IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice Washington, D.C. 20530, Plaintiff, v. WILLIAM H. GATES III One Microsoft Way Redmond, WA 98052, Defendant.	CASE NUMBER 1:04CV00721 JUDGE: Colleen Kollar-Kotelly DECK TYPE: Antitrust DATE STAMP: 05/03/2004

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of civil penalties against the Defendant named herein for failing to comply with the premerger reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a ("HSR Act" or "Act"), added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, to recover civil penalties for violation of that section.

2. This Court has jurisdiction over the Defendant and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant William H. Gates III ("Gates") is a natural person with his principal office and place of business at One Microsoft Way, Redmond, WA 98052. Gates is an investor with holdings in numerous companies. Gates is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Gates had total assets in excess of $100 million.

OTHER ENTITIES

5. Cascade Investment, L.L.C. ("Cascade") is a limited liability company organized under the laws of Delaware with its principal place of business at 2365 Carillon Point, Kirkland, Washington 98033. Cascade is the personal investment entity of Gates, who is the sole member. For purposes of the HSR Act and Premerger Notification Rules, 16 C.F.R. Part 800 *et. seq.* ("HSR Rules" or "Rules"), Gates is the ultimate parent entity of Cascade.

6. ICOS Corporation ("ICOS") is a corporation organized under the laws of Delaware with its principal place of business at 22021 20th Avenue, S.E., Bothell, WA 98021. At all times

relevant to this complaint, ICOS was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, ICOS had total assets in excess of $10 million.

7. Republic Services, Inc. ("Republic") is a corporation organized under the laws of Delaware, with its principal office and place of business at 110 SE 6th Street, 28th Floor, Fort Lauderdale, FL 33301. At all times relevant to this complaint, Republic was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. § 18a(a)(1). At all times relevant to this complaint, Republic had total assets in excess of $10 million.

THE HART-SCOTT-RODINO ACT AND RULES

8. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Federal Trade Commission and the Department of Justice ("federal antitrust agencies") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate proposed transactions and to determine whether to seek an injunction to prevent the consummation of transactions that may violate the antitrust laws.

9. Section (c)(9) of the HSR Act, 15 U.S.C. § 18a(c)(9), exempts from the requirements of the HSR Act acquisitions of voting securities that are solely for the purpose of investment if as a result of the acquisition, the securities held do not exceed 10 per cent of the outstanding voting securities of the issuer.

10. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), Rules were promulgated to carry out the purposes of the HSR Act. These Rules, among other things, define terms contained in the HSR Act.

11. Section 801.1(i)(1) of the Rules, 16 C.F.R. § 801.1(i)(1), defines the term "solely for the purpose of investment." The definition reads:

> Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. The maximum amount of civil penalty is $11,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

PRIOR ACQUISITIONS

The November 2, 2001 Republic Acquisition

13. On November 2, 2001, Gates, acting through Cascade, acquired 500,000 shares of Republic. As a result of that acquisition, Gates held approximately 10.1% of the outstanding voting securities of Republic. Gates was required by the HSR Act to submit a notification and observe the Act's waiting period before he made the November 2, 2001 acquisition of voting securities of Republic. Neither Gates nor Cascade, on behalf of Gates, filed a premerger notification under the HSR Act prior to the November 2 Republic acquisition, relying on the exemption for acquisitions made solely for the purpose of investment.

14. On November 10, 2001, Cascade discovered that the November 2, 2001 Republic acquisition violated the HSR Act because as a result of the acquisition, Gates held in excess of 10% of the outstanding shares of Republic and the exemption for acquisitions solely for the purpose of investment did not apply. On November 16, 2001, Gates made a notification to cover the November 2, 2001 Republic acquisition.

15. On December 18, 2001, the Premerger Notification Office of the Federal Trade Commission informed Cascade via letter that it would not recommend seeking civil penalties for the Republic violation, recognizing that Gates asserted that the violation was inadvertent. The letter stated that Gates "is accountable for instituting an effective program for entities he controls to ensure full compliance with the Act's requirements" and expressly reserved the antitrust agencies' right to seek civil penalties for this or any future HSR Act violation in order to guarantee compliance with the Act.

Acquisitions of ICOS Voting Securities

16. In July, 1990, Gates became a director of ICOS. Gates has continuously been a member of the board of directors of ICOS up to and including the date of this complaint. As a director of ICOS, Gates attended numerous meetings of the board of ICOS during the time period relevant to this complaint.

17. In 1994, Gates filed a notification under the HSR Act to acquire shares of ICOS. The HSR Rules provide a series of notification thresholds (16 C.F.R. § 801.1(h)). Under the Rules (16 C.F.R. § 802.21), Gates' 1994 notification covered Gates' crossing the notification threshold for which he filed and exempted any subsequent acquisitions of ICOS voting securities made during the five years after the end of the waiting period if those subsequent acquisitions did not increase Gates' holdings beyond a higher notification threshold. That five year period for the exemption for such subsequent acquisitions expired in 1999. Absent this special five-year exemption for such subsequent acquisitions, or some other exemption, such subsequent acquisition would typically result in an additional premerger reporting obligation, because under the Rules (16 C.F.R. § 801.13(a)(1)), all voting securities of an issuer that will be held after an acquisition -- including those held before the acquisition -- are deemed held "as a result of" the acquisition.

VIOLATION

18. On May 9, 2002, Gates, acting through Cascade, acquired 328,000 shares of ICOS. As a result of that acquisition, Gates held 5,359,501 common shares of ICOS voting securities,

valued at $129,646,329, exceeding the HSR Act's $50 million threshold and the Rules' $100 million notification threshold.

19. Gates was required by the HSR Act to submit a notification and observe the Act's waiting period before he made the May 9, 2002 acquisition of voting securities of ICOS. Neither Gates nor Cascade, on behalf of Gates, filed a premerger notification under the HSR Act prior to the May 9, 2002 ICOS acquisition, relying on the exemption for acquisitions made solely for the purpose of investment.

20. Gates did not qualify for the "solely for the purpose of investment" exemption to the reporting requirements of the HSR Act in connection with his May 9, 2002 acquisition of voting securities of ICOS because he intended to participate in the formulation, determination, or direction of the basic business decisions of ICOS through, among other things, his membership on the board of directors of ICOS, as described in Paragraph 16.

21. On July 25, 2002, Gates made a notification under the HSR Act to cover the May 9, 2002 ICOS acquisition described above . The HSR Act waiting period for Defendant Gates' May 9, 2002 acquisition of voting securities of ICOS expired on August 26, 2002.

22. Gates was in continuous violation of the HSR Act during the period beginning on May 9, 2002, when he acquired voting securities of ICOS that resulted in his holding in excess of $50 million, and ending on August 26, 2002, when the waiting period expired.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the May 9, 2002, acquisition by Defendant Gates of voting securities of ICOS was in violation of the HSR Act, 15 U.S.C. § 18a; and that

Defendant Gates was in violation of the HSR Act each day from May 9, 2002 through August 26, 2002.

2. That the Court order Defendant Gates to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

3. That the Court order such other and further relief as the Court may deem just and proper.

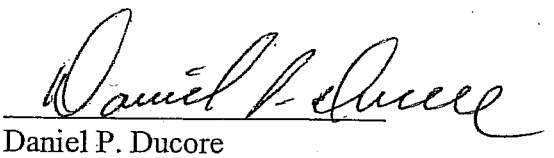
4. That the Court award the Plaintiff its costs of this suit.

Dated: May 3, 2004.

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

R. Hewitt Pate
Assistant Attorney General

Department of Justice
Antitrust Division
Washington, D.C. 20530



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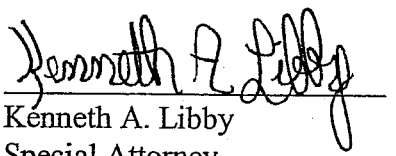

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CERTIFICATE OF SERVICE

I, Daniel P. Ducore, certify that on May 3, 2004, the attached Complaint and Motion for Entry of Judgment, with exhibits, including a Stipulation and proposed Final Judgment, were served upon the parties by mailing a copy to the person listed below:

James Weiss, Esq.
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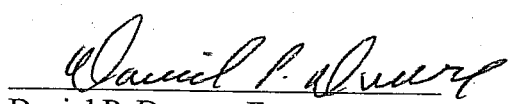
Counsel for Defendant

Dated: May 3, 2004



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