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.

INPUT/OUTPUT, INC.
11104 West Airport Blvd., Suite 200
Stafford, TX 77477-2416,

and

THE LAITRAM CORPORATION
220 Laitram Lane
Harahan, LA 70123
Defendants.

CASE NUMBER 1:99CV00912

JUDGE: Thomas Penfield Jackson

DECK TYPE: Antitrust

DATE STAMP: 04/12/99

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 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, 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"), to recover civil penalties for violations of the HSR Act.

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

3. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1395(a). Venue is also proper by virtue of the Defendants' consents, in the Stipulation relating hereto, to the maintenance of this action in this District.

THE DEFENDANTS

4. Defendant Input/Output, Inc. ("Input/Output") is a Delaware corporation headquartered in Stafford, Texas. Input/Output manufactures and markets seismic data acquisition systems and related equipment for ocean bottom exploration. At all times relevant to this complaint, Input/Output had annual net sales or total assets in excess of $100 million.

5. The Laitram Corporation ("Laitram") is a Louisiana corporation headquartered in Harahan, Louisiana and is controlled by James M. Lapeyre ("Lapeyre"). Lapeyre is the ultimate parent entity, within the meaning of 16 C.F.R. § 801.1(b)(1), of Laitram. Laitram owned 100% of the outstanding voting securities of DigiCOURSE, Inc. ("DigiCOURSE"). At all times relevant to this complaint, Lapeyre, through his interest in Laitram, had annual net sales or total assets in excess of $100 million.

OTHER ENTITIES

6. DigiCOURSE, a Louisiana corporation, is the sole manufacturer of cable positioning systems, which consist of devices, such as "birds" and acoustic transponders, that are integral to the effective operation of seismic data acquisition systems.

7. Input/Output Marine, Inc., ("Input/Output Marine") is a Louisiana corporation, and is a wholly-owned subsidiary of Input/Output.

THE HART-SCOTT-RODINO ACT AND RULES

8. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets will be acquired ("acquired persons") to file notifications with the Department of Justice and the Federal Trade Commission and to observe a designated 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 provides the 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.

9. The notification and waiting period requirements of the HSR Act apply to direct or indirect acquisitions when the Act's size-of-person and commerce tests are met and, inter alia, as a result of such acquisition, an acquiring person would hold an aggregate total amount of the voting securities and assets of an acquired person in excess of $15 million.

10. Section 801.1(c)(1) of the Premerger Notification Rules, 16 C.F.R. § 800 *et seq.* ("HSR Rules"), defines "hold" to mean to have "beneficial ownership." The Statement of Basis and Purpose that accompanied the issuance of § 801.1(c)(1), 43 Fed. Reg. 33458, states that "the existence of beneficial ownership is determined in the context of the particular case with reference to the person or persons that enjoy the indicia of beneficial ownership."

11. Where an acquisition is subject to the HSR Act, the acquiring person and the acquired person are each obligated by the HSR Act and HSR Rules to file preacquisition Notification and Report Forms with the Federal Trade Commission and the Department of Justice and to observe the required waiting period before consummating the acquisition. The filing may be made by the ultimate parent entity or by any entity included within the person. 15 U.S.C. § 18a(a)-(b), (d)-(e); 16 C.F.R. § 803.2(a).

12. Any person 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 that person is in violation. The maximum amount of civil penalty is $10,000 per day through November 19, 1996, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), and $11,000 per day thereafter, 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.

VIOLATION ALLEGED

13. On September 30, 1998, Input/Output, Laitram, and DigiCOURSE executed an Agreement and Plan of Merger ("Agreement"). Pursuant to the Agreement, Input/Output, through its acquisition subsidiary Input/Output Marine, would acquire 100% of the outstanding voting securities of DigiCOURSE. In consideration, Laitram would acquire 5,794,000 shares, or approximately 11.5%, of the outstanding voting securities of Input/Output, valued at approximately $46 million as of September 30, 1998. Each party filed its required notifications as both acquiring and acquired persons with the Department of Justice and the Federal Trade Commission on October 14, 1998.

14. Executing the Agreement transferred some of the indicia of beneficial ownership, including risk of loss, benefit of gain, and the ability to dispose of the business, but did not by itself transfer beneficial ownership of DigiCOURSE to Input/Output.

15. Additional indicia were transferred when Input/Output began to exercise operational control over DigiCOURSE's business no later than October 10, 1998, by installing a new management team to operate Input/Output Marine, which included both the existing marine operations of Input/Output and all operations of DigiCOURSE. Input/Output's exercise of operational control over DigiCOURSE's business was evidenced by:

a. Input/Output circulated on October 10, 1998, an internal memorandum announcing the reorganization of Input/Output into product-based divisions, effective immediately. Managers of the newly structured Input/Output Marine managed all operations of DigiCOURSE and the existing marine operation of Input/Output. Roy Kelm, President of DigiCOURSE, P.J. Peek, Marketing Director of DigiCOURSE, and David Miner, Manager of Technology Marketing of DigiCOURSE were assigned to positions and titles within Input/Output. The newly structured Input/Output Marine was led by Roy Kelm as President of the Division. P.J. Peek became Vice President of Marketing and Sales, and David Miner became Technical Marketing Director. Each was given an office at the Input/Output facility in Stafford, Texas.

b. At least three other individuals from DigiCOURSE's Houston sales office moved into Input/Output's offices in Stafford, Texas. While continuing as DigiCOURSE employees, they received Input/Output e-mail addresses and access to Input/Output's internal reports and e-mail systems.

c. Under the authority of the president of Input/Output, all these employees, including Mr. Kelm, obtained business cards bearing Input/Output titles. These cards were distributed to DigiCOURSE customers and others.

d. The phones in all DigiCOURSE offices were answered under the Input/Output name.

e. Mr. Kelm, while continuing as President of DigiCOURSE, traveled to the United Kingdom to resolve a commercial dispute between Input/Output and one of its customers, Horizon Exploration, Ltd. With the assistance of Mr. Peek and another DigiCOURSE employee who resided in the United Kingdom, Mr. Kelm negotiated a settlement with Horizon Exploration, Ltd. On October 27, 1998, Mr. Kelm accepted the settlement on behalf of Input/Output by signing the term sheet.

f. Mr. Kelm, while continuing as President of DigiCOURSE, was consulted by Input/Output officials and asked to review and comment upon the possible acquisition by Input/Output of another marine equipment company.

g. Mr. Kelm's duties as President of Input/Output Marine included management of DigiCOURSE's business.

16. The actions described in paragraphs 13 through 15, by which Input/Output, in connection with its contract to acquire DigiCOURSE, took operational control of DigiCOURSE's business, constituted a transfer of beneficial ownership of DigiCOURSE to Input/Output prior to the expiration of the waiting period.

17. On or about November 3, 1998, all parties took steps to halt the premature consummation of the acquisition. DigiCOURSE officials vacated their Input/Output offices, leaving behind any internal Input/Output materials, turning in Input/Output business cards, and terminating participation in Input/Output Marine's business. Input/Output also sent letters to its customers stating that the acquisition had not yet been consummated and asking them to contact Input/Output officials with questions regarding its own product line.

18. The waiting period under the HSR Act expired on November 13, 1998.

19. The HSR Act and the HSR Rules required Defendants Input/Output and Laitram to file notification and observe a waiting period before implementing the acquisition.

20. Defendants Input/Output and Laitram did not comply with the waiting period requirements of the HSR Act and HSR Rules before implementing the acquisition.

21. Defendants Input/Output and Laitram were continuously in violation of the HSR Act during the period beginning on or about October 10, 1998, and ending on November 3, 1998.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that Defendant Input/Output's acquisition of DigiCOURSE on or about October 10, 1998 was in violation of the HSR Act and that Defendants Input/Output and Laitram were in violation of the HSR Act each day of the period beginning on or about October 10, 1998 and ending on November 3, 1998;

2. That Defendant Input/Output be ordered to pay to the United States an appropriate civil penalty as provided by Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1) and 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;

3. That Defendant Laitram be ordered to pay to the United States an appropriate civil penalty as provided by Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1) and 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;

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: 4/12/99

FOR THE UNITED STATES OF AMERICA

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