UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. COMPUWARE CORPORATION and VIASOFT, INC., Defendants.	CASE NUMBER 1:99CV02884 JUDGE: Emmet G. Sullivan DECK TYPE: Antitrust DATE STAMP: 10/29/1999

COMPLAINT

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UNITED STATES DISTRICT COURT FOR THE
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UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil No.:
COMPUWARE CORPORATION and VIASOFT, INC.,	)	Date:
Defendants.	)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants and alleges as follows:

1. The United States brings this antitrust case to enjoin Compuware Corporation (hereinafter "Compuware") from acquiring Viasoft, Inc. (hereinafter "Viasoft") and thereby substantially lessening competition in two separate markets for mission-critical software typically used by large firms and organizations operating mainframe computer systems to handle very large scale computer processing requirements, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Compuware is the world's dominant producer of mainframe testing and debugging software ("test/debug software"), with no less than 60% of the market. For a substantial number of users, Viasoft is Compuware's closest competitive alternative (and, many users believe, its only real competitor) offering comparable functionality and performance. Viasoft has competed by targeting Compuware customers and offering better prices and more flexible licensing terms, as well more responsive customer service and support. No other significant competitors offer test/debug software with a comparable range of features and performance to the Compuware and Viasoft products.

3. Compuware is also the world's dominant seller of mainframe fault management software ("fault management software"), accounting for more than 80% of that market. At the beginning of 1999, Viasoft began marketing its own fault management software, with plans to challenge Compuware by continuing to add features to its products and by integrating the products with Viasoft's test/debug software. Since entering the fault management market, Viasoft has competed by offering customers lower prices and more responsive customer support. There are few other providers of fault management software, and no other provider is likely to be able to offer both the range of features and performance of the Viasoft and Compuware products as well as integration between fault management and test/debug software products. Compuware now is attempting to acquire Viasoft, thereby

eliminating it as a competitive force.

4. Allowing Compuware to acquire its closest rival in the test/debug software market and its potentially most significant rival in the fault management software market would substantially lessen competition in violation of Section 7 of the Clayton Act, harming consumers through higher prices and decreased product support and development.

I.

JURISDICTION AND VENUE

5. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain defendants' violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

6. Compuware is a Michigan corporation with its principal place of business in Farmington Hills, Michigan. Compuware transacts business in the District of Columbia. Compuware has waived all objections to personal jurisdiction and venue with respect to this suit.

7. Viasoft is a Delaware corporation that transacts business in the District of Columbia.

8. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the defendants pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

THE DEFENDANTS

9. Compuware, headquartered in Farmington Hills, Michigan, is the world's fifth largest independent software company with more than 100 offices in 47 countries. For fiscal year 1999, it reported total revenues in excess of $1.6 billion. Compuware sells services and software products for mainframe and client/server platforms, including software products for mainframe computer systems running on IBM's principal operating system. In fiscal year 1999, total software product revenues (license and maintenance fees) totaled approximately $1 billion, with approximately $830 million in

mainframe software product revenues, an increase of nearly 44% over the previous fiscal year. Compuware's mainframe software products include test/debug and fault management software. The proposed acquisition of Viasoft is the latest in a series of transactions in which Compuware has acquired competitors' test/debug and fault management software products, only to cease sales and upgrades for those products after the acquisitions. Moreover, Compuware has just recently made an offer to acquire the exclusive marketing rights to the fault management software product sold by Compuware's only significant competitor in this market other than Viasoft.

10. Viasoft, headquartered in Phoenix, Arizona, is also an independent software company with nine offices in seven countries. Viasoft's fiscal year 1999 revenues were $104 million. Although substantially smaller than Compuware, Viasoft is a well-respected vendor of mainframe systems software, including test/debug and fault management software.

11. On July 19, 1999, Defendants Compuware and Viasoft notified the United States that they had entered into a definitive agreement pursuant to which Compuware would purchase all issued and outstanding shares of Viasoft's common stock, valued at approximately $168 million, through a cash tender offer.

III.

IMPACT OF THE PROPOSED ACQUISITION ON TRADE AND COMMERCE

A. Systems Software Tools for Mainframe Computers

12. Mainframe computers are large, powerful computers used for very large scale, often "mission-critical," data processing requirements. Mainframe computers have the capacity to process reliably hundreds of millions of instructions per second and manage a tremendous volume of

transactions and information, making possible modern operations for large corporations, public utilities, educational institutions, and government agencies. The vast majority of the world's mainframe computers have been manufactured by IBM or IBM-compatible vendors that sell systems that utilize IBM's mainframe operating systems. Operating systems control the operational resources of the computer (including the central processing unit, memory, data storage devices, and other hardware components) and allow "applications" software (programs that perform user-directed tasks requested of the computer, such as programs that maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The most common operating system in use on large mainframe computers is IBM's MVS, now called OS/390 (collectively, "OS/390" or "mainframe") operating system, with thousands of user sites worldwide. Mainframe users employ a variety of systems software to maintain the efficiency and enhance the productivity of their mainframe systems and applications, including test/debug and fault management software.

13. Test/debug software is used during software development to check for errors as the code is being written and during production to fix program code after an abnormal program termination, commonly called an "abend," occurs. The more powerful products have user-friendly interfaces and are host-based (installed and interoperating directly with the mainframe hardware and operating system). Host-based systems allow testing and debugging in the actual operating system environment, which is necessary for the most complete production testing and implementation for new code and maintenance and problem correction for existing code. Test/debug software products are more attractive to users when they are easier to use, have

user-friendly interfaces, and work with multiple programming languages and environments that are often used within a single mainframe computer data center.

14. Fault management software detects and diagnoses abends. When an abend occurs during processing, the mainframe operating system generates a lengthy raw data "dump." Fault management software automatically interprets and generates a report from that raw data, saving many hours of downtime and programmer labor per abend. The report identifies the nature of the error, directs the programmer to the exact line of code where it occurred, and suggests ways to fix the problem. Similar to test/debug software, fault management software products are more attractive to users when they are easier to use, have user-friendly interfaces, and work with multiple programming languages and environments that are often used within a single mainframe computer data center.

15. Test/debug and fault management software products perform unique functions. Mainframe users do not regard them as functionally-interchangeable but as complementary products, and a number of customers purchase both types of software products. Vendors who supply test/debug software and fault management software products that are integrated have a competitive advantage in marketing to customers who value the ease of use resulting from such integration.

16. Compuware and Viasoft both supply test/debug and fault management software for mainframe systems. Viasoft is Compuware's primary competitor for mainframe test/debug software and the only vendor to offer comparable functionality across the range of major programming languages and environments. Viasoft is Compuware's potentially most threatening competitor for fault management software, having obtained important customers in its first year on the market. Viasoft is the only competitor to Compuware that offers both test/debug and fault management products with a

broad range of functionality and has announced plans and begun work to provide integration between the two products. Thus, Viasoft is the only competitor well-poised to compete with Compuware for those customers who value integration between test/debug and fault management software products.

B. Relevant Markets and Market Shares

17. Customers who need mainframe test/debug software are unable to use software written for other operating systems or other kinds of software to meet their needs. Likewise, no other kinds of software provide the same functionality as mainframe fault management software. Moreover, few, if any, mainframe users will go through the time, difficulty, and expense of switching to different types of computer systems in order to avoid even a substantial increase in the price of either of these types of software products. Furthermore, customers rely on these products to increase significantly the productivity of their mainframe systems and are unlikely to stop using these products even if prices increase significantly.

18. Mainframe test/debug software and mainframe fault management software each constitute a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

19. **Test/debug software.** Compuware's total worldwide revenues for test/debug software in 1998 were approximately $133 million. Compuware, with its XPEDITER software, dominates this market with an estimated market share of no less than 60%. Viasoft's SmartTest, with total worldwide revenues of approximately $20 million, is one of the only two competitors to Compuware with a significant presence in this market. Moreover, Viasoft's SmartTest is the only competitive software that is comparable to Compuware's in its ability to work with a range of

environments and programming languages. Using a measure of market concentration called the "HHI" (defined and explained in Appendix A), the market is already highly concentrated with an HHI exceeding 4800. The proposed acquisition would further increase the HHI by at least 800, to a level over 5600, and eliminate Compuware's closest rival.

20. **Fault Management software**. Compuware's total worldwide revenues for mainframe fault management software in 1998 were over $230 million. Compuware, with its Abend-AID products, is the overwhelmingly dominant competitor in this market, with an estimated market share of more than 80%. Viasoft's SmartQuest software is one of only two significant competitors to Compuware. Although Viasoft introduced its fault management software product only this year, it has already begun to attract customers away from Compuware. The market for fault management software is already highly concentrated with an HHI exceeding 6900, and the proposed acquisition would allow Compuware to eliminate its potentially most significant competitor. In addition, Compuware has made an offer to acquire the exclusive rights to market the only other significant fault management software product, and therefore seeks to virtually eliminate competition in this market.

21. Even though Viasoft is a new entrant to the fault management software market and has not yet had an opportunity to acquire a large market share, it is poised to become Compuware's most significant competitor. Viasoft is one of no more than two vendors to offer fault management software that is functionally comparable to Compuware's products across the range of programming languages and environments. Moreover, Viasoft is the only announced vendor preparing to offer integration of test/debug and fault management software in the near future, and thus is best situated to compete with Compuware for those users that prefer integrated products. Viasoft's current level of sales thus

understates the strength of its competitive position in the fault management software market.

22. In each of the relevant product markets, competitors sell these software products to customers located throughout the world. For each of the relevant products, the relevant geographic market within the meaning of Section 7 of the Clayton Act is worldwide.

C. Likely Effects on Competition

23. In the test/debug and fault management software markets, the proposed acquisition would eliminate direct head-to-head competition between Compuware and Viasoft for new customers purchasing these products for the first time. In addition to competition for new users, substantial competition in the markets for these software products occurs when current users, and particularly current users of Compuware's products, consider whether they should switch to a different product. Indeed, according to an internal memorandum describing feedback received from a number of customers at a 1998 technical conference, Compuware was told by many customers "that our products are too expensive, that our upgrade charges are unreasonable (we heard words like 'gouge,' 'arrogant,' and 'disdainful')." This memorandum also stated that several of the customers "indicated that they are actively seeking replacements for Compuware products because of our prices." Viasoft competes head-to-head with Compuware by offering more flexibility and better prices for licenses, maintenence, and upgrades, more responsive customer service, and better technical support. Customers have benefited from this competition.

24. In the test/debug software market, the proposed acquisition would eliminate Compuware's closest of only two significant competitors and, for a number of customers, their only competitive alternative to Compuware, because Viasoft is the only vendor in this market to offer comparable features across the range of major programming languages and computing environments.

25. In the fault management software market, the proposed acquisition would eliminate Compuware's potentially most threatening competitor and one of only two significant rivals. It would enable Compuware to protect its commanding market position by eradicating a nascent competitor.

26. The acquisition of Viasoft by Compuware would be likely to substantially lessen competition in each relevant market and thereby lead to higher prices, lower quality service and support, and less innovation in product development.

27. The competitive harm resulting from the proposed acquisition is not likely to be mitigated by the possibility of significant new entry in either relevant market. For each market, a new entrant would require substantial time and money to develop and test a competitive product and to establish a sufficient reputation as a reliable vendor of such products to overcome user reluctance to entrust critical business requirements to an unproven vendor. Moreover, the markets for mainframe systems software, such as test/debug and fault management software, are mature, with relatively static demand, and are dominated by an entrenched incumbent, making entry unattractive to other potential competitors. Therefore, new entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service and support or product development in either of the relevant markets.

IV.

VIOLATION ALLEGED

28. Unless restrained, Compuware's proposed acquisition of Viasoft is likely substantially to lessen competition in the United States in markets for test/debug software and fault management software, in the following ways:

a. Actual and potential competition between Compuware and Viasoft will be eliminated in each of the markets;

b. Competition generally in each of the markets is likely to be substantially lessened; and

c. Prices are likely to increase and the quality of product support and development is likely to decrease in each of the markets.

29. Compuware's proposed acquisition of Viasoft, therefore, may tend substantially to lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

V.

REQUEST FOR RELIEF

The United States requests (a) adjudication that Compuware's proposed acquisition of Viasoft would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, (b) preliminary and

permanent injunctive relief preventing consummation of the proposed acquisition, and (c) such other relief as the Court deems just and proper.

DATED: October 29, 1999

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.