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. AUTOMATIC DATA PROCESSING, INC. One ADP Boulevard Roseland, New Jersey 07068-1728, Defendant.	CASE NUMBER 1:96CV00606 JUDGE: Royce C. Lamberth DECK TYPE: Civil General DATE STAMP: 03/27/96

COMPLAINT FOR CIVIL PENALTIES
FOR FAILURE TO FILE DOCUMENTS
IN VIOLATION OF 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 a civil penalty against the Defendant named herein for failing to submit required documents to the Federal Trade Commission and Department of Justice in accordance with 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, also known as Title II of the Hart-Scott-Rodino Antitrust

Improvements Act of 1976 ("HSR Act" or "Act"), to recover a civil penalty for violation of the HSR Act.

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 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355.

3. Venue in this District is proper by virtue of 28 U.S.C. §§ 1391 and 1395, and by virtue of the 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 Automatic Data Processing, Inc. ("ADP") is incorporated in the state of Delaware with its principal place of business at One ADP Boulevard, Roseland, New Jersey 07068-1728. ADP is a multinational developer and seller of computer software and information services. At the time of its acquisition of AutoInfo, Inc. assets in 1995, ADP, through its Claims Solutions Group division, was engaged, *inter alia*, in the provision of computer information services to the automotive recycled parts and insurance industries in the United States, including the creation of software used for automated storage and collection of inventory data from salvage yards, the creation and maintenance of an interchange numbering system used to identify interchangeable used automotive parts, communications systems for salvage yards, and software used in estimating automobile casualty losses.

5. At all times pertinent to this complaint, Defendant ADP had total assets valued in excess of $100 million. Defendant ADP at all times pertinent to this proceeding 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).

AUTOINFO, INC.

6. AutoInfo, Inc. ("AutoInfo") is a Delaware corporation with its principal place of business in Fair Lawn, New Jersey. Prior to the acquisition of AutoInfo assets by Defendant ADP, AutoInfo, through its Orion Management Corporation, Compass Communications, Inc. and Finnell Corporation subsidiaries, was a direct and substantial competitor of Defendant ADP in the provision of computer information services to the recycled parts and insurance industries in the United States. At all times pertinent to this complaint, AutoInfo 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), and had total assets in excess of $10 million.

THE ACQUISITION

7. On or about April 1, 1995, Defendant ADP acquired assets in the United States from AutoInfo for approximately $30 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 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 designed to provide the antitrust agencies an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent consummation of transactions that may violate the antitrust laws.

9. The HSR Act provides that the Federal Trade Commission or Department of Justice may require the parties to an acquisition reportable under the HSR Act to provide additional information or documentary material relevant to the acquisition. 15 U.S.C. § 18a(e)(1). Such a request extends the waiting period for an additional period of not more than 20 days after the date the antitrust agencies receive the information required to be submitted pursuant to such request. 15 U.S.C. § 18a(e)(2).

10. Section (d)(1) of the HSR Act, 15 U.S.C. § 18a(d)(1), authorizes the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, to require that the notification required by the Act be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to determine whether such acquisition, if consummated, may violate the antitrust laws.

11. Pursuant to the authorization described in paragraph 10 and section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), Premerger Notification Rules were promulgated to carry out the purposes of the HSR Act, 16 C.F.R. Part 300 *et seq.* ("Rules"). These Rules require that notification be provided to the Federal Trade Commission and the Department of Justice in accordance with a Notification and Report Form which is made a part of the Rules. 16 C.F.R.

§ 803.1 and appendix to 16 C.F.R. Part 803.

12. Among the documentary material required by the Rules to be submitted as a part of the premerger notification are:

> all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets . . . .

Instructions to Notification and Report Form, appendix to 16 C.F.R. Part 803. These documents are required in response to Item 4(c) of the Notification and Report Form.

13. Section 803.6(a)(2), 16 C.F.R. § 803.6(a)(2), of the Rules requires that an officer or director of the corporation certify:

> This NOTIFICATION AND REPORT FORM, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

Notification and Report Form, appendix to 16 C.F.R. Part 803.

14. Section (g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of the Act.

VIOLATION ALLEGED

15. Beginning sometime toward the end of 1993 and throughout 1994, Defendant ADP and AutoInfo engaged in negotiations involving the possible acquisition by ADP of stock or assets of

AutoInfo.

16. On or about December 1, 1994, Defendant ADP and AutoInfo entered into a Letter of Intent for Defendant ADP to acquire AutoInfo stock or assets.

17. On December 7, 1994, Defendant ADP and AutoInfo each filed a Notification and Report Form with the Federal Trade Commission and the Antitrust Division of the Department of Justice for the proposed acquisition of AutoInfo stock or assets. Neither Defendant ADP nor AutoInfo submitted any documents responsive to Item 4(c) with its Notification and Report Form.

18. Neither the Federal Trade Commission nor the Department of Justice issued Requests for Additional Information and Documentary Material within 30 days of the filing of the forms described in paragraph 17.

19. The acquisition described in paragraph 7 that occurred on or about April 1, 1995, between Defendant ADP and AutoInfo, described in paragraphs 4, 5 and 6, was subject to the notification and waiting period requirements of the HSR Act and Rules. The HSR Act and Rules required Defendant ADP to file a proper Notification and Report Form and to observe a waiting period before acquiring an aggregate total amount of assets of AutoInfo in excess of $15 million. 15 U.S.C. § 18a(a)(3).

20. Following the public announcement of Defendant ADP's acquisition of AutoInfo assets, the Federal Trade Commission received complaints from salvage yards and other persons expressing concern that the acquisition would harm competition in the provision of computer information and communications services to the automotive recycled parts and insurance industries in the United States.

21. The Federal Trade Commission thereafter requested that Defendant ADP voluntarily submit documents and, subsequently issued a subpoena for documents in order to investigate the likely competitive effects of the acquisition. After substantial delays, Defendant ADP submitted documents to the Federal Trade Commission.

22. Included among the documents submitted by Defendant ADP to the Federal Trade Commission, were:

a. a July 1994 document from the files of ADP's Vice President for Corporate Development that was prepared at the request of that ADP officer by a consultant during the negotiations for the acquisition of AutoInfo, which states as its purpose that "this analysis is to provide a comprehensive and detailed view of the AutoInfo business to ADP Corporate Management. Insofar as AutoInfo is being considered as an acquisition target by the ADP Claims Solutions Group, the information provided is intended to establish a basis for calculating plausible acquisition values." The document discussed in detail the reasons for the acquisition, addressing the size of the market and effects of consolidation in the market, including how ADP's used parts numbering system "would be the unchallenged industry standard";

b. an April 1994 "AutoInfo/Hollander Market Plan" created at the request of, and given to, ADP's Claims Solutions Group ("CSG") President, who was also an ADP corporate officer, detailing the size of the salvage yard market, competitors to ADP in the information and communication services provided in the salvage yards, and stating that the acquisition of AutoInfo "would enable CSG to

monopolize the salvage industry in an expeditious, and timely manner";

c. a December 1993 handwritten letter from ADP's Claims Solutions Group President to ADP's Vice President for Corporate Development relating to a possible acquisition of AutoInfo, detailing ADP's competitive position in salvage information services and projected growth;

d. a July 1994 document created by a consultant at the request of ADP's Vice President for Corporate Development for presentation by ADP's Claims Solutions Group President to ADP's Executive Committee, comprised of corporate officers, which discussed the products developed and sold by AutoInfo, a salvage market profile, and the attractiveness of the AutoInfo acquisition in fitting with ADP; and

e. a July 1994 analysis of the acquisition written by ADP's Vice President for Corporate Development discussing various aspects of the AutoInfo acquisition, including the size of AutoInfo's customer base and the possibility of "price flexibility" once the companies are consolidated.

23. The documents described in paragraph 22, along with other documents in ADP's subpoena response, were prepared by or for Defendant ADP officers or directors and evaluated and analyzed the proposed AutoInfo transaction with respect to market shares, competition, competitors, markets, and potential for sales growth or expansion into product or geographic markets. These documents were required to have been submitted in response to Item 4(c) of the Notification and Report Form before ADP consummated the acquisition with AutoInfo.

24. Defendant ADP made little effort to locate those documents that were responsive to Item 4(c) for inclusion in the filing for the AutoInfo transaction. Defendant ADP did not search or

have searched the files of its officers or directors, or those persons who may have generated documents responsive to Item 4(c) for the officers or directors. ADP's in-house counsel prepared the Notification and Report Form and was responsible for collecting 4(c) documents. ADP's in-house counsel, at the most, asked only three persons whether they had documents like those covered by Item 4(c) of the Notification and Report Form. Those persons did not search or have their files searched for Item 4(c) documents and did not produce 4(c) documents. ADP's in-house counsel was unaware of whether and what potentially responsive 4(c) documents were typically created by or for ADP officers during an ADP acquisition.

25. Defendant ADP's Chief Financial Officer, who certified the accuracy and completeness of the Notification and Report Form, did not supervise the preparation of the Notification and Report Form or review the completed Notification and Report Form, did not know what documents were required by Item 4(c), did not read the instructions to the Notification and Report Form, and had no understanding of the statute or rules referred to in the certification.

26. As a result of Defendant ADP's failure to submit, among other documents, those documents identified in paragraph 22, as required by Item 4(c) of the Notification and Report Form, Defendant ADP did not comply with the reporting and waiting requirements of the HSR Act and Rules.

27. Defendant ADP failed to submit documents that it knew or should have known were responsive to Item 4(c) of the Notification and Report Form.

28. Defendant ADP's failure to submit the required 4(c) documents with its Notification and Report Form hindered the ability of the Federal Trade Commission and Department of Justice to analyze the competitive effects of the AutoInfo acquisition prior to consummation.

29. Had Defendant ADP submitted the documents required by Item 4(c) of the Notification and Report Form, the Federal Trade Commission or the Department of Justice:

a. likely would have issued a Request for Additional Information and Documentary Material, which, as described in paragraph 9, would have extended the waiting period so the antitrust agencies could further investigate the proposed acquisition, and

b. would have been better able to evaluate whether to seek an injunction to prevent consummation of the acquisition of AutoInfo assets, and prevent possible anticompetitive effects from the acquisition.

30. On January 23, 1996, Defendant ADP recertified its original Notification and Report Form, following revised procedures to identify and submit documents responsive to Item 4(c), and submitted numerous documents in response to Item 4(c) to the Federal Trade Commission and Department of Justice. Those documents included the documents submitted in response to the Subpoena, described in paragraph 23, and other documents not previously submitted.

31. Defendant ADP was in continuous violation of the HSR Act from April 1, 1995, at least until January 23, 1996.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that Defendant's purchase of assets of AutoInfo on or about April 1, 1995, was in violation of the HSR Act, 15 U.S.C. § 18a, and that the Defendant was in violation of the Act each day of the period from on or about April 1, 1995, at least until January 23, 1996;

2. That the Defendant be ordered to pay to the United States an appropriate civil penalty as provided by Section (g)(1) of the HSR Act, 15 U.S.C. § 18a(g)(1);

3. That the Plaintiff have such other and further relief as the Court may deem just and proper;

4. That the Plaintiff be awarded its costs of this suit.

Dated: MARCH 27, 1996.

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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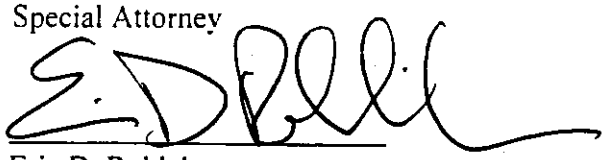

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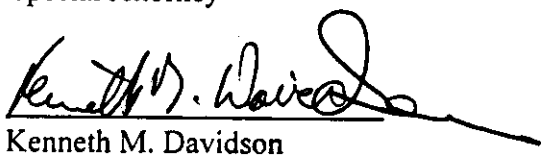

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