



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Inspector General

May 2, 2022

MEMORANDUM

FROM: Andrew Katsaros
Inspector General

TO: Holly Vedova
Director
Bureau of Competition

SUBJECT: OIG Survey of BC Attorneys on Their Merger Transactions Work

Introduction and Background

On March 1, 2022, we issued a survey to attorneys from BC (and other areas of the agency) who review merger transactions, seeking input on various issues that may affect BC's management of its merger review workload. The survey consisted of the following:

- *Background.* First, we asked 3 questions about respondents' agency experience and organizational location.
- *Survey Statements.* In the next section, we asked whether respondents AGREE, SOMEWHAT AGREE, NEITHER AGREE NOR DISAGREE, SOMEWHAT DISAGREE, or DISAGREE with a series of 9 statements about their work—generally, as well as specifically pertaining to merger transactions—related to how management supports them with training, staffing levels, technology, and other resources.
- *Further Information.* Lastly, we included 1 open-ended section, to provide respondents the opportunity to offer additional comments.

At the FTC, BC leadership estimates that 181 attorneys currently work, in some capacity, on merger transactions.¹ 82 attorneys responded to our survey (45%), 79 of whom reported that they currently work with merger transactions. Not all respondents provided an answer to every question.

Based on survey results, we may plan future audits or reviews to address merger transactions work-related issues that emerged from the survey. This report compiles the survey responses—and conveys our observations based on the resulting data—but does not contain recommendations for agency leadership.

We include the survey that we issued as appendix I.

¹ This total includes attorneys who work on merger transactions in various FTC headquarters offices, as well as three regional offices.

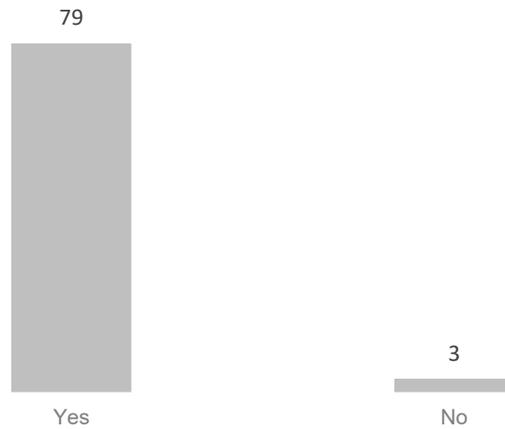
Results

Background

1. I currently work on merger transactions.

We began by asking whether or not respondents currently work on merger acquisitions; more than 95% responded affirmatively (see figure A, below).

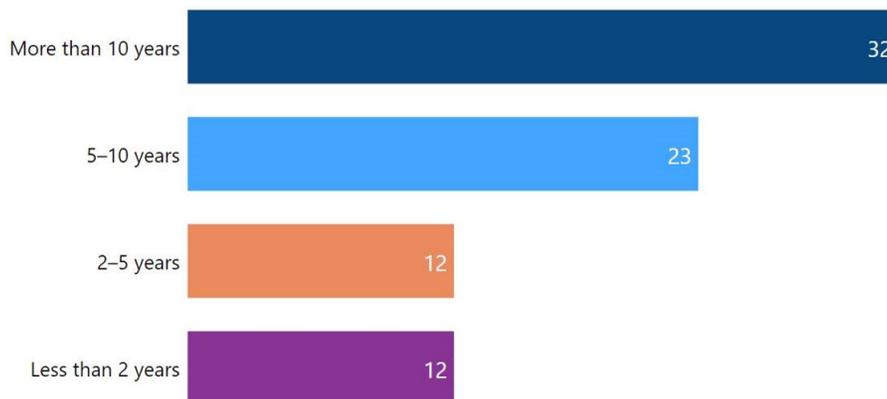
Figure A



2. How long have you worked on merger transactions?

Next, a significant portion of the 79 respondents working on merger acquisitions (nearly 70%) reported at least 5 years of experience working on merger transactions—over half of that majority reported more than 10 years of experience (see figure B, below).

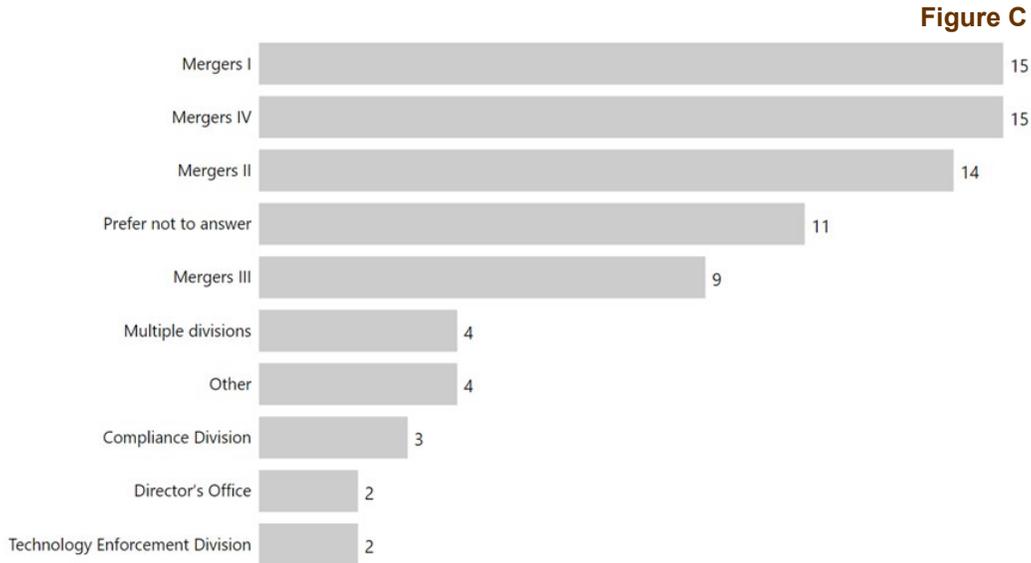
Figure B²



² Find the same corresponding colors and levels of experience presented here in the subsequent figures D, I, and L.

3. For which of the following divisions are you currently doing merger transaction work?

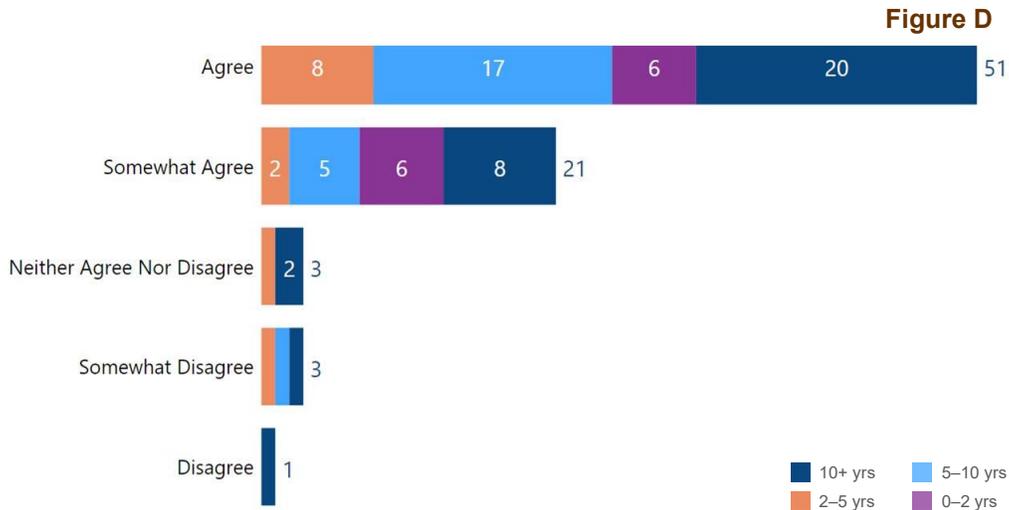
In response to this question, the greatest share of respondents—almost two-thirds (53 out of 82)—indicated BC’s Merger Divisions I, II, III, and IV. Almost one-fifth (15 out of 82) selected the Compliance Division, the Director’s Office, the Technology Enforcement Division, multiple divisions, or other operating units (see figure C, below).



Survey Statements

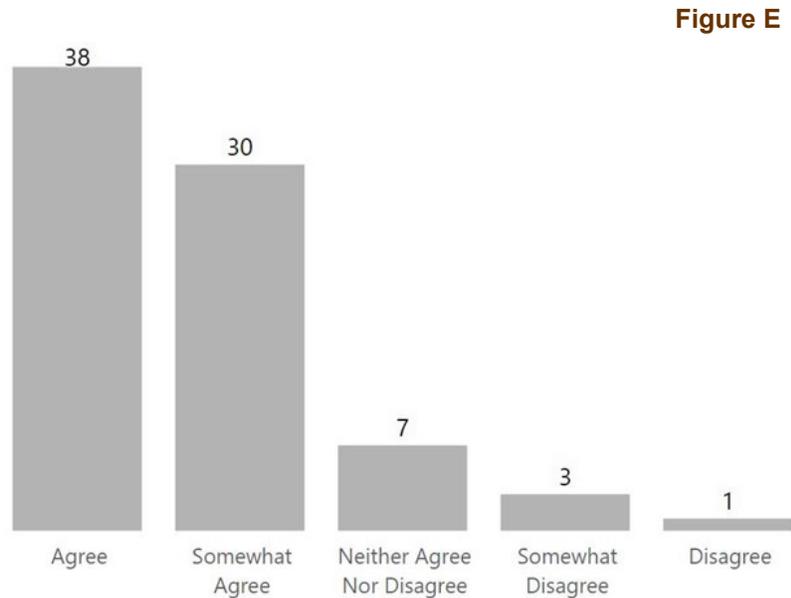
4. I understand the expectations of my job.

More than 90% (72 out of 79) agreed or somewhat agreed with this statement. Within that strong majority, stronger agreement corresponded with a higher degree of experience—from those with less than 2 years’ or 2–5 years’ experience (each segment at around 15%) to those with 5–10 or more than 10 years’ experience (each segment at around one-third). See figure D, below:



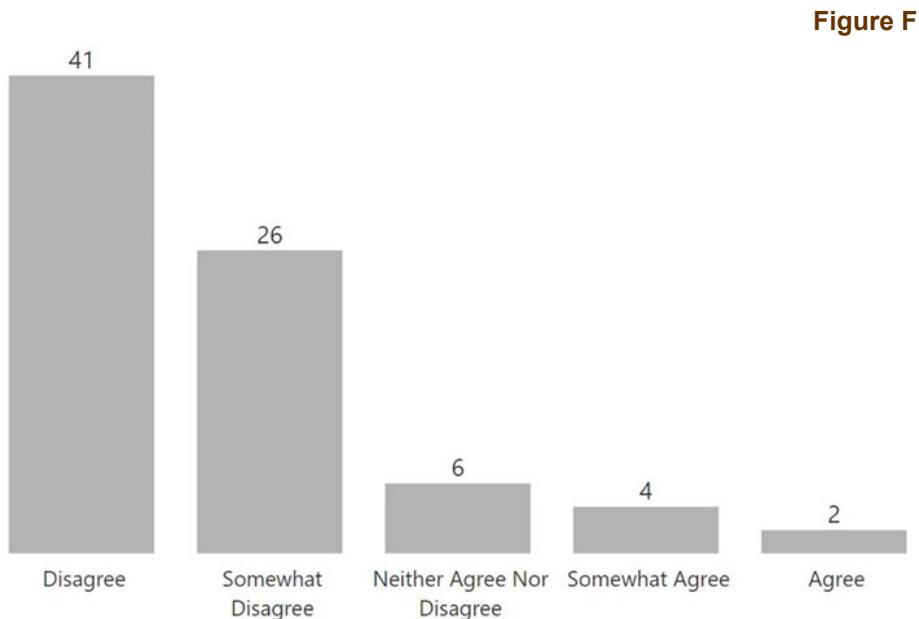
5. Adequate training is available for me to do my job effectively.

Similarly, almost 90% (68 out of 79) of respondents agreed or somewhat agreed with this statement (see figure E, below):



6. Overall, I feel BC has the necessary staff to accomplish its mission.

However, a nearly identical proportion (67 out of 79) of respondents expressed concern about whether current staffing levels were adequate (see figure F, below):

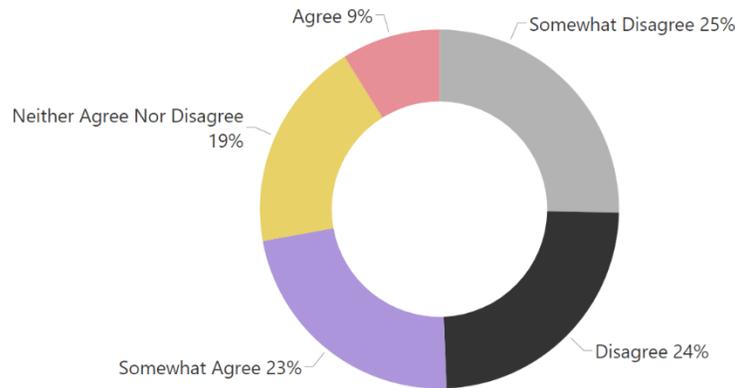


7. Overall, I feel BC staff have sufficient technology resources to review the documents received in HSR filings and second request responses effectively.

Our next set of statements focused on respondents’ work reviewing merger transactions filed with the FTC pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR).³

Fewer than one-third (25 of 79) of respondents agreed, completely or somewhat, that current technology resources are sufficient (see figure G, below):

Figure G



³ The Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435 (HSR Act), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the FTC and the Antitrust Division of the Department of Justice (Antitrust Division) to obtain preliminary relief against anticompetitive mergers. The HSR Act requires that certain proposed mergers be reported to the FTC and the Antitrust Division prior to consummation. The parties must then wait a specified period, usually 30 days, before they may complete the transaction.

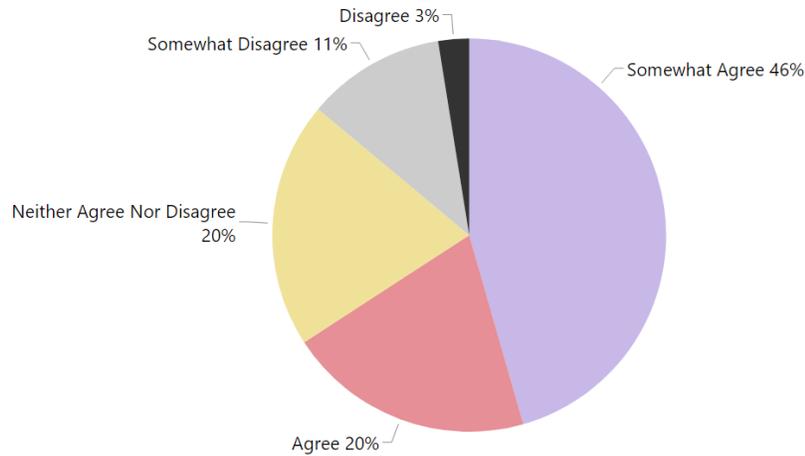
After the companies report a proposed deal, the agencies will do a preliminary review to determine whether it raises any antitrust concerns that warrant closer examination. Because the FTC and the Antitrust Division share jurisdiction over merger review, transactions requiring further review are assigned to one agency on a case-by-case basis, depending on which agency has more expertise with the industry involved.

The FTC and the Antitrust Division do not take action on the vast majority of transactions, and those transactions are allowed to proceed following the specified HSR period. During the HSR waiting period, the FTC and/or the Antitrust Division may issue a “second request” to the parties for more information and documents. Once the parties have certified that they have substantially complied with the request, the investigating agency has 30 additional days (10 days in the case of a cash tender or bankruptcy transaction) to complete its review of the transaction and take action, if necessary.

8. I know how to use the available technology and software effectively to review documents received in HSR filings and second request responses.

Notably, while almost two-thirds (52 of 79) of respondents agreed—completely or somewhat—that they knew how to use the available technology and software at their disposal, nearly half of all respondents (36 of 79) only somewhat agreed (see figure H, below):

Figure H

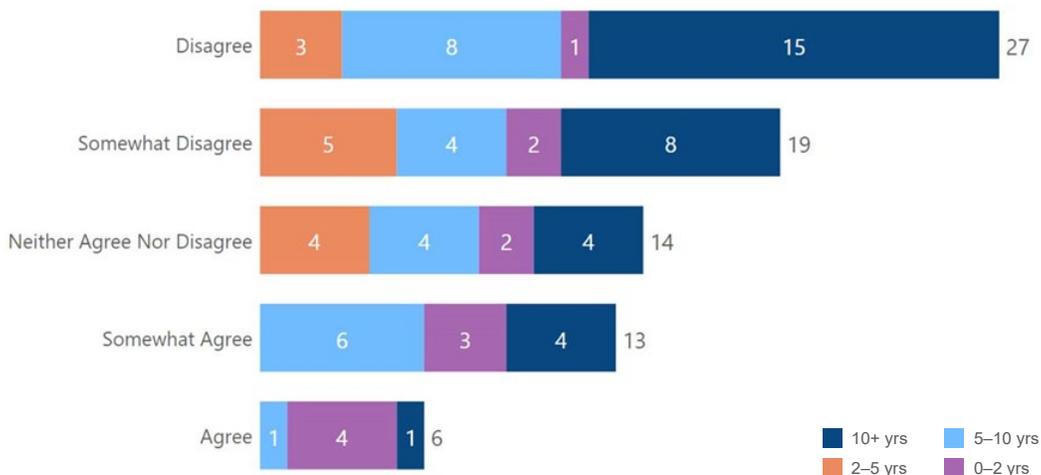


9. I find the pace of my assignments to be manageable.

A concern over the pace of assignments and the overall workload was prevalent. Fewer than a quarter (19 of 79) of respondents agreed, completely or somewhat, that they considered the pace of assignments “manageable” (see figure I, below).

Of respondents who completely or somewhat disagreed that the pace is manageable, the clear majority who disagreed and the significant number who somewhat disagreed were attorneys with 10 or more years of experience working on merger transactions (i.e., in figure I, the right-most portions of the 27 respondents who disagreed and 19 respondents who somewhat disagreed).

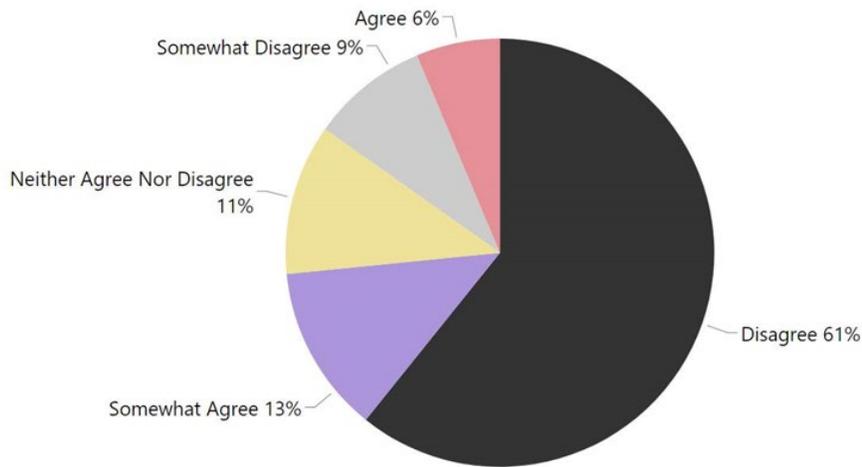
Figure I



10. I am spending some of my time reviewing HSR-reportable merger transactions for which second requests were not issued and the initial HSR waiting period has expired.

When we asked whether attorneys were reviewing transactions after the HSR periods had expired, we found that a relatively small proportion of attorneys were spending time on this work. Only about one-fifth agreed (completely or somewhat) that they are reviewing HSR transactions when second requests were not issued, but the initial HSR waiting period had expired (see figure J, below).

Figure J



11. I am spending some of my time reviewing HSR-reportable merger transactions for which second requests were issued and all relevant waiting periods have expired, but the agency has not or not yet taken enforcement action.

Similarly, fewer than one-fourth agreed (completely or somewhat) they are reviewing HSR transactions when second requests were issued, and all relevant waiting periods had expired, but no enforcement activity had yet ensued (see figure K, below):

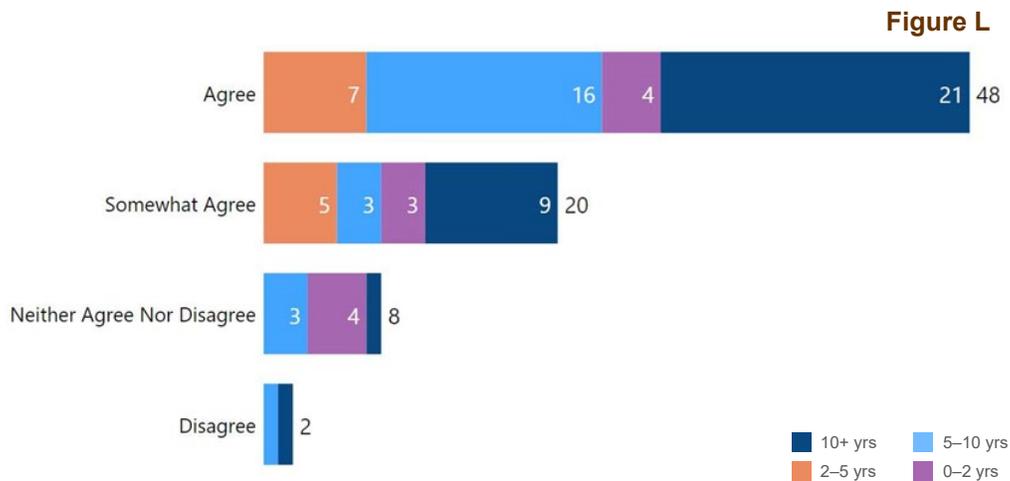
Figure K



12. My workload has increased significantly over the past 2 years.

There was near-consensus in respondents' concern over the recent significant increase in workload—almost 90% of respondents agreed, completely or somewhat, with the statement (see figure L, below).

As with respondents' concern over workload manageability, the greatest number of attorneys most likely to agree to some degree with the statement about a significantly increased workload were those with 10 or more years of relevant merger work experience (i.e., the right-most portions of each of the top two bars on the graph in figure L).



Further Information

13. Please add any additional comments you would like to share on any of these survey topics.

Among the 82 respondents who participated in our survey, nearly half (37) included additional comments in response to our open-ended request. Many of these respondents offered comments that amplified concerns raised by some of our questions—on understaffing, most prominently retention and attrition, and correlated morale issues (22 respondents, or nearly 60% of those with additional comments); on the excessive workload, in quantity and pace of assignments, over the last 2 years (17 respondents, or nearly 50%); and on the outdated/insufficient technology and software support (6 respondents, or more than 15%).

The following two concerns—related to, but substantively beyond, the narrowed focus of our survey questions—emerged as the most common themes among respondents offering additional comments:

- the need for additional supporting personnel, particularly paralegal support (10 respondents, or more than 25% of those with additional comments), and

- issues with the Front Office and other upper management, caused by problematic communication that respondents viewed as resulting in inefficiency and ineffectiveness (10 respondents, or more than 25%).

Some respondents further expanded on the following two specific effects of several of the conditions noted:

- staff burnout, or the physical and mental toll—primarily from the excessive number of extra hours worked (7 respondents, or almost 20%), and
- challenges to performing timely or otherwise adequately within the timeframes or other requirements of HSR (6 respondents, or more than 15%).

Multiple respondents, but in smaller numbers, provided additional comments related to a pay disparity with their private-sector attorney counterparts (4 respondents); a reminder that regional personnel, not just located in the DC area, work on merger transactions (4 respondents);⁴ an increase in litigation (2 respondents); and challenges related to working remotely during the pandemic (2 respondents).

Observations

Our survey results portray a corps of attorneys working on merger transactions across the agency who—regardless of the number of years’ experience they cull from—recognize the value of the human capital currently supporting their work. Their managers and colleagues have helped them understand what is expected of them; their opportunities to engage in training are also clear to the vast majority (i.e., more than 80%) of them.

The concerns arise when agency attorneys reflect on whether there is enough human capital to support the mission. A clear majority (again, more than 80%) view their teams as understaffed; this could be one explanation as to why almost three-fourths of respondents find that the workload pace has become unmanageable, in the face of a “significant” workload increase (a description agreed with, completely or somewhat, with near unanimity). In addition, respondents have indicated a concern with whether the FTC has an effective IT/software strategy to support their work—fewer than one-third of respondents think that current technology meets their needs.

The issues noted above span across agency offices/units and experience levels. While attorneys working in Mergers divisions I–IV expressed most of the disagreement over the manageability of the pace of assignments, almost half of respondents who agreed that the workload had increased significantly over the last 2 years work outside of Mergers divisions (or preferred not to identify for whom they work). A similar near-50/50 split emerged with the concern over whether BC has the staff necessary to accomplish its mission. Likewise, attorneys with fewer than 10 years’ experience were equally likely to be concerned about BC staffing levels compared with those with 10 years or more: of those who “disagreed” with the statement about BC having necessary staffing levels, 45% had 10 years or more on the job while 50% ranged from less than 2 years to 2–5 years. When we asked about sufficient technology resources, the most veteran (more than 10 years) comprised 43% of those who

⁴ The survey, in gathering information on where respondents were working organizationally, did not include a geographic option for “Regional Office.”

disagreed; an almost equal portion (48%) of those who disagreed ranged from less than 2 years' to 2–5 years' experience.

When respondents provided their additional comments, there emerged an even clearer correlation between insufficient staff levels and concerns over staff attrition. Among the additional comments we received, more than a half-dozen bemoaned staff “burnout” for a variety of reasons—ranging from sheer number of extra hours worked and career/life balance to relative pay compared to the private sector—but the agency not devoting enough attorney or support resources to the work was a prevalent theme when respondents noted attrition or predicted continuing (or increasing) attrition. Of the almost two dozen commenters who noted the insufficient staffing levels, 10 expressed the need for more administrative or non-technical support from management generally. Notably, there were 8 who specifically cited the need for more help from paralegals.

Another concern raised by additional commenters—who amplified the response to our survey questions—related to the technology that supports respondents' merger transaction work. Issues with IT infrastructure and software were noted a half-dozen times.

An additional top concern, raised by those respondents who offered additional comments beyond the topics covered in our survey questions, related to what they viewed as ineffective strategic management of cases and attorneys' caseloads. In more than one instance, attorneys noted that higher agency leadership do not allow lower management and staff attorneys to exercise a sufficient level of discretion in their handling of merger reviews—with an end result of lower efficiency and staff morale. Comments also reflected problems with management communication deemed unclear or contradictory about agency priorities related to their HSR work.

While anonymous comments are subjective and anecdotal, the recurring themes and concerns that they evoke are clear. These concerns, about how FTC management handles the daunting workload of merger transactions, are noteworthy because they were distributed across all experience levels and agency locations. The additional comments—along with the responses to our questions—indicate that the attorneys' concerns are not simply about the shock experienced by only certain staff (e.g., newer employees) in certain organizational locations (e.g., the Mergers Divisions). The morale issues emerging here appear to result from substantial concerns, across the board, about staffing levels and the ability to hire more attorneys and stem attrition.

Conclusion

As a compilation and summarization of attorney responses to our survey, this report does not contain recommendations for FTC management. Nonetheless, we are available to discuss these results and observations with BC and agency leadership at your request.

We thank BC leadership for their assistance in the development of this survey, as well as all respondents for their observations.

Appendix I: OIG Survey Sent to FTC Attorneys

FTC Bureau of Competition Attorney Staff Survey

Background.

1. I currently work on merger transactions.
 - a. Yes
 - b. No
2. How long have you worked on merger transactions?
 - a. Less than 2 years
 - b. 2–5 years
 - c. 5–10 years
 - d. More than 10 years
 - e. Not applicable
3. For which of the following divisions are you currently doing merger transaction work?
 - a. Director's Office
 - b. Premerger Notification Office
 - c. Mergers I
 - d. Mergers II
 - e. Mergers III
 - f. Mergers IV
 - g. Health Care Division
 - h. Anticompetitive Practices
 - i. Compliance Division
 - j. Technology Enforcement Division
 - k. Multiple divisions
 - l. Other
 - m. I do not work on merger transactions
 - n. Prefer not to answer

Survey Statements. For statements 4–12, please indicate the degree to which you agree or disagree (1–AGREE; 2–SOMEWHAT AGREE; 3–NEITHER AGREE NOR DISAGREE; 4–SOMEWHAT DISAGREE; 5–DISAGREE).

4. I understand the expectations of my job.
5. Adequate training is available for me to do my job effectively.
6. Overall, I feel BC has the necessary staff to accomplish its mission.
7. Overall, I feel BC staff have sufficient technology resources to review the documents received in HSR filings and second request responses effectively.
8. I know how to use the available technology and software effectively to review documents received in HSR filings and second request responses.
9. I find the pace of my assignments to be manageable.
10. I am spending some of my time reviewing HSR-reportable merger transactions for which second requests were not issued and the initial HSR waiting period has expired.
11. I am spending some of my time reviewing HSR-reportable merger transactions for which second requests were issued and all relevant waiting periods have expired, but the agency has not or not yet taken enforcement action.
12. My workload has increased significantly over the past 2 years.

Further Information. (2,000 character limit)

13. Please add any additional comments you would like to share on any of these survey topics.