

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

c/o Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Plaintiff,

v.

VALUEACT CAPITAL PARTNERS, L.P.

435 Pacific Avenue, 4th Floor
San Francisco, California 94133,

Defendant.

Case: 1:07-cv-02267

Assigned To : Kennedy, Henry H.

Assign. Date : 12/19/2007

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 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:

I. 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 violations 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.

II. THE DEFENDANT AND RELATED ENTITIES

4. Defendant ValueAct Capital Partners, L.P. ("ValueAct") is a limited partnership organized under the laws of Delaware with its principal office and place of business at 435 Pacific Avenue, 4th Floor, San Francisco, California 94133. ValueAct is an investor with holdings in numerous companies. ValueAct 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).

5. ValueAct Capital Master Fund, L.P. ("Master Fund") is a limited partnership organized under the laws of the British Virgin Islands with its principal office and place of business at 435 Pacific Avenue, 4th Floor, San Francisco, California 94133.

6. ValueAct Capital Partners II, L.P. ("VACII") is a limited partnership organized under the laws of Delaware with its principal office and place of business at 435 Pacific Avenue, 4th Floor, San Francisco, California 94133.

7. ValueAct Capital International, Ltd. (“VAC International”) is a company organized under the laws of the British Virgin Islands with its principal office and place of business at 435 Pacific Avenue, 4th Floor, San Francisco, California 94133.

III. OTHER ENTITIES

8. Gartner Inc. (“Gartner”) is a corporation organized under the laws of Delaware with its principal place of business at 56 Top Gallant Road, Stamford, Connecticut 06904. Gartner is a provider of market research covering the information technology industry. At all times relevant to this complaint, Gartner 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).

9. Acxiom Corporation (“Acxiom”) is a corporation organized under the laws of Delaware with its principal place of business at 1 Information Way, Little Rock, Arkansas 72202. Acxiom provides software and services that store, integrate and analyze customer information from a variety of sources. At all times relevant to this complaint, Acxiom 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).

10. Catalina Marketing Corporation (“Catalina”) is a corporation organized under the laws of Delaware with its principal place of business at 200 Carillon Parkway, St. Petersburg, Florida 33716. Catalina provides strategic behavior-based marketing services for consumer goods companies, pharmaceutical manufacturers and their retailers based on information from its Catalina Marketing Network, an electronic network collecting information from the checkout scanners of almost 18,000 supermarkets. At all times relevant to this complaint, Catalina 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).

11. Martha Stewart Living Omnimedia Inc. (“MSO”) is a corporation organized under the laws of Delaware with its principal place of business at 20 West 43rd Street, New York, New York 10036. MSO provides content and domestic merchandise related to home, cooking and entertainment, gardening, crafts, holidays, weddings and children. At all times relevant to this complaint, MSO 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).

12. Mentor Corp. (“Mentor”) is a corporation organized under the laws of Minnesota, with its principal office and place of business at 201 Mentor Drive, Santa Barbara, California 93111. Mentor manufactures products for the medical specialties of aesthetic and general surgery (plastic and reconstructive surgery); surgical urology; and clinical and consumer healthcare, including catheters and other products for the management of urinary incontinence and retention. At all times relevant to this complaint, Mentor 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).

IV. THE HART-SCOTT-RODINO ACT AND RULES

13. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notification 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.

14. 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. These Rules, among other things, define terms contained in the HSR Act.

15. Pursuant to the HSR Act, an acquiring person must file the required notification before making an acquisition if as a result of such acquisition the acquiring person would hold in excess of \$50 million, as adjusted annually beginning in 2005 to account for changes in gross national product (hereinafter “as adjusted”), of the voting securities of an issuer, provided that the parties meet statutory size thresholds. 15 U.S.C. § 18a(a). Pursuant to the HSR Rules, all voting securities previously held are deemed to be held as a result of the acquisition at issue.

16. Pursuant to the HSR Rules, an acquiring person who has filed notification sufficient only to enable it to acquire in excess of \$50 million (as adjusted) but less than \$100 million (as adjusted) of the voting securities of an issuer, must file an additional notification and observe a waiting period before acquiring in excess of \$100 million (as adjusted) of the voting securities of such issuer.

17. Pursuant to the HSR Rules, the term “person” means an ultimate parent entity and all entities which it controls. An ultimate parent entity is an entity that is not controlled by any other

entity. Control of an unincorporated entity means having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity.

18. For purposes of the HSR Rules, an ultimate parent entity is deemed to hold all of the voting securities of other issuers that are held by each entity it controls.

19. On January 25, 2005, the Federal Trade Commission announced revised thresholds under the HSR Act and Rules, that became effective on March 2, 2005. All acquisitions made prior to March 2, 2005, were governed by the prior thresholds.

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

21. 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).

V. PRIOR TRANSACTIONS

Acquisitions of Gartner, Mentor and MSO Voting Securities

22. On August 29, 2001, ValueAct acquired 1,575,000 shares of voting securities of Gartner. As a result of that acquisition, ValueAct held 6,930,924 shares of voting securities of Gartner, with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately \$64 million. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before it made the August 29, 2001, acquisition of voting securities of Gartner. ValueAct did not file a premerger notification under the HSR Act prior to the August 29, 2001, Gartner acquisition.

23. On January 16, 2002, ValueAct acquired 1,705 shares of voting securities of Mentor. As a result of that acquisition, ValueAct held 2,098,905 shares of voting securities of Mentor, with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately \$58.9 million. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before it made the January 16, 2002, acquisition of voting securities of Mentor. ValueAct did not file a premerger notification under the HSR Act prior to the January 16, 2002, Mentor acquisition.

24. On March 14, 2002, ValueAct acquired 991,600 shares of voting securities of MSO. As a result of that acquisition, ValueAct held 3,601,600 shares of voting securities of MSO, with a value calculated pursuant to Sections 801.10 and 801.13 of the HSR Rules, 16 C.F.R. § § 801.10 and 801.13, of approximately \$53.9 million. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before it made the March 14, 2002,

acquisition of voting securities of MSO. ValueAct did not file a premerger notification under the HSR Act prior to the March 14, 2002, MSO acquisition.

25. In August 2003, ValueAct discovered that the Gartner, Mentor and MSO acquisitions violated the HSR Act. On October 3, 2003, ValueAct made notifications to cover the Gartner, Mentor and MSO acquisitions.

26. As part of the notifications, ValueAct outlined the steps it would take to prevent future violations of the HSR Act.

Formation of Master Fund

27. Prior to October 2004, ValueAct, VACII and VAC International held separate amounts of voting securities in each of the issuers in which they invested. For purposes of the HSR Act and Rules, ValueAct, VACII and VAC International was each its own ultimate parent entity. Prior to October 2004, neither VACII nor VAC International held more than \$50 million of voting securities of any issuer.

28. On or about October 1, 2004, Master Fund was formed. In connection with the formation of Master Fund, ValueAct, VACII and VAC International contributed all of their assets, consisting of voting securities they held in issuers, in exchange for limited partnership interests of Master Fund. The formation of Master Fund, and the contributions of voting securities by ValueAct, VACII and VAC International to Master Fund, were not subject to the reporting requirements of the HSR Act. Upon the formation of Master Fund, ValueAct was entitled to 50 percent or more of the profits of Master Fund and/or 50 percent or more of the assets upon dissolution of Master Fund. Accordingly, ValueAct was the ultimate parent entity of Master Fund.

VI. VIOLATIONS

The Gartner Acquisition

29. On February 7, 2005, Master Fund acquired 1,189,900 shares of voting securities of Gartner. As a result of this acquisition, Master Fund held approximately 26,670,684 shares of voting securities of Gartner, with a value of approximately \$248 million. ValueAct, as ultimate parent entity of Master Fund, held all voting securities held by Master Fund. ValueAct's October 3, 2003, notification with regard to Gartner covered only acquisitions valued at less than \$100 million.

30. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before Master Fund made the February 7, 2005, acquisition of voting securities of Gartner. Neither ValueAct nor Master Fund, on behalf of ValueAct, filed a premerger notification under the HSR Act prior to the February 7, 2005, Gartner acquisition.

31. On June 13, 2005, ValueAct made a notification under the HSR Act to cover the February 7, 2005, Gartner acquisition described above. The HSR Act waiting period for ValueAct's February 7, 2005, acquisition of voting securities of Gartner expired on July 13, 2005.

32. ValueAct was in continuous violation of the HSR Act during the period beginning on February 7, 2005, and ending on July 13, 2005.

The Catalina Acquisition

33. On April 28, 2005, Master Fund acquired 98,700 shares of voting securities of Catalina. As a result of this acquisition, Master Fund held approximately 6,420,517 shares of voting securities of Catalina, which was in excess of 10 percent of the outstanding voting

securities of Catalina, and had a value of approximately \$148 million. ValueAct, as ultimate parent entity of Master Fund, held all voting securities held by Master Fund.

34. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before Master Fund made the April 28, 2005, acquisition of voting securities of Catalina. Neither ValueAct nor Master Fund, on behalf of ValueAct, filed a premerger notification under the HSR Act prior to the April 28, 2005, Catalina acquisition.

35. On June 13, 2005, ValueAct made a notification under the HSR Act to cover the April 28, 2005, Catalina acquisition described above. The HSR Act waiting period for ValueAct's April 28, 2005, acquisition of voting securities of Catalina expired on July 13, 2005.

36. ValueAct was in continuous violation of the HSR Act during the period beginning on April 28, 2005, and ending on July 13, 2005.

The Acxiom Acquisition

37. On April 28, 2005, Master Fund acquired 98,700 shares of voting securities of Acxiom. As a result of this acquisition, Master Fund held approximately 9,576,845 shares of voting securities of Acxiom, which was in excess of 10 percent of the outstanding voting securities of Acxiom, and had a value of approximately \$178 million. ValueAct, as ultimate parent entity of Master Fund, held all voting securities held by Master Fund.

38. ValueAct was required by the HSR Act to submit a notification and observe the Act's waiting period before Master Fund made the April 28, 2005, acquisition of voting securities of Acxiom. Neither ValueAct nor Master Fund, on behalf of ValueAct, filed a premerger notification under the HSR Act prior to the April 28, 2005, Acxiom acquisition.

39. On June 13, 2005, ValueAct made a notification under the HSR Act to cover the April 28, 2005, Acxiom acquisition described above. The HSR Act waiting period for ValueAct's April 28, 2005, acquisition of voting securities of Acxiom expired on July 13, 2005.

40. ValueAct was in continuous violation of the HSR Act during the period beginning on April 28, 2005, and ending on July 13, 2005.

VII. PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the February 7, 2005, acquisition by Defendant ValueAct of voting securities of Gartner, the April 28, 2005, acquisition by Defendant ValueAct of voting securities of Catalina, and the April 28, 2005, acquisition by Defendant ValueAct of voting securities of Acxiom were each in violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant ValueAct was in violation of the HSR Act each day from February 7, 2005, through July 13, 2005, as to the Gartner acquisition, from April 28, 2005, through July 13, 2005, as to the Catalina acquisition, and from April 28, 2005 through July 13, 2005, as to the Acxiom acquisition.

2. That the Court order Defendant ValueAct 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.

Dated: December 19, 2007

FOR THE PLAINTIFF UNITED STATES
OF AMERICA:

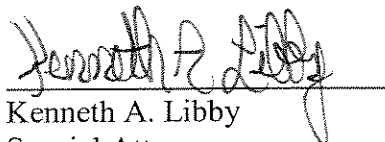


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