settled
Tops Market / Penn Traffic Company	FTC	2010	Aug. 2010	July 2011	No	Settled
Novartis AG / Alcon	FTC	2010	Aug. 2010	Oct. 2010	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Air Products & Chemicals / Airgas	FTC	2010	Sep. 2010	Oct. 2010	No	Settled
Coca-Cola / Coca-Cola Enterprise	FTC	2010	Sep. 2010	Nov. 2010	No	Settled
GrafTech International / Seadrift Coke	DOJ	2011	Nov. 2010	Mar. 2011	No	Settled
L.B. Foster Company / Portec Rail Products	DOJ	2011	Dec. 2010	May 2011	No	Settled
Comcast / General Electric / NBC Universal	DOJ	2011	Jan. 2011	Sep. 2011	No	Settled
Google / ITA Software	DOJ	2011	Apr. 2011	Oct. 2011	No	Settled
Stericycle / Healthcare Waste Solutions	DOJ	2011	Apr. 2011	June 2011	No	Settled
Unilever / Alberto-Culver Company	DOJ	2011	May 2011	July 2011	No	Settled
George's Foods / Tyson Foods	DOJ	2011	June 2011	Nov. 2011	No	Settled
VeriFone Systems / Hypercom Corporation / Ingenico	DOJ	2011	May 2011	Aug. 2011	No	Settled
H&R Block / 2SS Holdings / TA IX	DOJ	2011	May 2011	Oct. 2011	No	Gov't win
Regal Beloit / A.O. Smith	DOJ	2011	Aug. 2011	Nov. 2011	No	Settled
General Electric Company / CVT Holdings	DOJ	2011	Aug. 2011	Nov. 2011	No	Settled
AT&T / T-Mobile	DOJ	2011	Aug. 2011	Dec. 2011	No	Abandoned
Cumulus Media / Citadel Broadcasting	DOJ	2011	Sep. 2011	Nov. 2011	No	Settled
ProMedica / St. Luke's Hospital	FTC	2011	Jan. 2011	Mar. 2012	Yes	Gov't win
Phoebe Putney / Palmyra	FTC	2011	Apr. 2011	June 2013	No	Settled
Lab Corp / Westcliff Medical Laboratories	FTC	2011	Dec. 2010	Mar. 2011	Yes	Gov't loss
Hikma Pharmaceuticals / Baxter International	FTC	2011	Apr. 2011	June 2011	No	Settled
Irving Oil Terminals / ExxonMobil	FTC	2011	May 2011	July 2011	No	Settled
Keystone Holdings / Saint-Gobain	FTC	2011	Dec. 2010	Feb. 2011	No	Settled
Universal Health Services / Psychiatric Solutions	FTC	2011	Nov. 2010	Apr. 2011	No	Settled
Simon Property Group / Prime Outlets Acquisition Company	FTC	2011	Nov. 2010	Jan. 2011	No	Settled
Grifols / Talecris	FTC	2011	June 2011	July 2011	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Cardinal Health / Biotech Pharmacy	FTC	2011	July 2011	Oct. 2011	Yes	Settled
Perrigo Company / Paddock Laboratories	FTC	2011	July 2011	June 2012	No	Settled
DaVita / CDSI I Holding Company	FTC	2011	Sep. 2011	Oct. 2011	No	Settled
Grupo Bimbo / Sara Lee	DOJ	2012	Oct. 2011	Feb. 2012	No	Settled
Blue Cross and Blue Shield of Montana / Community Medical Services	DOJ	2012	Nov. 2011	Mar. 2012	No	Settled
Exelon / Constellation Energy Group	DOJ	2012	Dec. 2011	May 2012	No	Settled
Deutsche Boerse / NYSE Euronext	DOJ	2012	Dec. 2011	Feb. 2012	No	Abandoned
International Paper Company / Temple-Inland	DOJ	2012	Feb. 2012	May 2012	No	Settled
Humana / Arcadian Management Services	DOJ	2012	Mar. 2012	Oct. 2012	No	Settled
United Technologies / Goodrich	DOJ	2012	July 2012	May 2013	No	Settled
Standard Parking / Central Parking	DOJ	2012	Sep. 2012	Jan. 2013	No	Settled
OSF Healthcare System / Rockford Health System	FTC	2012	Nov. 2011	Apr. 2012	No	Gov't win
Graco / Illinois Tool Works	FTC	2012	Dec. 2011	Jan. 2012	No	Settled
Omnicare / PharMerica	FTC	2012	Dec. 2011	Feb. 2012	No	Abandoned
Teva Pharmaceutical Industries / Cephalon	FTC	2012	Oct. 2011	July 2012	No	Settled
Healthcare Technology Holdings / SDI Health	FTC	2012	Oct. 2011	Mar. 2012	No	Settled
Lab Corp / Orchid Cellmark	FTC	2012	Dec. 2011	Feb. 2012	No	Settled
Valeant Pharmaceuticals International / Johnson & Johnson	FTC	2012	Dec. 2011	Feb. 2012	No	Settled
AmeriGas Propane / Energy Transfer Partners	FTC	2012	Jan. 2012	June 2012	No	Settled
Fresenius Medical Care / Liberty Dialysis Holdings	FTC	2012	Feb. 2012	May 2012	No	Settled
Carpenter Technology Corporation / Latrobe Specialty Metals	FTC	2012	Feb. 2012	Apr. 2012	No	Settled
Western Digital / Hitachi Global Storage	FTC	2012	Mar. 2012	May 2012	No	Settled
CoStar Group / LoopNet	FTC	2012	Apr. 2012	Aug. 2012	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Kinder Morgan / El Paso Corporation	FTC	2012	May 2012	June 2012	No	Settled
Johnson & Johnson / Synthes	FTC	2012	June 2012	Aug. 2012	No	Settled
Koninklijke Ahold / Safeway	FTC	2012	June 2012	Aug. 2012	No	Settled
Novartis / Fougera Holdings	FTC	2012	July 2012	Sep. 2012	No	Settled
Renown Health	FTC	2012	Aug. 2012	Dec. 2012	Yes	Settled
Star Atlantic Waste / Veolia Environment	DOJ	2013	Nov. 2012	Mar. 2013	No	Settled
Twin America / Coach USA / CitySights	DOJ	2013	Dec. 2012	Nov. 2015	Yes	Settled
Bazaarvoice / PowerReviews	DOJ	2013	Jan. 2013	Apr. 2014	Yes	Gov't win
Anheuser-Busch InBev SA/NV / Grupo Modelo	DOJ	2013	Jan. 2013	Oct. 2013	No	Settled
Ecolab / Permian Mud Service	DOJ	2013	Apr. 2013	Sep. 2013	No	Settled
Cinemark Holdings / Rave Holdings	DOJ	2013	May 2013	Aug. 2013	No	Settled
US Airways Group / AMR	DOJ	2013	Aug. 2013	Apr. 2014	No	Settled
Reading Health System / Surgical Institute of Reading	FTC	2013	Nov. 2012	Nov. 2012	No	Abandoned
Integrated Device Technology / PLX Technology	FTC	2013	Dec. 2012	Dec. 2012	No	Abandoned
Pinnacle Entertainment / Ameristar Casinos	FTC	2013	May 2013	Dec. 2013	No	Settled
Ardagh Group / Saint-Gobain Containers	FTC	2013	July 2013	June 2014	No	Settled
St. Luke's Health System / Saltzer Medical Group	FTC	2013	Mar. 2013	Feb. 2015	Yes	Gov't win
Universal Health Services / Ascend Health Services	FTC	2013	Oct. 2012	Nov. 2012	No	Settled
Magnesium Elektron North America	FTC	2013	Oct. 2012	Dec. 2012	Yes	Settled
Watson Pharmaceuticals / Actavis	FTC	2013	Oct. 2012	Dec. 2012	No	Settled
Corning / Becton, Dickinson & Company	FTC	2013	Oct. 2012	Dec. 2012	No	Settled
Hertz Global Holdings / Dollar Thrifty	FTC	2013	Nov. 2012	July 2013	No	Settled
Robert Bosch / SPX Service Solutions	FTC	2013	Nov. 2012	Apr. 2013	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Tesoro / Northwest Product's Pipeline	FTC	2013	June. 2013	Aug. 2013	No	Settled
Oltrin Solutions / JCI Jones Chemicals	FTC	2013	Jan. 2013	Mar. 2013	Yes	Settled
Charlotte Pipe / Star Pipe Products	FTC	2013	Apr. 2013	May 2013	Yes	Settled
Graco / Gusmer / GlasCraft	FTC	2013	Apr. 2013	Apr. 2013	Yes	Settled
Nielsen Holdings / Arbitron	FTC	2013	Sep. 2013	Feb. 2014	No	Settled
General Electric / Avio	FTC	2013	July 2013	Aug. 2013	No	Settled
Solera / Actual Systems	FTC	2013	July 2013	Oct. 2013	Yes	Settled
Actavis / Warner Chilcott	FTC	2013	Sep. 2013	Dec. 2013	No	Settled
Honeywell / Intermec	FTC	2013	Sep. 2013	Nov. 2013	No	Settled
Mylan / Agila	FTC	2013	Sep. 2013	Dec. 2013	No	Settled
Gannett / Belo	DOJ	2014	Dec. 2013	Nov. 2014	No	Settled
Heraeus Electro-Nite	DOJ	2014	Jan. 2014	Apr. 2014	Yes	Settled
ConAgra Foods / Horizon Milling	DOJ	2014	May 2014	Oct. 2014	No	Settled
Martin Marietta Materials / Texas Industries	DOJ	2014	Jun. 2014	Sep. 2014	No	Settled
Sinclair Broadcast Group / Perpetual Corp	DOJ	2014	Jul. 2015	Nov. 2014	No	Settled
Landmark Aviation / Ross Aviation	DOJ	2014	Jul. 2014	Oct. 2014	No	Settled
Tyson Foods / Hillshire Brands	DOJ	2014	Aug. 2014	Nov. 2014	No	Settled
Jostens / American Achievement Group	FTC	2014	Apr. 2014	Apr. 2014	No	Abandoned
Albertson's / United Supermarkets	FTC	2014	Dec. 2013	Feb. 2014	No	Settled
SCI / Stewart Enterprises	FTC	2014	Dec. 2013	May 2014	No	Settled
Fidelity National Financial / Lender Processing Services	FTC	2014	Dec. 2013	Mar. 2014	No	Settled
Community Health Systems / Health Management Associates	FTC	2014	Jan. 2014	Apr. 2014	No	Settled
Thermo Fisher / Life Technologies	FTC	2014	Jan. 2014	Apr. 2014	No	Settled
Endo Health Solutions / Boca Life Sciences	FTC	2014	Jan. 2014	Mar. 2014	No	Settled
Bi-Lo Holdings / Delhaize Group	FTC	2014	Feb. 2014	Jan. 2015	No	Settled
CoreLogic / TPG	FTC	2014	Mar. 2014	May 2014	No	Settled
Akorn / Hi-Tech Pharmcal	FTC	2014	Apr. 2014	June 2014	No	Settled
Forest Laboratories / Actavis	FTC	2014	June 2014	Sep. 2014	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Valeant Pharmaceuticals International / Precision Dermatology	FTC	2014	July 2014	Aug. 2014	No	Settled
Akorn / VersaPharm	FTC	2014	Aug. 2014	Sep. 2014	No	Settled
Prestige Brand Holdings / Insight Pharmaceuticals	FTC	2014	Aug. 2014	Oct. 2014	No	Settled
Media General / LIN Media	DOJ	2015	Oct. 2014	Jan. 2015	No	Settled
National Cinemedia / Screenvision	DOJ	2015	Nov. 2014	Mar. 2015	No	Abandoned
Nexstar Broadcasting Group / Communication of America	DOJ	2015	Nov. 2014	Feb. 2015	No	Settled
Continental AG / Geyance Technologies	DOJ	2015	Dec. 2014	Mar. 2015	No	Settled
Verson Paper / NewPage Holdings	DOJ	2015	Dec. 2014	Dec. 2015	No	Settled
Waste Management / Deffenbaugh Disposal	DOJ	2015	Mar. 2015	July 2015	No	Settled
AB Electrolux / General Electric	DOJ	2015	Jul. 2015	Dec. 2015	No	Abandoned
Entercom Communications / Lincoln Fiscal Media	DOJ	2015	Jul. 2015	Oct. 2015	No	Settled
General Electric / Alstom S.A.	DOJ	2015	Sep. 2015	Dec. 2015	No	Settled
Cox Enterprises / Dealertrack Technologies	DOJ	2015	Sep. 2015	Jan. 2016	No	Settled
Verisk Analytics / EagleView Technology	FTC	2015	Dec. 2014	Dec. 2014	No	Abandoned
Sysco / US Foods	FTC	2015	Feb. 2015	June 2015	No	Gov't win
Steris / Synergy Health	FTC	2015	May 2015	Oct. 2015	No	Gov't loss
Surgery Partners / Symbion Holdings	FTC	2015	Nov. 2014	Apr. 2015	No	Settled
Novartis / GlaxoSmithKline	FTC	2015	Nov. 2014	Jan. 2015	No	Settled
Covidien / Medtronic	FTC	2015	Dec. 2014	Mar. 2015	No	Settled
Eli Lilly / Novartis	FTC	2015	Jan. 2015	July 2015	No	Settled
Cerberus / Safeway	FTC	2015	Jan. 2015	Mar. 2015	No	Settled
Sun Pharmaceutical Industries / Ranbaxy Laboratories	FTC	2015	Mar. 2015	Apr. 2015	No	Settled
Impax Laboratories / Tower Holdings	FTC	2015	Mar. 2015	May 2015	No	Settled
Par Petroleum / Mid Pac Petroleum	FTC	2015	May 2015	June 2015	No	Settled
Lafarage / Holcim	FTC	2015	May 2015	June 2015	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Zeppelin Foundation Friedrichschafen / TRW Automotive Holdings	FTC	2015	May 2015	June 2015	No	Settled
Reynolds American / Lorillard	FTC	2015	May 2015	July 2015	No	Settled
Biomet / Zimmer Holdings	FTC	2015	June 2015	Aug. 2015	No	Settled
Dollar Tree / Family Dollar	FTC	2015	July 2015	Sep. 2015	No	Settled
Pfizer / Hospira	FTC	2015	Aug. 2015	Oct. 2015	No	Settled
Endo International / Par Pharmaceutical	FTC	2015	Sep. 2015	Nov. 2015	No	Settled
Wright Medical Group / Tornier	FTC	2015	Sep. 2015	Nov. 2015	No	Settled
Anthem / Cigna	DOJ	2016	Jul. 2016	Feb. 2017	No	Gov't win
Aetna / Humana	DOJ	2016	Jul. 2016	Feb. 2017	No	Gov't win
Deere & Company / Precision Planting	DOJ	2016	Nov. 2015	May 2017	No	Abandoned
Springleaf Holdings / OneMain Fiscal Holdings	DOJ	2016	Nov. 2015	Apr. 2016	No	Settled
AMC Entertainment Holdings / SMH Theatres	DOJ	2016	Dec. 2015	Mar. 2016	No	Settled
Gray Television / Schurz Communications	DOJ	2016	Dec. 2015	Mar. 2016	No	Settled
BBA Aviation / Landmark Aviation	DOJ	2016	Feb. 2016	June 2016	No	Settled
Tribune Publishing / Freedom Communications	DOJ	2016	Mar. 2016	Mar. 2016	No	Abandoned
Iron Mountain / Recall Holdings	DOJ	2016	Mar. 2016	Nov. 2016	No	Settled
Halliburton / Baker Hughes	DOJ	2016	Apr. 2016	May 2016	No	Abandoned
Charter Communications / Time Warner Cable	DOJ	2016	Apr. 2016	Sep. 2016	No	Settled
GTCR / PR Newswire	DOJ	2016	June 2016	Sep. 2016	No	Settled
Anheuser-Busch InBev / SABMiller	DOJ	2016	Jul. 2016	Oct. 2018	No	Settled
Nexstar Broadcasting Group / Media General	DOJ	2016	Sep. 2016	Nov. 2016	No	Settled
Staples / Office Depot	FTC	2016	Dec. 2015	May 2016	No	Gov't win
Penn State Hershey Medical Center / PinnacleHealth System	FTC	2016	Dec. 2015	Oct. 2016	No	Gov't win
Advocate Health and Hospitals / NorthShore University HealthSystem	FTC	2016	Dec. 2015	Mar. 2017	No	Gov't win
Cabell Huntington Hospital / St. Mary's Medical Center	FTC	2016	Nov. 2015	Jul. 2016	No	Withdrawn
Superior / Canexus	FTC	2016	Jun. 2016	Jun. 2016	No	Abandoned

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consummated	Outcome
Keystone Orthopedic Specialist	FTC	2016	Oct. 2015	Dec. 2015	Yes	Settled
Mylan / Perrigo	FTC	2016	Nov. 2015	Feb. 2016	No	Settled
NXP Semiconductors / Freescale Semiconductor	FTC	2016	Nov. 2015	Jan. 2016	No	Settled
Cumberland Gulf / ArcLight Capital Partners	FTC	2016	Dec. 2015	Feb. 2016	No	Settled
DSI Renal / U.S. Renal Care	FTC	2016	Dec. 2015	Mar. 2016	No	Settled
Lupin Pharmaceuticals / GAVIS Pharmaceuticals	FTC	2016	Feb. 2016	Apr. 2016	No	Settled
Hikma Pharmaceuticals / Ben Venue Laboratories	FTC	2016	Feb. 2016	Mar. 2016	No	Settled
Hikma Pharmaceuticals / Roxane Laboratories	FTC	2016	Feb. 2016	May 2016	No	Settled
Koninklijke Ahold / Delhaize Group	FTC	2016	July 2016	Oct. 2016	No	Settled
Teva / Allergan	FTC	2016	July 2016	Sep. 2016	No	Settled
Mylan / Meda	FTC	2016	July 2016	Sep. 2016	No	Settled
ON Semiconductor / Fairchild Semiconductor	FTC	2016	Aug. 2016	Oct. 2016	No	Settled
American Air Liquide / Airgas	FTC	2016	May 2016	Dec. 2016	No	Settled
Ball / Rexam	FTC	2016	June 2016	Aug. 2016	No	Settled
HeidelbergCement / Italcementi	FTC	2016	June 2016	Aug. 2016	No	Settled
Energy Transfer Equity / The Williams Companies	FTC	2016	June 2016	Aug. 2016	No	Settled
Westinghouse Air Brake Technologies / Faiveley Transport	DOJ	2017	Oct. 2016	Apr. 2017	No	Settled
Energy Solutions / Waste Control Specialists	DOJ	2017	Nov. 2016	June 2017	No	Gov't win
Alaska Air Group / Virgin America	DOJ	2017	Dec. 2016	June 2017	No	Settled
AMC Entertainment Holdings / Carmike Cinemas	DOJ	2017	Dec. 2016	Mar. 2017	No	Settled
Clear Channel Outdoor Holdings / Fairway Media Group	DOJ	2017	Dec. 2016	Mar. 2017	No	Settled
Smith Group / Morpho Detection	DOJ	2017	Mar. 2017	June 2017	No	Settled
Danone / WhiteWave Foods	DOJ	2017	Apr. 2017	July 2017	No	Settled
General Electric / Baker Hughes	DOJ	2017	June 2017	Oct. 2017	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Dow Chemical / E.I. Du Pont De Nemours	DOJ	2017	June 2017	Oct. 2017	No	Settled
Parker-Hannifin / CLARCOR	DOJ	2017	Sep. 2017	Apr. 2018	Yes	Settled
Showa Denko K.K. / SGL Carbon SE	DOJ	2017	Sep. 2017	Nov. 2017	No	Settled
Sanford Health / Mid Dakota Clinic	FTC	2017	June 2017	July 2019	No	Gov't win
DraftKings / FanDuel	FTC	2017	July 2017	July 2017	No	Abandoned
Valeant Pharmaceuticals / Paragon Holdings	FTC	2017	Nov. 2016	Feb. 2017	Yes	Settled
Abbott Laboratories / St. Jude Medical	FTC	2017	Dec. 2016	Feb. 2017	No	Settled
CentraCare Health / SMG	FTC	2017	Oct. 2016	Jan. 2017	No	Settled
C.H. Boehringer Sohn / Sanofi	FTC	2017	Dec. 2016	Feb. 2017	No	Settled
Enbridge / Spectra Energy	FTC	2017	Feb. 2017	Mar. 2017	No	Settled
China National Chemical / Sygenta	FTC	2017	Apr. 2017	June 2017	No	Settled
DaVita / Renal Ventures Management	FTC	2017	Mar. 2017	June 2017	No	Settled
Emerson Electric / Pentari	FTC	2017	Apr. 2017	June 2017	No	Settled
Sherman-Williams / Valspar	FTC	2017	May 2017	July 2017	No	Settled
Alimentation Couche-Tard / CST Brands	FTC	2017	June 2017	Aug. 2017	No	Settled
Broadcom / Brocade Communications Systems	FTC	2017	July 2017	Aug. 2017	No	Settled
Abbott Laboratories / Alere	FTC	2017	Sep. 2017	Nov. 2017	No	Settled
Integra Lifesciences / Johnson & Johnson	FTC	2017	Sep. 2017	Dec. 2017	No	Settled
Baxter International / Claris Life Sciences	FTC	2017	July 2017	Aug. 2017	No	Settled
Mars / VCA	FTC	2017	Aug. 2017	Dec. 2017	No	Settled
CenturyLink / Level 3 Communications	DOJ	2018	Oct. 2017	Mar. 2018	No	Settled
Entercom Communications / CBS	DOJ	2018	Nov. 2017	Jan. 2018	No	Settled
AT&T / Time Warner	DOJ	2018	Nov. 2017	Feb. 2019	No	Gov't loss
TransDigm / SCHROTH	DOJ	2018	Dec. 2017	Apr. 2018	Yes	Settled
Vulcan Materials / SPO Partners II	DOJ	2018	Dec. 2017	Apr. 2018	No	Settled
Martin Marietta Materials / Bluegrass Materials	DOJ	2018	Apr. 2018	July 2018	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consummated	Outcome
CRH / Pounding Mill Quarry Corporation	DOJ	2018	June 2018	Nov. 2019	No	Settled
Bayer AG / Monsanto	DOJ	2018	May 2018	Feb. 2019	No	Settled
Walt Disney / Twenty-First Century Fox	DOJ	2018	June 2018	Sep. 2019	No	Settled
Wilhelmsen Maritime Services / Drew Marine	FTC	2018	Feb. 2018	July 2018	No	Gov't win
Tronox / Cristal	FTC	2018	Dec. 2017	May 2018	No	Gov't win
J.M. Smucker / Conagra	FTC	2018	Mar. 2018	Mar. 2018	No	Abandoned
CDK / Auto/Mate	FTC	2018	Mar. 2018	Mar. 2018	No	Abandoned
Otto Bock / Freedom Innovations	FTC	2018	Dec. 2017	Nov. 2019	Yes	Gov't win
Beckton Dickinson / C.R. Bard	FTC	2018	Dec. 2017	Jan. 2018	No	Settled
Agrium / Potash	FTC	2018	Dec. 2017	Feb. 2018	No	Settled
Seven & I / Sunoco	FTC	2018	Jan. 2018	Mar. 2018	No	Settled
Red Ventures / Bankrate	FTC	2018	Nov. 2017	Apr. 2018	No	Settled
Alimentation-Couche-Tard / Holiday	FTC	2018	Dec. 2017	Feb. 2018	No	Settled
Alimentation-Couche-Tard / Jet-Pep	FTC	2018	Nov. 2017	Jan. 2018	No	Settled
Grifols / Biotest	FTC	2018	Aug. 2018	Sep. 2018	No	Settled
Northrop Grumman / Orbital	FTC	2018	June 2018	Dec. 2018	No	Settled
CRH / Ash Grove	FTC	2018	June 2018	Aug. 2018	No	Settled
Penn National Gaming / Pinnacle	FTC	2018	Oct. 2018	Feb. 2019	No	Settled
Amneal / Impax	FTC	2018	Apr. 2018	Jul. 2018	No	Settled
Air Medical Group / AMR	FTC	2018	Mar. 2018	May 2018	No	Settled
CVS / Aetna	DOJ	2019	Oct. 2018	Oct. 2018	No	Settled
United Tech. / Rockwell Collins	DOJ	2019	Oct. 2018	Oct. 2018	No	Settled
Gray Television / Raycom Media	DOJ	2019	Dec. 2018	Dec. 2018	No	Settled
Thales / Gemalto	DOJ	2019	Feb. 2019	Feb. 2019	No	Settled
QuadGraphics / LSC Communications	DOJ	2019	Jun. 2019	Jul. 2019	No	Abandoned
Harris / L3 Technologies	DOJ	2019	Jun. 2019	Jun. 2019	No	Settled
Amcort / Bemis	DOJ	2019	May 2019	May 2019	No	Settled
T-Mobile / Sprint	DOJ	2019	July 2019	Apr. 2020	No	Settled
Nexstar Media / Tribune Media	DOJ	2019	July 2019	July 2019	No	Settled
Sabre / Farelogix	DOJ	2019	Aug. 2019	Apr. 2020	No	Gov't loss
Novelis / Aleris	DOJ	2019	May 2020	May 2020	No	Gov't win

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
Praxair / Linde	FTC	2019	Oct. 2018	Feb. 2019	No	Settled
Marathon / REROB	FTC	2019	Oct. 2018	Feb. 2019	No	Settled
Indorama Ventures / DAK America	FTC	2019	Dec. 2018	Feb. 2019	No	Settled
Staples / Essendant	FTC	2019	Jan. 2019	Jan. 2019	No	Settled
Fresenius / NxStage	FTC	2019	Feb. 2019	Apr. 2019	No	Settled
UnitedHealth / DaVita	FTC	2019	Jun. 2019	Aug. 2019	No	Settled
Quaker Chemical / Houghton	FTC	2019	Jul. 2019	Sep. 2019	No	Settled
Boston Scientific / BTG	FTC	2019	Aug. 2019	Sep. 2019	No	Settled
Evonik / PeroxyChem	FTC	2019	Aug. 2019	Jan. 2020	No	Gov't loss
Fidelity / Stewart	FTC	2019	Sep. 2019	Sep. 2019	No	Abandoned
US Foods / SGA	FTC	2019	Sep. 2019	Nov. 2019	No	Settled
Nexus / Generation Pipeline	FTC	2019	Sep. 2019	Nov. 2019	No	Settled
Symrise / IDF Holdco	DOJ	2020	Oct. 2019	Mar. 2020	No	Settled
ZF Friedrichshafen / WABCO	DOJ	2020	Jan. 2020	Apr. 2020	No	Settled
Olympus Growth Fund / Liqui-Box	DOJ	2020	Feb. 2020	Jun. 2021	No	Settled
United Technologies / Raytheon	DOJ	2020	Mar. 2020	Jul. 2020	No	Settled
Communications and Power Industries / General Dynamics	DOJ	2020	May 2020	Sep. 202	No	Settled
Dairy Farmers of America / Dean Foods	DOJ	2020	May 2020	Dec. 2020	No	Settled
Geisinger Health / Evangelical Community Hospital	DOJ	2020	Aug. 2020	Mar. 2021	No	Settled
A-B InBev / Craft Brew Alliance	DOJ	2020	Sep. 2020	Apr. 2021	No	Settled
Post / TreeHouse Foods	FTC	2020	Dec. 2019	Dec. 2019	No	Abandoned
Illumina / Pacific Biosciences	FTC	2020	Dec. 2019	Dec. 2019	No	Abandoned
Edgewell / Harry's	FTC	2020	Feb. 2020	Feb. 2020	No	Abandoned
Peabody Energy / Arch Coal	FTC	2020	Feb. 2020	Sep. 2020	No	Gov't win
Jefferson Health / Albert Einstein	FTC	2020	Feb. 2020	Dec. 2020	No	Gov't loss
Axon / Safariland	FTC	2020	Jan. 2020	Pending	Yes	Pending
Altria / JUUL Labs	FTC	2020	Apr. 2020	Pending	Yes	Pending
Bristol-Myers Squibb / Celgene	FTC	2020	Nov. 2019	Jan. 2020	No	Settled
Agnaten / National Veterinary	FTC	2020	Feb. 2020	Apr. 2020	No	Settled

Parties	Agency	Fiscal Year	Compl. Filed	Resolved	Consum-mated	Outcome
FXI / Innocor	FTC	2020	Feb. 2020	Apr. 2020	No	Settled
Ossur HF / College Park Industries	FTC	2020	Apr. 2020	May 2020	No	Settled
Danaher / General Electric	FTC	2020	Mar. 2020	May 2020	No	Settled
Tri Star / Hollingsworth	FTC	2020	Jun. 2020	Aug. 2020	No	Settled
Eldorado / Caesars	FTC	2020	Jun. 2020	Aug. 2020	No	Settled
AbbVie / Allergan	FTC	2020	May. 2020	Sep. 2020	No	Settled
Elanco / Bayer	FTC	2020	Jul. 2020	Sep. 2020	No	Settled
Arko / Empire	FTC	2020	Aug. 2020	Oct. 2020	No	Settled