IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,
Plaintiff,

v.

ESL PARTNERS, L.P.
200 Greenwich Avenue
Greenwich, CT 06830,

and

ZAM HOLDINGS, L.P.
350 Park Avenue
11th Floor
New York, NY 10022,
Defendants.

Case: 1:08-cv-02175
Assigned To : Bates, John D.
Assign. Date : 12/15/2008
Description: Antitrust

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 Defendants 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 Defendants 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 Defendants' consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANTS

4. Defendant ESL Partners, L.P. ("Partners") is a limited partnership organized under the laws of Delaware with its principal office and place of business at 200 Greenwich Avenue, Greenwich, CT 06830. Partners is an investor with holdings in numerous companies. Partners 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, Partners had total assets in excess of $100 million. For purposes of determining compliance with HSR Act requirements, Partners is its own ultimate parent entity.

5. Defendant ZAM Holdings, L.P. ("ZAM") is a limited partnership organized under the laws of Delaware with its principal office and place of business at 350 Park Avenue, 11th Floor, New York, NY 10022. Through its interests in certain partnerships and investment funds, ZAM

is an investor with holdings in numerous companies. ZAM 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, ZAM had total assets in excess of $100 million.

OTHER ENTITIES

6. AutoZone, Inc. ("AutoZone") is a corporation organized under the laws of Nevada with its principal place of business at 123 South Front Street, Memphis, TN 38103. At all times relevant to this complaint, AutoZone 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, AutoZone had total assets in excess of $10 million.

7. ESL Investors, L.L.C. ("Investors") is a limited liability company organized under the laws of Delaware with its principal office and place of business at 200 Greenwich Avenue, Greenwich, CT 06830. Investors is an investor with holdings in numerous companies. Investors 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, Investors had total assets in excess of $100 million. For purposes of determining compliance with HSR Act requirements, ZAM is the ultimate parent entity of Investors.

8. RBS Partners, L.P ("RBS") is a limited partnership organized under the laws of Delaware with its principal office and place of business at 200 Greenwich Avenue, Greenwich, CT 06830. At all times relevant to this complaint, RBS made the investment decisions for both

Partners and Investors, and the individual who managed and operated RBS served on the board of directors of AutoZone.

THE HART-SCOTT-RODINO ACT AND RULES

9. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the 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). These notification and waiting period requirements apply to direct or indirect acquisitions that meet the HSR Act's thresholds. At all times relevant to this Complaint, the HSR Act's reporting and waiting period requirements applied to some transactions that would have resulted in the acquiring person holding more than $50 million, and all transactions where the acquiring person would hold more than $200 million of the acquired person's voting securities and/or assets, except for certain exempted transactions.

10. The HSR Act's 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.

11. 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. 16 C.F.R. §§ 801-803 ("HSR Rules"). The HSR Rules, among other things, define terms contained in the HSR Act.

12. Pursuant to section 801.13(a)(1) of the HSR 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 at issue.

13. 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).

DEFENDANTS' HOLDINGS OF AUTOZONE PRIOR TO THE VIOLATIONS

Partners' Prior Holdings of AutoZone Voting Securities

14. Partners held approximately $775 million of AutoZone voting securities as of September 1, 2004. In August of 1999, Partners filed a notification with the federal antitrust agencies under the HSR Act for the acquisition of AutoZone voting securities. Early termination of the HSR Act's waiting period was granted September 1, 1999. Pursuant to the HSR Rules, the filing was effective in covering some additional acquisitions of AutoZone voting securities during a five-year period that expired September 1, 2004.

ZAM's Prior Holdings of AutoZone Voting Securities

15. ZAM, as the ultimate parent entity of Investors, held approximately $270 million of AutoZone voting securities as of September 1, 2004, and had not been required to make an HSR filing with regard to those holdings. ZAM, acting through Investors, had previously purchased a majority stake in another partnership that held AutoZone voting securities. The HSR Rules in

effect at that time did not require ZAM to file for its acquisition of that partnership interest or for the AutoZone voting securities held by that partnership. On July 1, 2004, that partnership dissolved, distributing over 2 million shares of AutoZone voting securities to Investors. The HSR Rules did not require ZAM to file for the AutoZone voting securities acquired through the dissolution of the partnership.

VIOLATIONS

Partners' 2004 Acquisition of AutoZone Voting Securities

16. On September 28, 2004, Partners acquired additional AutoZone voting securities. Partners held AutoZone voting securities valued in excess of $775 million as a result of that acquisition. Partners' August 1999 HSR filing did not cover its September 28, 2004, acquisition because the effective period for that filing expired on September 1, 2004. Partners' September 28, 2004, acquisition also did not qualify for the HSR Act's exemption for acquisitions solely for the purpose of investment that result in holding 10 percent or less of an issuer's voting securities because, among other things, Partners held more than 10 percent of AutoZone voting securities as a result of the acquisition. Partners was required by the HSR Act to submit a notification and observe the Act's waiting period before the September 28, 2004 acquisition of AutoZone voting securities but did not do so. On September 30, 2004, October 12, 2004, and October 14, 2004, Partners made additional purchases of AutoZone voting securities without having filed a premerger notification under the HSR Act covering those purchases.

17. On January 27, 2005, after the Premerger Notification Office of the Federal Trade Commission inquired as to the absence of any HSR filing by Partners with regard to AutoZone after the 1999 filing, Partners filed a notification to cover the September 28, 2004, September 30,

2004, October 12, 2004, and October 14, 2004, AutoZone acquisitions. The HSR Act waiting period for Defendant Partners' September 28, 2004, September 30, 2004, October 12, 2004, and October 14, 2004, acquisitions of AutoZone voting securities expired on February 28, 2005.

18. Partners was in continuous violation of the HSR Act during the period beginning on September 28, 2004, when it acquired AutoZone voting securities that resulted in it holding in excess of $50 million, and ending on February 28, 2005, when the waiting period expired.

ZAM's 2004 Acquisition of AutoZone Voting Securities

19. On October 12, 2004, Investors purchased AutoZone voting securities. ZAM, as the ultimate parent entity of Investors, held AutoZone voting securities valued in excess of $270 million as a result of that acquisition. ZAM did not qualify for the HSR Act's exemption for acquisitions solely for the purpose of investment because Investors intended to participate in the formulation, determination, or direction of the basic business decisions of AutoZone through, among other things, Investors' representation on the board of directors of AutoZone through RBS, described in Paragraph 8. ZAM was required by the HSR Act to submit a notification and observe the Act's waiting period before the October 12, 2004, acquisition of AutoZone voting securities by Investors but did not do so. On October 14, 2004, Investors made additional purchases of AutoZone voting securities without ZAM or Investors having filed a premerger notification under the HSR Act covering those purchases.

20. On January 31, 2005, after the Premerger Notification Office of the Federal Trade Commission inquired as to the absence of any HSR filing with regard to Investors' October 2004 purchases of AutoZone voting securities, ZAM filed a notification to cover the October 12, 2004, and October 14, 2004, AutoZone acquisitions. The HSR Act waiting period for Defendant

ZAM's October 12, 2004, and October 14, 2004, acquisitions of AutoZone voting securities expired on March 2, 2005.

21. ZAM was in continuous violation of the HSR Act during the period beginning on October 12, 2004, when it acquired AutoZone voting securities that resulted in it holding in excess of $50 million, and ending on March 2, 2005, when the waiting period expired.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that each of the September 28, 2004, September 30, 2004, October 12, 2004, and October 14, 2004, acquisitions by Defendant Partners of AutoZone voting securities was a violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Partners was in violation of the HSR Act each day from September 28, 2004, through February 28, 2005.

2. That the Court adjudge and decree that each of the October 12, 2004, and October 14, 2004, acquisitions by Defendant ZAM of AutoZone voting securities was a violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant ZAM was in violation of the HSR Act each day from October 12, 2004, through March 2, 2005.

3. That the Court order Defendant Partners and Defendant ZAM 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).

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

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

Dated: December 15, 2008

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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