

# PUBLICATION

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## DOJ/FTC Issue Their Annual "Hart-Scott-Rodino Report" – Insurance Industry Spotlight

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In early August 2016, the DOJ Antitrust Division and the Federal Trade Commission (FTC) issued their 38<sup>th</sup> annual Hart-Scott-Rodino (HSR) report. The report presents data on the agencies' merger review and enforcement activities in the federal government's prior fiscal year, which ended on September 30, 2015.

Among its highlights, the report notes that 1,801 transactions were reported to the antitrust agencies for premerger notification and approval in fiscal year 2015, an 8.3 percent increase over the prior year (the reporting threshold for transactions in 2015 was \$76.3 million). In addition, the number of times the FTC or DOJ issued requests for additional information from the parties (Second Requests), which require the parties to delay the closing of their proposed transaction until the agencies can take a closer look at the proposed transaction (typically delaying the closing for several months, at the very least), decreased from 51 to 47. The data also reflects, not surprisingly, that the largest deals were most likely to be the greatest focus of agency attention.

The report also discloses that 78 insurance industry transactions were reported for premerger approval in fiscal year 2015. This was a significant increase in filings from 2014 when the total was only 61. The FTC and DOJ also sought "clearance" to conduct an initial examination of insurance industry transactions – the initial step toward a potential Second Request – seven times in 2015 (an increase from six in 2014), and in two transactions in 2015, the FTC and DOJ issued a Second Request to insurers proposing to merge (the same as in 2014).

In addition, the report also highlights the merger challenges brought by the FTC and DOJ in fiscal year 2015. A total of 42 such challenges were brought during the year (22 by the FTC and 20 by the DOJ). For the insurance industry, the most notable such challenge was brought by the FTC in the proposed \$650 million acquisition of Eagleview Technology by Verisk Analytics.

As detailed in the report, in the *Verisk* matter, the FTC alleged that Verisk's acquisition of Eagleview would likely reduce competition in the market for rooftop aerial measurement products used by the property insurance industry to assess property damage claims. Specifically, the FTC contended that Verisk's roof measurement products posed the only meaningful competition to Eagleview's roof measurement product, and thus a merger between the two companies would be anticompetitive. Shortly after the FTC filed their action, the parties abandoned their proposed transaction.