

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

SEP 7 1993

UNITED STATES OF AMERICA,  
c/o Department of Justice  
Washington, D.C. 20530  
Plaintiff,

v.

ANOVA HOLDING AG,  
Hurdnerstrasse 10  
CH-8640 Hurden  
Switzerland

STEPHAN SCHMIDHEINY, AND  
Hurdnerstrasse 10  
CH-8640 Hurden  
Switzerland

UNOTEC HOLDING AG,  
Hurdnerstrasse 10  
CH-8640 Hurden  
Switzerland

Defendants.

SPERMAN, J. SS

93 1852

Civil Action No.

RECEIVED

SEP 7 1993

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF 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, brings this civil action to obtain monetary relief in the  
form of a civil penalty against the Defendants named herein, 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, commonly known as Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act" or "Act") to recover a civil penalty for violating the HSR Act.

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

3. Venue in this District is proper 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 DEFENDANTS

4. Anova Holding AG ("Anova") is made a defendant herein. Anova is a Swiss corporation with offices at Hurdnerstrasse 10, CH-8640 Hurden, Switzerland

5. Unotec Holding AG ("Unotec") is made a defendant herein. Unotec is a Swiss corporation with offices at Hurdnerstrasse 10, CH-8640 Hurden, Switzerland.

6. Stephan Schmidheiny ("Schmidheiny"), an individual, is made a defendant herein. Schmidheiny is a Swiss citizen with his principal place of business at Hurdnerstrasse 10, CH-8640 Hurden, Switzerland. At all times relevant to this complaint, Schmidheiny has held 100% of the voting securities of Anova and of Unotec and has controlled Anova and Unotec.

OTHER RELEVANT ENTITIES

7. Landis & Gyr AG ("Landis & Gyr") was, at all times relevant to this complaint, a Swiss corporation with principal offices at Gubelstrasse 22, Ch-6301 Zug, Switzerland. Through subsidiaries, Landis & Gyr is engaged in the manufacture and distribution of various types of electric and electronic equipment and systems in the United States.

8. Wild Leitz Holding ("WL Holding") was, at all times relevant to this complaint, a Swiss corporation with principal offices at Burgstrasse 35, Ch-8750 Glarus, Switzerland. Through subsidiaries, WL Holding is engaged in the manufacture and sale of surveying and drafting instruments, and photographic equipment and supplies in the United States.

THE HART-SCOTT-RODINO ACT AND RULES

9. The HSR Act prohibits certain acquisitions of voting securities or assets until notification has been filed with the Department of Justice and the Federal Trade Commission and a waiting period has expired. The notification and waiting period are intended to give those 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 transactions that may violate the antitrust laws.

10. The HSR Act and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq. ("HSR Rules" or "Rules"), exempt certain classes of acquisitions from the reporting and waiting period requirements of the Act. Section 802.51 of the Rules, 16 C.F.R. § 802.51, provides such exemption for certain acquisitions by foreign persons.

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

## VIOLATION I

12. At all times relevant to this complaint, Landis & Gyr and defendant Schmidheiny were 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 (a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1).

13. At all times relevant to this complaint, Landis & Gyr and defendant Schmidheiny had sales or assets above the thresholds established by section (a) of the HSR Act, 15 U.S.C. § 18a(a). Landis & Gyr had annual net sales in excess of \$10 million and Schmidheiny had total assets in excess of \$100 million.

14. In December 1987, defendant Anova, a subsidiary of defendant Schmidheiny, acquired 66.6 percent of the voting securities of Landis & Gyr Holding AG ("LG Holding"), a Swiss company, which in turn held 48.9 percent of the voting securities of Landis & Gyr.

15. In January 1988, LG Holding, a Swiss company controlled by Anova and Schmidheiny, acquired in open market transactions on the Zurich stock exchange approximately 1.76 percent of Landis & Gyr's outstanding voting securities. As a result of that

acquisition, Schmidheiny controlled Landis & Gyr within the meaning of the HSR Rules and held an aggregate total amount of voting securities of Landis and Gyr in excess of \$15 million.

16. The acquisition described in paragraph 15 was subject to the notification and waiting period requirements of the HSR Act and Rules and was not exempted by section 802.51 of the Rules, 16 C.F.R. § 802.51. The HSR Act and Rules required Schmidheiny, as the ultimate parent entity of Anova, or Anova, as an entity included within Schmidheiny and authorized by Schmidheiny to file on Schmidheiny's behalf, to file the notification and to observe a waiting period before undertaking that acquisition.

17. Defendants Anova and Schmidheiny did not comply with the reporting and waiting period requirements of the Act before making the acquisition described in paragraph 15 above.

18. After discovering his failure to file a premerger notification and report form, Schmidheiny notified the Federal Trade Commission of his possible violation of the HSR Act in August 1989.

19. On February 4, 1991, Schmidheiny filed a reconstructed notification and report form for the acquisition of the Landis & Gyr shares. The waiting period expired on March 6, 1991.

20. Defendants Schmidheiny and Anova were continuously in violation of the HSR Act from on or about January 31, 1988, through March 6, 1991.

#### VIOLATION II

21. At all times relevant to this complaint, WL Holding and defendant Schmidheiny were 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 (a)(1) of the HSR Act, 15 U.S.C. § 18a(a)(1).

22. At all times relevant to this complaint, WL Holding and defendant Schmidheiny had sales or assets above the thresholds established by section (a) of the HSR Act, 15 U.S.C. § 18a(a). WL Holding had annual net sales in excess of \$10 million and Schmidheiny had total assets in excess of \$100 million.

23. Prior to June 30, 1989, Schmidheiny held 18.5 percent of the outstanding voting securities of WL Holding.

24. On June 30, 1989, defendant Unotec, a subsidiary of defendant Schmidheiny, acquired additional voting securities of WL Holding. As a result of that acquisition, Schmidheiny controlled WL Holding within the meaning of the HSR Rules and held an aggregate total amount of voting securities of WL Holding in excess of \$15 million.

25. The acquisition described in paragraph 24 was subject to the notification and waiting period requirements of the HSR Act and Rules and was not exempted by section 802.51 of the Rules, 16 C.F.R. § 802.51. The HSR Act and Rules required Schmidheiny, as the ultimate parent entity of Unotec, or Unotec, as an entity included within Schmidheiny and authorized by Schmidheiny to file on Schmidheiny's behalf, to file the notification and to observe a waiting period before undertaking that acquisition.

26. Defendants Unotec and Schmidheiny did not comply with the reporting and waiting requirements of the Act before making the acquisition described in paragraph 24 above.

27. After discovering his failure to file a premerger notification and report form, Schmidheiny notified the Federal Trade Commission of his possible violation of the HSR Act in August 1989.

28. On February 4, 1991, Schmidheiny filed a reconstructed notification and report form for the acquisition of the WL Holding shares. The waiting period expired on March 6, 1991.

29. Defendants Schmidheiny and Unotec were continuously in violation of the HSR Act from June 30, 1989, through March 6, 1991.



PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the acquisition of Landis & Gyr voting securities by Defendant Schmidheiny and Defendant Anova on or about January 31, 1988, was in violation of the HSR Act, 15 U.S.C. § 18a, and that those defendants were in violation of the Act each day of the period from on or about January 31, 1988, through March 6, 1991.

2. That the Court adjudge and decree that the acquisition of WL Holding voting securities by Defendant Schmidheiny and Defendant Unotec on June 30, 1989, was in violation of the HSR Act, 15 U.S.C. § 18a, and that those defendants were in violation of the Act each day of the period from June 30, 1989, through March 6, 1991;


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


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

5. That Plaintiff be awarded its costs of this suit.

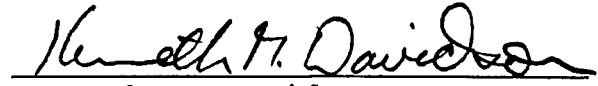
Dated: 9/7/93

FOR THE PLAINTIFF UNITED STATES OF AMERICA


  
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