

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;

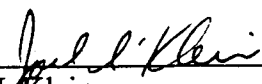
3. That Defendant Laitram be ordered to pay to the United States an appropriate civil penalty as provided by Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1) and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment 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

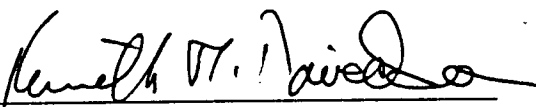
FOR THE UNITED STATES OF AMERICA

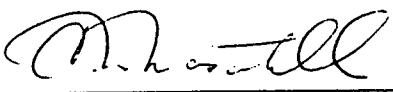
  
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Assistant Attorney General  
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220 Laitram Lane  
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Defendants.

Civil Action No.

99 0912

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) the parties consent that the Court may file and enter a Final Judgment in the form attached to this Stipulation, on the Court's own motion or on the motion of any party at any time, and without further notice to any party or other proceedings, if Plaintiff has not withdrawn its consent, which it may do at any time before the entry of judgment by serving notice of its withdrawal on Defendants, The Laitram Corporation and Input/Output, Inc., and filing that notice with the Court;

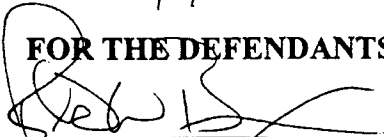
(2) Defendants, The Laitram Corporation and Input/Output, Inc., waive any objection to venue or jurisdiction for purposes of this Final Judgment and authorize their respective attorneys, Paul T. Denis of Arnold & Porter and Ronald Breaux of Haynes and Boone, L.L.P., to accept service of all process in this matter on their behalf; and

(3) in the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.



Dated: 1/9/91

**FOR THE DEFENDANTS:**

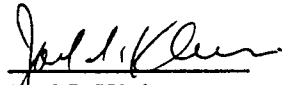


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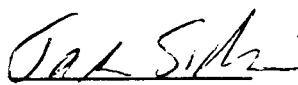
**FOR THE PLAINTIFF:**



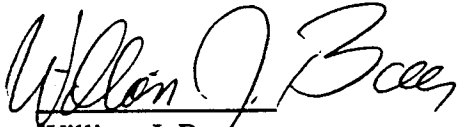
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Assistant Attorney General



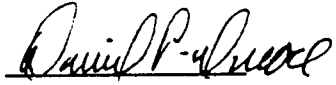
Constance K. Robinson  
Director of Merger Enforcement



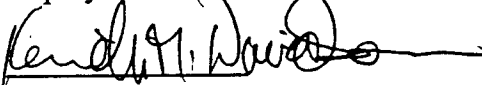
Jack Sidorov  
Attorney



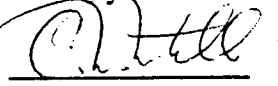
William J. Baer  
Director



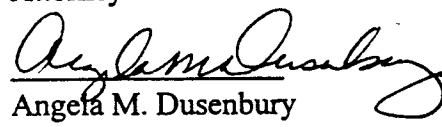
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and

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Defendants.

Civil Action No.

99 0912

**FINAL JUDGMENT**

Plaintiff, the United States of America ("United States"), having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendants, The Laitram Corporation and Input/Output, Inc., by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by the Defendants with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendants. The Complaint states a claim upon which relief can be granted against the Defendants under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendants, and, pursuant to Section 7A(g)(1) of the Clayton 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), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996), Defendant The Laitram Corporation is hereby ordered to pay a civil penalty in the amount of \$225,000, and Defendant Input/Output, Inc. is hereby ordered to pay a civil penalty in the amount of \$225,000. Payment of the civil penalties ordered hereby shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division, Department of Justice, Liberty Place, 325 7th Street, Suite 200, N.W., Washington, D.C., 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of entry of this Final Judgment. In the event of a default in payment, interest at

the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_, 1999.

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United States District Judge

IN THE UNITED STATES DISTRICT COURT  
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Defendants.

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C JUDGE: Thomas Penfield Jackson

DECK TYPE: Antitrust

DATE STAMP: 04/12/99

**MOTION FOR ENTRY OF JUDGMENT**

Plaintiff, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendant Input/Output, Inc. ("Input/Output") and Defendant The Laitram Corporation ("Laitram") (collectively, "the Defendants"). By agreement of the parties, the Final Judgment against the Defendants provides for the payment of a civil penalty totaling \$225,000 by Defendant Input/Output and a civil penalty totaling \$225,000 by Defendant Laitram pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1).

## STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that Defendants violated Section (a) of Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("Hart-Scott-Rodino Act" or "Act"), Section 7A of the Clayton Act, 15 U.S.C. § 18a, which requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notification with the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. The Complaint alleges that the Defendants were in continuous violation of the HSR Act each day at least for the period beginning on or about October 10, 1998, and ending on November 3, 1998. Section (g)(1) of the Hart-Scott-Rodino Act, Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of the Act.<sup>1</sup> Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, within 30 days of entry of the Final Judgment, Defendant Input/Output has agreed to pay civil penalties totaling \$225,000 and Defendant Laitram has agreed to pay civil penalties totaling \$225,000.

The United States does not believe that the procedures of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), are required in this action. The APPA requires that any proposal for a "consent judgment" submitted by the United States in a civil case filed "under the

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<sup>1</sup> This amount was increased to a maximum civil penalty of \$11,000 per day for violations occurring on or after November 20, 1996, pursuant to the Debt Collection Act of 1996, Pub. L. 104-134 § 31001(s) and FTC Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996).

antitrust laws" be filed with the court at least 60 days in advance of its effective date, published in the Federal Register and a newspaper for public comment, and reviewed by the court for the purpose of determining whether it is in the public interest. Key features of the APPA are preparation by the United States of a "competitive impact statement" explaining the proceeding and the proposed judgment, and the consideration by the court of the proposed judgment's competitive impact and its impact on the public generally as well as individuals alleging specific injury from the violation set forth in the Complaint.

The procedures of the APPA are not required in this action because the Complaint seeks, and the Final Judgment provides for, only the payment of civil penalties. In our view, a consent judgment in a case seeking only monetary penalties is not the type of "consent judgment" Congress had in mind when it passed the APPA. Civil penalties are intended to penalize the defendant for violating the law, and, unlike injunctive relief, have no "competitive impact," and no effect on other persons or on the public generally, within the context of the APPA. The legislative history of the APPA does not contain any indication that Congress intended to subject settlements of civil penalty actions to its competitive impact review procedures.

Thus, courts to date have not required use of APPA procedures in cases involving only the payment of civil penalties. Indeed, courts in this district have consistently entered consent judgments for

civil penalties under the Hart-Scott-Rodino Act without employing APPA procedures.<sup>2</sup> Previously, in *United States v. ARA Services, Inc.*, 1979-2 CCH Trade Cases ¶ 62,861 (E.D. Mo.), a consent judgment calling for both equitable relief and civil penalties was approved by the court on August 14, 1979, after the United States had taken the position in APPA proceedings that the civil penalties component of that judgment was not open to public objection. *See* 44 Fed. Reg. 41583 (July 17, 1979).<sup>3</sup> There are no circumstances favoring the use of APPA procedures in this case.

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<sup>2</sup> *See, e.g., United States v. The Loewen Group Inc.*, 1998-1 Trade Cas. (CCH) ¶ 72,151 (D.D.C.); *United States v. Mahle GMBH et al.*, 1997-2 Trade Cas. (CCH) ¶ 71,868 (D.D.C.); *United States v. Figgie Int'l, Inc.*, 1997-1 Trade Cas. (CCH) ¶ 71,766 (D.D.C.); *United States v. Foodmaker, Inc.*, 1996-2 Trade Cas. (CCH) ¶ 71,555 (D.D.C.); *United States v. Titan Wheel International, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,406 (D.D.C.); *United States v. Automatic Data Processing, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,361 (D.D.C.); *United States v. Trump*, 1988-1 Trade Cas. (CCH) ¶ 67,968 (D.D.C.); *United States v. First City Financial Corp., Ltd.*, 1988-1 Trade Cas. (CCH) ¶ 67,967 (D.D.C.); *United States v. Wickes Companies, Inc.*, 1988-1 Trade Cas. (CCH) ¶ 67,966 (D.D.C.). In each case, the United States noted the issue in a motion for entry of judgment, explaining to the court that it believed the APPA inapplicable.

<sup>3</sup> In the first case brought under the Hart-Scott-Rodino Act, *United States v. Coastal Corp.*, 1985-1 Trade Cas. (CCH) ¶ 66,425 (D.D.C.), the United States -- noting its view that the APPA was not applicable -- chose to employ the APPA procedures, believing that those procedures would in that particular case help describe to the public the circumstances and events that gave rise to the complaint and final judgment. 49 Fed. 36455 (Sept. 17, 1984). In one other civil penalties case under the Hart-Scott-Rodino Act, the APPA procedures were followed. In *United States v. Bell Resources Ltd.*, 1986-2 Trade Cas. (CCH) ¶ 67,321 (S.D.N.Y.), the complaint sought injunctive relief in addition to civil penalties.



For the above reasons, the United States asks the Court to enter the Final Judgment in this

case.

Dated: 4/12/98

Respectfully submitted,



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Roberta Baruch

D.C. Bar No. 269266

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