

# PUBLICATION

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## Antitrust Enforcement Agencies Release Annual Report Summarizing 2014 Merger Enforcement Activity Under Hart-Scott-Rodino [Ober|Kaler]

2015

The Hart-Scott-Rodino Antitrust Improvements Act (HSR) requires parties to a proposed acquisition of voting securities or assets meeting certain size threshold requirements to report the transaction to the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ), and observe a statutory waiting period before completing the deal. The reporting and waiting period requirements are intended to allow the enforcement agencies time to conduct a preliminary antitrust review of the potential anticompetitive effects of the proposed acquisition. Transactions that raise potential concerns are subject to additional requests for information (i.e., second requests). If significant, unresolved, concerns remain regarding the potential anticompetitive effects of the transaction after the second request phase, then either the FTC or DOJ may take action to block the transaction.

On August 12, 2015, the FTC and DOJ approved the release of their [annual report \[PDF\]](#) summarizing their enforcement activities under HSR for the 2014 fiscal year (which runs from October 1, 2013, through September 30, 2014). According to the report, there were a total of 1,663 transactions reported under HSR, a 25 percent increase over 2013. Of the reported transactions, the enforcement agencies challenged a total of 33 (17 by the FTC and 16 by DOJ), a 14 percent reduction from 2013.

According to the statistics compiled by the enforcement agencies, the number of transactions subject to HSR involving entities identified by industrial classification codes as a hospital, nursing care facility, or other ambulatory health care service facility was relatively flat as compared with 2013. Nevertheless, challenges to acquisitions of health care-related entities are once again prominently featured in the report. In particular, the annual report highlights the FTC's successful challenge to St. Luke's Health Systems' acquisition of Saltzer Medical Group, which purportedly would have combined Idaho's largest health system and its largest independent multi-specialty physician practice group. After a four-week bench trial, the federal district court, affirmed by the U.S. Court of Appeals for the Ninth circuit, found that the acquisition violated Section 7 of the Clayton Act, and the Idaho Competition Act.

In addition, the annual report features the FTC's successful challenge of Promedica's acquisition of St. Luke's Hospital in Toledo, Ohio, a ruling that was upheld in April 2014 by the U.S. Court of Appeals for the Sixth Circuit. The annual report notes that it was the first favorable appellate ruling in a hospital merger enforcement action in nearly three decades.

Other health care-related transactions challenged in 2014, but resolved by the divestiture of certain assets or products, included:

- Community Health Systems' acquisition of Health Management Associates;
- Endo Health Solutions' acquisition of Boca Life Science Holdings;
- Akorn Inc.'s acquisition of Hi-Tech Pharmacal;
- Actavis plc's acquisition of Forest Laboratories, Inc.;
- Valeant Pharmaceuticals International, Inc.'s acquisition of Precision Dermatology, Inc.;
- Akorn Inc.'s acquisition of VersaPharm, Inc.; and

Importantly, the annual report tallies enforcement actions against transactions that are subject to HSR. The enforcement authority of the federal agencies of course extends to transactions that are not subject to HSR's reporting requirements, and the modest decline in reported challenges should not be interpreted as a slowdown in federal antitrust enforcement, particularly in the health care industry.