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**AMERICAN BAR ASSOCIATION**

February 22, 2007

**Via Express Mail and E-mail**  
Antitrust Modernization Commission  
Attention: Public Comments  
1120 G Street, N.W.  
Suite 810  
Washington, DC 20005

**Section of Antitrust Law**

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**Re: Data Regarding the Burden Involved in Responding to HSR Second Request Investigations**

Ladies and Gentlemen:

On behalf of the Section of Antitrust Law of the American Bar Association, I am pleased to submit the enclosed as a response to the Antitrust Modernization Commission's request for data relating to the burden involved in responding to Requests for Additional Information and Documentary Materials ("Second Requests") issued by the Federal Trade Commission (FTC) and Department of Justice (DOJ) under the Hart-Scott-Rodino Act.

Please note that this data is being presented only on behalf of the Section of Antitrust Law and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the position of the American Bar Association.

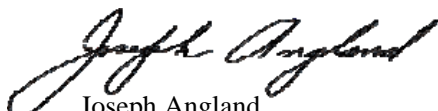
In 2005, the Section of Antitrust Law established a Merger Process Review Task Force to examine the burden associated with responding to Second Requests issued by the FTC and DOJ and to work with those agencies to find ways to reduce that burden. As part of this effort, the Task Force conducted a limited survey to collect data on the magnitude of Second Request responses and their associated costs. A copy of the aggregated summary of that survey is attached.

Although this data provides some insight into the relative costs incurred in responding to Second Requests, the Commission should be mindful of several limitations inherent in this survey:

- (1) The survey was sent to a limited number of law firms and was not meant to be an exhaustive search for data.
- (2) The survey collected data on a limited number of Second Requests issued over a several year period.
- (3) The Task Force undertook no effort to confirm the information and data provided in response to the survey.
- (4) Individual responses to the survey were provided to an economic consulting firm, which collected the data and aggregated the results into the summary form attached in order to protect the confidential nature of the data submitted. All individual responses that were provided were destroyed once the aggregated data was compiled in order to preserve all confidentiality.
- (5) Certain requests elicited responses too few in number to have any degree of reliability and, therefore, those responses were deleted from the attached aggregated summary.

If you have any questions after reviewing this data, we would be happy to respond.

Sincerely,



Joseph Angland  
Chair, Section of Antitrust Law

55<sup>th</sup> Annual Spring Meeting • April 18-20, 2007 • Washington, DC

ABA Annual Meeting Antitrust Activities • August 9-15, 2007 • San Francisco, CA

**ABA Section of Antitrust Law -- Merger Process Task Force  
Summary of 23 Responses to Second Request Questionnaire**

Ques. No.	Question	Number Responding to Question	Non-Numerical Responses			Numerical Responses				
			"Yes"	"No"	"N/A"	Maximum Value	Minimum Value	Average Value	Median Value	No. of Numerical Responses
1	What were the industry and relevant product or products under investigation?	23								
2	In what year(s) did the investigation take place?	23								
3	What was the dollar value of the transaction?	20			0	\$25,000,000,000	\$90,000,000	\$4,557,750,000	\$1,150,000,000	20
4	What agency issued the 2 <sup>nd</sup> Request?	23				DOJ = 10	FTC = 13			
5.a	How many relevant product markets were covered by the request?	23			0	13	1	5	3	22
5.b	How many relevant geographic markets were covered by the request?	19			0	1,721	1	174	12	19
6.a	How many relevant product markets were covered in the actual response to the request?	23			0	12	0	4	3	22
6.b	How many relevant geographic markets were covered in the actual response to the request?	19			0	1,721	0	170	12	19
7	How long [months] was the investigation from the filing of the HSR until the investigation was closed or an action was taken by the agency?	22			0	12	3	7	7	22
8	What was the volume of data produced?									
8.a	How many custodians were searched?	23			0	525	11	126	94	23
8.b	What entities within the company were searched, and approximately how many entities within each category?									
8.b.1	Divisions	16			1	12	1	5	3	8
8.b.2	Regional offices	15			1	25	1	9	7	7
8.b.3	Local offices	9			0	15	0	5	3	4
8.b.4	Manufacturing facilities	11			1	2	0	1	2	5
8.b.5	Foreign offices	12			1	12	0	3	2	7
8.c.1	What was the volume of e-mail in gigabytes?	22			4	357	3	119	95	14
8.c.2	Approximately how many pages of material did that represent?	9			2	5,000,000	249,723	1,566,867	582,913	7
8.d.1	What was the volume of other electronic document production in gigabytes?	8			3	164	13	55	35	5
8.d.2	Approximately how many pages of material did that represent?	9			3	20,000,000	109,763	5,411,437	554,870	6

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8.e	How many pages of hard copy were produced (or, if you prefer, how many boxes and what was the approximate size of the boxes)?									
8.e.1	Pages	21			1	8,472,665	10,670	1,515,662	544,516	20
8.e.2.a	Boxes	19			1	3,112	15	625	261	18
8.e.2.b	Size of boxes	7			2	5,000	874	2,723	2,508	4
8.f	How many pages of interrogatory responses?	22			3	6,500	0	872	275	18
8.g	What was the volume of any electronic data produced in response to the interrogatories [gigabytes]?	16			4	50	0	20	13	6
9	What were the technical requirements for the electronic document production?									
9.a.1	Did you produce metadata?	20	12	4	3					
9.a.2	What fields were required - create date, modify date, access date etc.?	11	0	1	2					
9.b.1	Were native files required?	19	10	7	2					
9.b.2	Which categories of documents were native files required - excel chart, power points etc.?	8			2					
9.c	Tiff images - were you required to separate the data into single page tiff images?	18	10	5	2					
9.d	Other requirements?	9	1	1	4					
10	As finally negotiated, were you required to search backup/archive storage?	21	3	15	1					
11	As finally negotiated, were you required to search agents?	22	6	15	1					
12	What were the total costs of complying with the second request?	19			0	\$15,100,000	\$250,000	\$5,194,196	\$3,300,00	19
12.a	Electronic review cost?	12			3	\$1,851,287	\$100,000	\$975,044	\$1,167,307	9
12.b	Data processing cost?	12			1	\$770,000	\$20,000	\$380,041	\$419,418	11
12.c	Third-party hosting costs?	11			4	\$600,000	\$0	\$234,571	\$92,000	7
12.d	Database costs?	7			4	\$6,000,000	\$0	\$2,100,000	\$300,000	3
12.d.1	Were required to create new databases?	4	0	2	2					
12.d.2.a	If so, what was the incremental cost of doing so in money?	3			3					
12.d.2.b	If so, what was the incremental cost of doing so in time?	3			3					

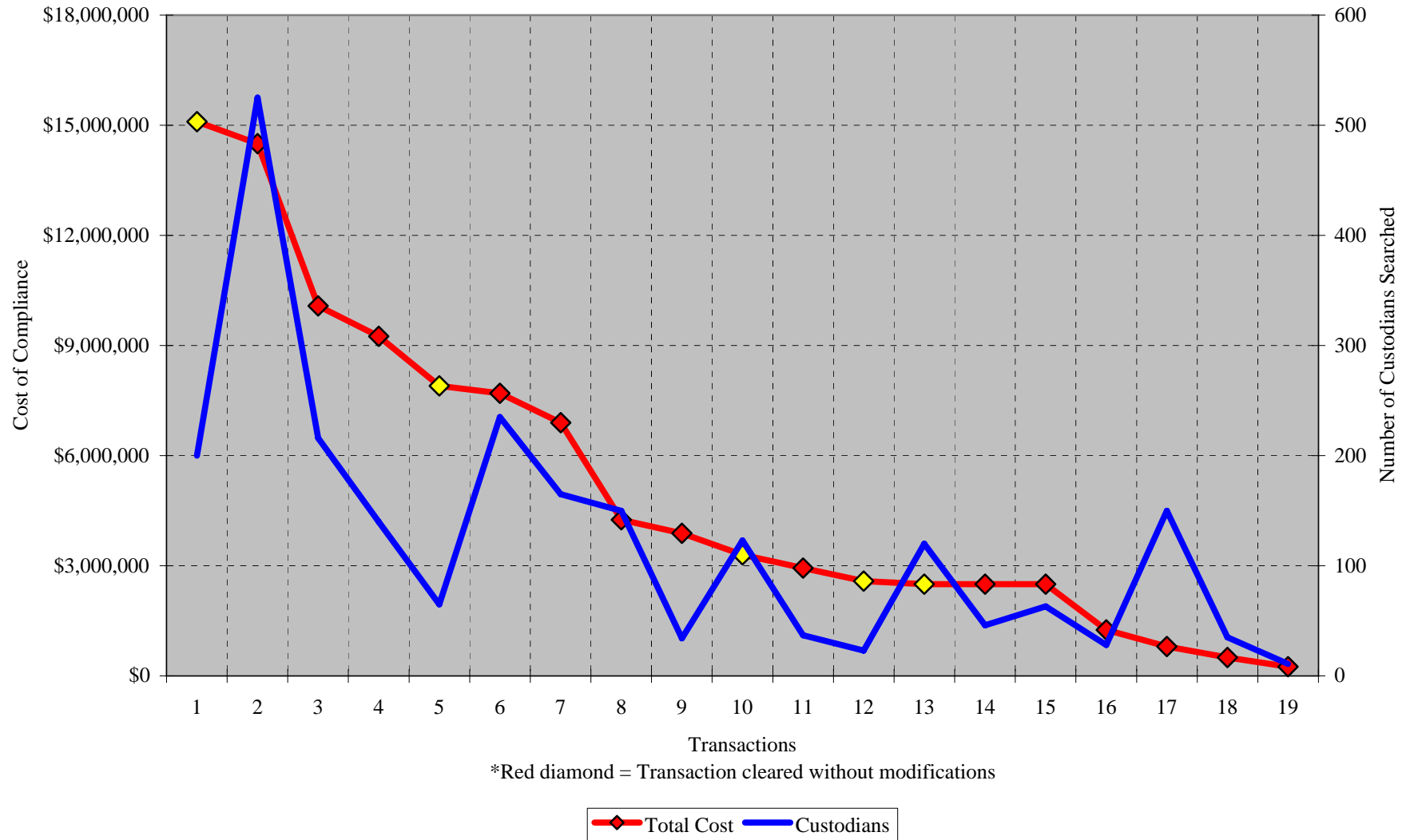
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12.e	Costs of economists (fees and disbursements)									
12.e.1	Fees	12			2	\$3,500,000	\$45,000	\$1,116,349	\$300,000	9
12.e.2	Disbursement	5			1	\$900,000	\$2,000	\$475,500	\$500,000	4
12.f	Costs of other consultants fees (e.g. , industry experts)									
12.g	Attorney/paralegal costs? (Fees and disbursements)									
12.g.1	Fees	14			1	\$18,250,000	\$218,000	\$4,361,604	\$2,424,803	13
12.g.2	Disbursement	13			1	\$4,000,000	\$5,000	\$818,598	\$178,714	12
12.h	How many regular and temporary attorneys and paralegals did you have working on the review?									
12.h.1	Attorneys - Regular	22			0	78	3	13	9	22
12.h.2	Attorneys - Temporary	21			0	385	3	78	45	21
12.h.3	Paralegals - Regular	20			0	85	0	12	4	20
12.h.4	Paralegals - Temporary	16			1	36	0	9	3	15
12.i	Estimate of total hours and costs required by your client:									
12.i.1	Client's in-house counsel?									
12.i.1.a	Hours	8			2	1,500	20	584	300	5
12.i.2	Client's in-house paralegals?									
12.i.2.a	Hours	8			2	1,500	0	625	500	5
12.i.3	Client's management and other (non-legal) personnel?									
12.i.3.a	Hours	7			2	4,000	500	1,900	1,550	4
12.j	Costs of translation?	19			7	\$250,000	\$0	\$41,652	\$0	11
12.k	Costs of copying or other reproduction of documents and information?	16			3	\$2,300,000	\$30,000	\$714,047	\$100,787	13
12.l	Any other costs? (Describe nature of cost and dollar amount)	8			3	\$2,000,000	\$66,199	\$841,417	\$772,921	5

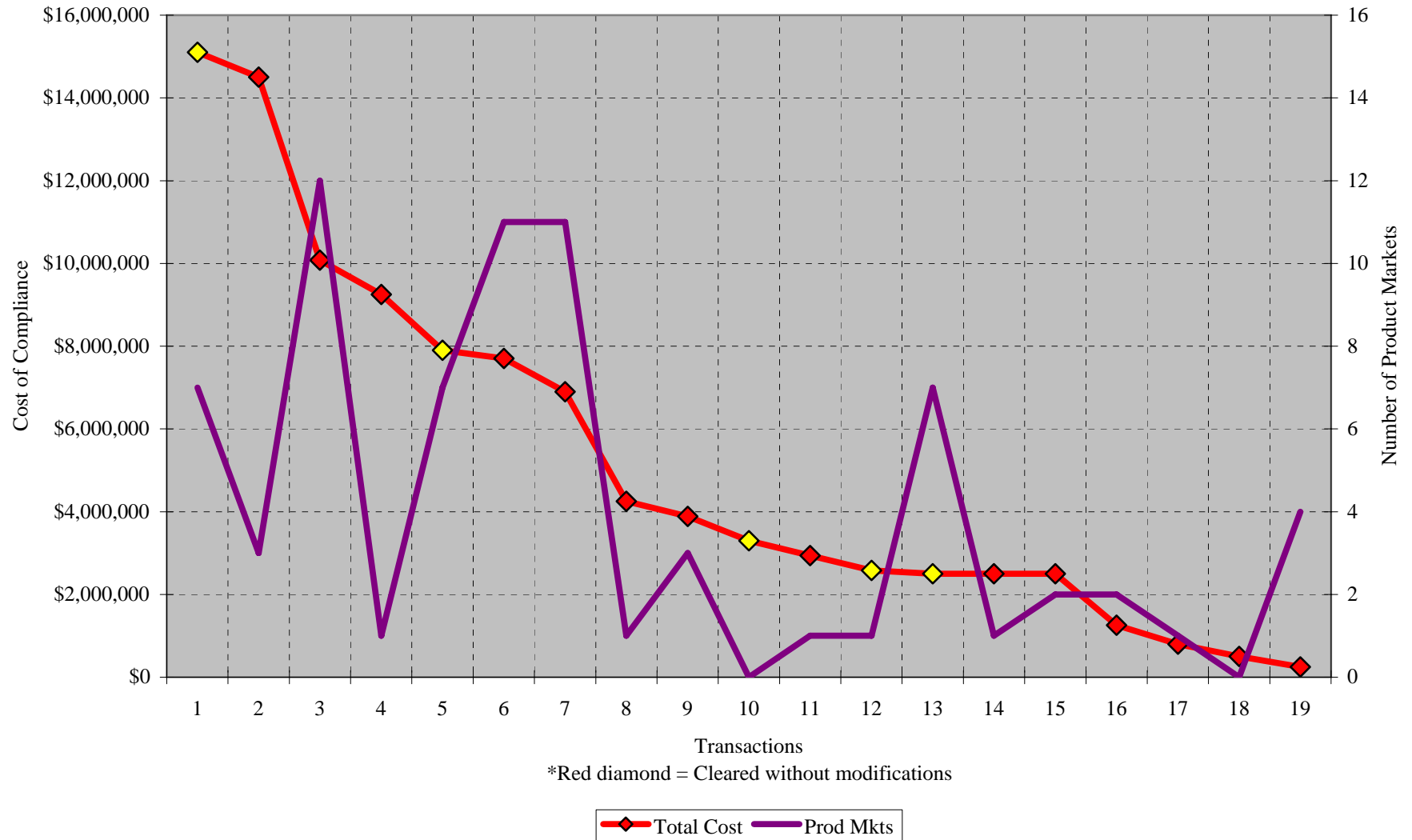
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12.m	State the average total cost per custodian and the incremental cost per custodian for the first 25, second 25, and third 25 custodians.									
12.m.1	First 25	8			4	\$79,400	\$46,675	\$61,746	\$60,454	4
12.m.2	Second 25	8			4	\$79,400	\$46,675	\$61,746	\$60,454	4
12.m.3	Third 25	8			4	\$79,400	\$46,675	\$61,746	\$60,454	4
12.n.1	How many years of e-mails and other electronic documents were sought?	19			0	5.0	1.5	3.2	3.0	19
12.n.2	What was the incremental cost of producing e-mails prior to the previous two years?	4			2					
12.o	What was the cost of compiling the privilege log?	12			5	\$325,000	\$20,000	\$219,667	\$267,500	6
12.p	Were you required to include in the privilege log:									
12.p.1	In-house counsel	15	12	2	1					
12.p.2	Outside counsel	13	9	3	1					
13	What was the outcome?									
13.a	Acquisition cleared without modifications (standard)		15							
13.b	Agency and parties negotiated a settlement in anticipation of a challenge.		5							
13.c	Transaction was abandoned prior to complaint for antitrust reasons		1							
13.d	Agency filed challenge, litigated, and won		0							
13.e	Agency filed challenge, litigated, and lost		0							
13.f	Agency filed challenge and transaction was abandoned		0							
13.g	Agency filed challenge and litigated, and the parties settled		0							
13.h	Transaction was abandoned for non-antitrust reasons		0							
13.i	Other (please provide details)		0							
13.i	No response		2							
<b>Subtotal - Outcome Specified</b>			21							
<b>Total</b>			23							

**Chart 1**  
**Relationship between the Total Cost of Compliance and**  
**Number of Custodians Searched\***



**Chart 2**  
**Relationship Between the Total Cost of Compliance and**  
**Number of Product Markets**



**Chart 3**  
**Relationship Between the Total Cost of Compliance and**  
**Value of the Transaction**

