MD, have been added as parties to this venture.

Also, MOG Solutions SA, Maia, PORTUGAL; and National TeleConsultants, Glendale, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 23, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 18, 2016 (81 FR 22633).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–17434 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on June 16, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: The Research Foundation for the State University of New York, acting on behalf of the State University of New York Polytechnic Institute, Albany, NY; The Trustees of Columbia University in the City of New York, New York, NY; The Regents of the University of California, on behalf of its Santa Barbara campus, Santa Barbara, CA; Massachusetts Institute of Technology, Cambridge, MA; Arizona Board of Regents on behalf of the University of Arizona, Tucson, AZ; The Rector and Visitors of the University of Virginia, Charlottesville, VA; and SunEdison Semiconductor Limited, St. Peters, MO.

The general area of AIM Photonics' planned activity is research, development and demonstration in the manufacture of integrated photonics. AIM Photonics seeks to (1) advance integrated photonic circuit manufacturing technology development while simultaneously providing access to state-of-the-art fabrication, packaging, and testing capabilities for commercial enterprises, academia and the government; (2) create an adaptive integrated photonic circuit workforce capable of meeting industry needs and thus further increasing domestic competitiveness; and (3) meet participating commercial, defense and civilian agency needs in this burgeoning technology area. AIM Photonics became the sixth Institute for Manufacturing Innovation. Its objective is to increase manufacturing in the United States.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–17435 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. VA Partners I, LLC, ValueAct Capital Master Fund, LP, and ValueAct Co-Invest International, LP; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States of America* v. *VA Partners I, LLC, et al.,* Civil Action No. 16-cv-01672. On April 4, 2016, the United States filed a Complaint against VA Partners I, LLC, ValueAct Capital Master Fund, L.P. and ValueAct Co-Invest International, L.P. (collectively ''ValueAct'' or ''Defendants'') alleging that ValueAct's acquisitions of voting securities of Halliburton Company and Baker Hughes Incorporated violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the ''HSR Act''). The proposed Final Judgment requires the Defendants to pay a civil penalty of $11,000,000 and further prohibits Defendants from engaging in conduct of the sort alleged in the Complaint, in violation of the HSR Act.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Northern District of California. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530 (telephone: 202–307–2931).

/s/

Patricia A. Brink,

Director of Civil Enforcement.

Kathleen S. O'Neill (PA Bar No. 82785)
Joseph Chandra Mazumdar (WI Bar No. 1030967)
Brian E. Hanna (VA Bar No. 80439)
Robert A. Lepore (AZ Bar No. 028137)
Tai Milder (CABN 267070)
United States Department of Justice, Antitrust Division
450 Fifth Street, NW., Suite 8000
Washington, DC 20530
Telephone: (202) 307–2931
Fax: (202) 307–2874
Email: *kathleen.oneill@usdoj.gov*
Brian J. Stretch (CABN 163973)
United States Attorney
[Additional counsel listed on signature page]
Attorneys for Plaintiff United States of America

United States District Court for the Northern District of California San Francisco Division

United States of America, Plaintiff, v. *VA Partners I, LLC, Valueact Capital Master*

Fund, L.P., Valueact Co-Invest International, L.P., Defendants.

Case No.: 16-cv-01672
Judge: William Alsup
Filed: 04/04/2016

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain civil penalties and equitable relief against the Defendants (collectively, ''ValueAct'') for failing to comply with the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''), and alleges as follows:

I. Introduction

1. The Hart-Scott-Rodino Act, 15 U.S.C. 18a, is an essential part of modern antitrust enforcement. It requires purchasers of voting securities in excess of a certain value to notify the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating the transaction. These obligations extend to acquisitions of minority interests. One limited exemption to these obligations applies if the purchaser's holdings constitute less than ten percent of the stock of the company and the acquisition is ''solely for the purpose of investment''—that is, the purchaser has no intention of participating in the company's business decisions.

2. ValueAct promotes itself as having a strategy of ''active, constructive involvement'' in the management of the companies in which it invests. This case concerns recent acquisitions by two ValueAct investment funds of over $2.5 billion of voting securities of Halliburton Company and Baker Hughes Incorporated. Halliburton and Baker Hughes are head-to-head competitors and two of the largest providers of oilfield products and services in the world. On November 17, 2014, Halliburton and Baker Hughes announced their intent to merge. Their proposed merger is the subject of an ongoing antitrust review in the United States and several other countries.

3. ValueAct began acquiring significant holdings of the two companies on the heels of the Halliburton/Baker Hughes merger announcement. From the beginning, ValueAct anticipated influencing the business decisions of the companies as the merger process unfolded. ValueAct sent memoranda to its investors outlining this strategy and explaining that purchasing a stake in each of these firms would allow it to ''be a strong advocate for the deal to close,'' which would in turn ''[i]ncrease probability of deal happening.'' If the deal encountered ''regulatory issues,'' ValueAct ''would be well positioned as an owner of both companies to help develop the new terms.'' ValueAct executives also discussed internally a back-up plan to ''sell at least some of Baker's pieces'' if the deal were blocked or abandoned.

4. ValueAct's purchases of Halliburton and Baker Hughes shares did not qualify for the narrow exemption from the requirements of the HSR Act for acquisitions made solely for the purpose of investment. ValueAct planned from the outset to take steps to influence the business decisions of both companies, and met frequently with executives of both companies to execute those plans.

5. These HSR Act violations allowed ValueAct to become one of the largest shareholders of both Halliburton and Baker Hughes, without providing the government its statutory right to notice and prior review of the stock purchases. ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatens to substantially lessen competition in numerous markets. ValueAct intended to use its position as a major shareholder of these companies to obtain access to management, to learn information about the merger and the companies' strategies in private conversations with senior executives, to influence those executives to improve the chances that the merger would be completed, and to influence other business decisions whether or not the merger went forward.

6. The Court should assess a civil penalty of at least $19 million to address ValueAct's violations of the HSR Act, and should restrain ValueAct from further violations.

II. Jurisdiction and Venue

7. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. 18a, added by Title II of the HSR Act, to recover civil penalties and equitable relief for violations of that section.

8. 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 pursuant to 28 U.S.C. 1331, 1337(a), 1345 and 1355. Each of the Defendants 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).

9. Venue is properly based in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(2), (c)(2). Each of the Defendants transacts or has transacted business in this district and has its principal place of business here.

III. Intradistrict Assignment

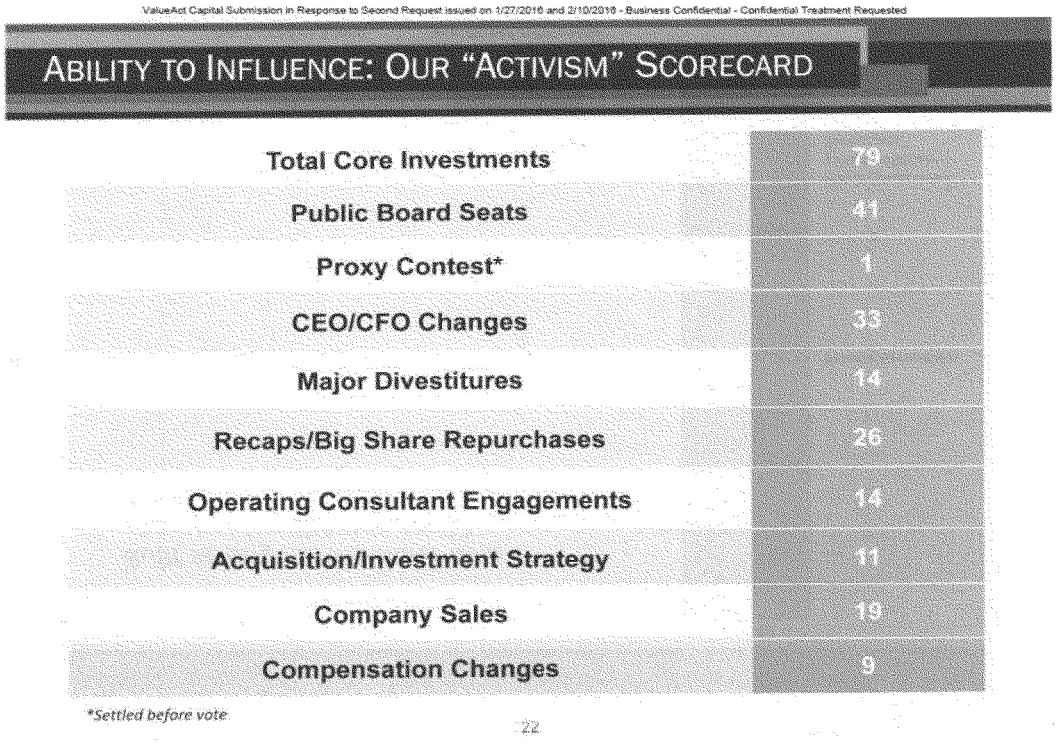
10. Assignment to the San Francisco Division is proper because this action arose primarily in San Francisco County. Many of the events that gave rise to the claims occurred in San Francisco, and Defendants' headquarters and principal places of business were during the relevant events, and continue to be, located in San Francisco.

IV. The Defendants

11. This case arises from acquisitions of stock over several months by two investment funds—ValueAct Master Capital Fund, L.P. (''Master Fund'') and ValueAct Co-Invest International, L.P. (''Co-Invest Fund''). Though separate entities for purposes of the HSR Act, both funds have the same general partner—VA Partners I, LLC (''VA Partners''). Master Fund and Co-Invest Fund are organized under the laws of the British Virgin Islands, and VA Partners is organized under the laws of Delaware. Master Fund, Co-Invest Fund, and VA Partners (collectively, ''ValueAct'' or ''Defendants'') all have the same principal office and place of business in San Francisco, California.

12. ValueAct is well known as an activist investor. In contrast to other large funds that focus on passive investment strategies to generate returns, ValueAct's Web site explains that it pursues a strategy of ''active, constructive involvement'' in the management of the companies in which it invests. The Web site further states, ''The goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders.''

13. ValueAct tracks its ''activism'' in these investments by various metrics, such as success in changing executive compensation, and touts these statistics in its presentations to potential investors as illustrated by the following slide from ValueAct's June 2015 presentation:



14. In presentations, ValueAct has explained that it likes ''disciplined oligopolies'' and looks to invest in businesses in ''[o]ligopolistic markets, high barriers-to-entry.''

15. ValueAct funds have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

V. Background

A. The Hart-Scott-Rodino Antitrust Improvements Act

16. The HSR Act requires parties to file a notification with the Federal Trade Commission and the Department of Justice and to observe a waiting period before consummating acquisitions of voting securities or assets that exceed certain value thresholds. These requirements give the antitrust enforcement agencies prior notice of, and information about, proposed transactions. The waiting period also provides the antitrust enforcement agencies with an opportunity to investigate and to seek an injunction to prevent the consummation of anticompetitive transactions.

17. The HSR Act contains certain limited exemptions to the notification and waiting period requirements. The acquirer of voting securities has the burden of showing eligibility for an exemption. One such exemption applies narrowly to acquisitions made ''solely for the purpose of investment'' if the voting securities held do not exceed ten percent of the outstanding voting securities of the issuer. 15 U.S.C. 18a(c)(9). The regulations implementing the Act explain that, to qualify for this exemption, the acquiring party must have ''no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.'' 16 CFR 801.1(i)(1).

B. ValueAct's Initial Investment Decision and Strategy

18. After Halliburton and Baker Hughes announced their intent to merge on November 17, 2014, ValueAct began purchasing stock in each company through its Master Fund and Co-Invest Fund. ValueAct continued to make purchases in both companies for several months, eventually acquiring over $2.5 billion in securities of the two companies combined.

19. As ValueAct was acquiring stock in these two companies in December 2014 and early January 2015, its executives were developing strategies to use ValueAct's ownership position to influence management of each firm as necessary to increase the probability of the deal being completed. ValueAct's Master Fund crossed the applicable HSR Act reporting thresholds for Baker Hughes and Halliburton on December 1 and December 5, 2014, respectively, and Master Fund continued to build up its position as its executives discussed strategy. These discussions culminated in the drafting of memoranda that ValueAct sent to its investors on January 16, 2015. These memoranda—one about Baker Hughes and one about Halliburton—explained ValueAct's decision to acquire stakes in these competitors through its Master Fund, and offered investors the opportunity to increase their stakes in these firms through additional share purchases by ValueAct's Co-Invest Fund.

20. These memoranda and other contemporaneous documents show that ValueAct's most senior executives planned from the outset to play an active role at Halliburton and Baker Hughes. The lead ValueAct partner responsible for the Baker Hughes investment internally circulated a draft of an investor memorandum explaining that ''our activist approach limits our downside in the unlikely case that the merger does not close.'' The draft further noted that if the merger were not completed, ValueAct ''would likely seek to take a more active role in overseeing the company.'' ValueAct's CEO then

requested an insertion into the memorandum highlighting that ValueAct's ''[a]ctive role'' is an additional reason to invest in both companies.

21. Although the memoranda ultimately shared with investors watered down the words used to describe ValueAct's activist strategy, they still emphasized that purchasing a stake in Halliburton and Baker Hughes would ''increase probability of deal happening'' and would allow ValueAct to be ''a strong advocate for the deal to close.'' ValueAct identified this as one of three ''key considerations'' supporting its investment decision. A contemporaneous email among ValueAct partners remarked that if Halliburton's shareholders threatened to vote against the deal, ValueAct's ''position in HAL should be meaningful enough to have a substantial role in those conversations.''

22. ValueAct also intended to help restructure the merger if it hit roadblocks. On December 16, 2014, ValueAct's CEO emailed his partners: ''if we own both we can drive new terms to get the deal done if weird [expletive] is happening.'' ValueAct also expressed this view in its memos to investors: ''In the event of further fundamental dislocation or regulatory issues, it is possible the deal would need to be restructured and we believe ValueAct Capital would be well positioned as an owner of both companies to help develop the new terms.''

23. In a December 2014 internal email, a ValueAct partner observed that ''[i]f the deal failed, the back-up plan would seem to be to sell at least some of Baker's pieces, and we think that we could get up to 12x EBITDA for just 2 of BHI's businesses—artificial lift and chemicals.'' ValueAct's memoranda to investors noted, ''Recent transactions in each of those industries [specialty chemicals and artificial lift] suggest that these businesses are worth north of 10 times EBITDA.'' Moreover, the Baker Hughes memorandum explained that there are ''numerous levers for the company to pull to drive margin expansion,'' and identified Baker Hughes's pressure pumping business as a good candidate for margin improvement.

24. Regardless of how the merger process unfolded, ValueAct intended to influence the business decisions of both companies. For example, on December 5, 2014, the day Master Fund's holdings in Halliburton crossed the HSR Act threshold, a ValueAct partner wrote an email to ValueAct's CEO about Halliburton: ''Wonder if it would be possible to get the VRX [Valeant Pharmaceuticals] comp plan in from outside the board room?'' The CEO responded ''Yes. Good idea.'' (ValueAct had recently convinced management to change the executive compensation plan at another of its investments, Valeant Pharmaceuticals.)

25. ValueAct also intended to play a role in Halliburton's efforts to integrate the two firms. ValueAct told its investors that its stake in Halliburton ''helps to further enhance our relationship with management and the board of directors as they work to complete the merger and integrate the business into Halliburton's existing operations.''

C. ValueAct's Efforts To Influence the Management of Both Companies

26. Consistent with its investment strategy of ''active, constructive involvement,'' ValueAct established a direct line to senior management at both Halliburton and Baker Hughes and met with them frequently from the time it started acquiring stock. From December 2014 through January 2016, ValueAct met in person or had teleconferences more than fifteen times with senior management of Halliburton or Baker Hughes, including meeting multiple times with the CEOs of both companies. ValueAct partners also exchanged a number of emails with management at both firms about the merger and the companies' respective operations.

27. ValueAct reached out to Baker Hughes immediately after it began purchasing shares. On December 1, 2014, the day Master Fund's holdings crossed the HSR Act threshold for Baker Hughes, a ValueAct partner told a Baker Hughes executive that ValueAct was positive on the merger but also liked ''that 20% of [Baker Hughes's] revenue comes from non-capital intensive business lines which could command a big multiple if sold.'' A few days later, ValueAct's CEO met in person with the CFO of Baker Hughes. According to Baker Hughes's notes of the meeting, ValueAct's CEO ''highlighted that it was critical that BHI continued focused [*sic*] on many of these improvement opportunities despite the acquisition. He specifically emphasized with graphs the largest gap/opportunities he saw.'' With respect to the gap in Baker Hughes's North American margins, ValueAct's CEO stated, ''Looking to learn with BHI on how to close that GAP [*sic*].'' ValueAct's CEO also discussed other areas ''that he thought BHI should continue to focus on as there was a lot of improvement opportunity.'' According to the notes, the meeting ended with ValueAct's CEO ''stating that they would remain in contact and sharing that they plan to be large shareholders of BHI.''

28. On January 16, 2015, ValueAct filed a Beneficial Ownership Report (Schedule 13D) with the Securities and Exchange Commission publicly disclosing its substantial stake in Baker Hughes and reporting that it might discuss ''competitive and strategic matters'' with Baker Hughes management, and might ''propos[e] changes in [Baker Hughes's] operations.'' Before submitting the Schedule 13D, ValueAct's CEO notified Halliburton's CEO of the impending filing on Baker Hughes, explaining that the filing ''gives us the flexibility to engage with the company [Baker Hughes] on all issues.'' Later the same day, ValueAct's CEO emailed Halliburton's CEO a copy of its investment memoranda for both Halliburton and Baker Hughes.

29. By February, after ValueAct had completed its outreach to investors seeking capital for additional share purchases, ValueAct began acquiring stock in Halliburton and Baker Hughes through Co-Invest Fund. On March 10, 2015, Co-Invest Fund's holdings in Halliburton crossed the applicable HSR Act reporting threshold.

30. Also in early March, ValueAct contacted Halliburton to offer assistance in advance of the shareholder vote on the merger. ValueAct offered Halliburton ''to speak with any of [Halliburton's] top shareholders about [ValueAct's] view of the merger prior to the vote.'' Halliburton responded that it would let ValueAct know if ValueAct's help became necessary.

31. In May 2015, ValueAct further engaged with Halliburton on the company's plans for post-merger integration. On May 13, ValueAct met with Halliburton's CEO to discuss actions that Halliburton could take in an attempt to achieve its target merger synergies. On May 27, a ValueAct partner called Halliburton's Chief Integration Officer to recommend a firm for real estate integration services. In a subsequent email exchange, another ValueAct partner emphasized the need to engage on these issues at the executive level, and stated that Halliburton's plan was ''a traditional approach likely to leave value on the table.'' Instead, the partner identified alternative ways the real estate firm could work with Halliburton to help achieve the synergy goals.

32. ValueAct also followed through on its idea for changing Halliburton's executive compensation plan. On July 14, 2015, ValueAct contacted Halliburton's CEO to schedule a meeting to discuss executive compensation. At

the meeting, which ultimately occurred in September, ValueAct delivered a thirty-five-page presentation detailing ValueAct's preferred approach, commenting on Halliburton's current plan, and proposing specific changes.

D. Consistent With Its Initial Plans, ValueAct Worked To Restructure the Merger or To Sell Parts of Baker Hughes

33. ValueAct carefully monitored the status of the antitrust review process and intended to intervene with the management of each firm as necessary to increase the probability of the deal being completed. ValueAct met with Baker Hughes's CEO in May 2015 and according to ValueAct's notes of that meeting, Baker Hughes's CEO ''seemed pretty worried about anti-trust, and implied odds deal goes through 70% or lower in his mind.'' ValueAct then continued to push management of both companies to preserve the deal or, if these efforts failed, to sell off pieces of Baker Hughes.

34. On August 31, 2015, ValueAct met with Baker Hughes's CEO ''to plant the seed to seek alternative options with other buyers if the deal falls through.'' In its initial investment analysis, the ValueAct partners had discussed selling individual Baker Hughes businesses as a back-up plan if the merger failed. ValueAct presented an updated analysis to argue this case to Baker Hughes. ValueAct also proposed restructuring the deal with Halliburton, suggesting that Baker Hughes should sell its pressure pumping, artificial lift, and specialty chemical businesses to Halliburton at a premium in lieu of receiving the merger termination fee.

35. According to ValueAct notes from the meeting, Baker Hughes's CEO was ''very committed to running BHI stand-alone if the deal fails and did not seem to entertain the idea of shopping the business piecemeal to other buyers.'' The notes explain that ValueAct agreed that the Baker Hughes CEO's plan to ''focus on technology-based product lines, and grow the business organically in these areas seems like the right areas to focus for the stand-alone company.'' But this plan was not what the ValueAct executives hoped for: ''the problem is that this story seems like a 4–5 year period with the stock not generating a great return over that period.'' According to Baker Hughes's notes of the meeting, the ValueAct executives registered disappointment with Baker Hughes's CEO, and informed him that Halliburton and Baker Hughes were ''the only investment ValueAct had where they did not have board seats.''

36. On September 18, 2015, ValueAct pitched its restructuring plan to Halliburton's CEO, advocating that Halliburton pursue selective acquisitions of Baker Hughes's production chemicals and artificial lift businesses. According to Halliburton's notes of the call, ValueAct suggested that Halliburton should offer a substantial sum to acquire these businesses and settle the $3.5 billion merger break-up fee at the same time.

37. During this conversation with the CEO of Halliburton, ValueAct shared Baker Hughes's plans if the merger could not close. According to Halliburton's notes of the call, ValueAct stated that if the merger could not be consummated, Baker Hughes's CEO intended to ''run the company like he did before.'' Halliburton's CEO then asked whether Baker Hughes's CEO was ''listening to VA.'' A ValueAct partner replied that Baker Hughes's CEO ''realize [*sic*] can go to his board directly.'' ValueAct also asked Halliburton's CEO if there was ''anything we [ValueAct] can do to be helpful,'' and explicitly offered to ''apply pressure to BHI CEO regarding unhappiness if he continues to run co. if deal does not go through.'' In short, ValueAct offered to use its position as a shareholder to pressure Baker Hughes's management to change its business strategy in ways that could affect Baker Hughes's competitive future.

38. ValueAct and Halliburton's willingness to discuss the competitive future of Baker Hughes in the absence of a merger is further confirmed by notes contained in ValueAct's files. These notes list ''3 options that Lazard [presumably Halliburton's CEO, David Lesar] discussed'' with respect to Baker Hughes. One of those options was ''Cripple a competitor.''

39. On November 5, 2015, ValueAct made a detailed fifty-five page presentation to Baker Hughes's CEO proposing operational and strategic changes to the company. The same day, ValueAct lobbied Halliburton's senior management to pursue alternative ways to get the deal done.

VI. Violations Alleged

40. Plaintiff alleges and incorporates paragraphs 1 through 39 as if set forth fully herein.

41. The HSR Act 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. Master Fund and Co-Invest Fund are each considered a separate person under the Act and are each obligated to comply with its requirements.

A. Count 1: Master Fund's Acquisition of Halliburton

42. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

43. On or about December 4, 2014, Master Fund began purchasing Halliburton voting securities. On or about December 5, 2014, Master Fund's aggregate value of Halliburton voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Halliburton voting securities until June 30, 2015, by which time Master Fund's aggregate value of Halliburton voting securities exceeded $1.4 billion.

44. Master Fund failed to file the required notification or to observe the required waiting period.

45. On or about January 27, 2016, Master Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

46. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning December 5, 2014, and ending on or about January 27, 2016.

B. Count 2: Co-Invest Fund's Acquisition of Halliburton

47. The HSR Act and applicable implementing regulations required that Co-Invest Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Co-Invest Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($76.3 million beginning in February 2016).

48. On or about February 24, 2015, Co-Invest Fund began purchasing Halliburton voting securities. On or about March 10, 2015, Co-Invest Fund's aggregate value of Halliburton voting securities exceeded the $76.3 million threshold. Co-Invest Fund continued to purchase Halliburton voting securities until March 12, 2015, by which time Co-Invest Fund's aggregate value of

Halliburton voting securities exceeded $138 million.

49. Co-Invest Fund failed to file the required notification or observe the required waiting period.

50. On or about January 22, 2016, Co-Invest Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

51. Co-Invest Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning March 10, 2015, and ending on or about January 22, 2016.

C. Count 3: Master Fund's Acquisition of Baker Hughes

52. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Baker Hughes that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

53. On or about November 28, 2014, Master Fund began purchasing Baker Hughes voting securities. On or about December 1, 2014, Master Fund's aggregate value of Baker Hughes voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Baker Hughes voting securities until January 15, 2015, by which time Master Fund's aggregate value of Baker Hughes voting securities exceeded $1.2 billion.

54. Master Fund failed to file the required notification or to observe the required waiting period.

55. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Baker Hughes voting securities each day beginning on December 1, 2014, and remains in violation of the HSR Act to the present.

VII. Request For Relief

Wherefore, Plaintiff requests:

(a) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(b) That the Court adjudge and decree that Defendant Co-Invest Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(c) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Baker Hughes, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(d) That the Court order Defendants 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 CFR § 1.98, 74 Fed. Reg. 858 (Jan. 9, 2009);

(e) That the Court enjoin Defendants from any future violations of the HSR Act;

(f) That the Court order such other and further relief as the Court may deem just and proper; and,

(g) That the Court award the Plaintiff its costs of this suit.

Dated:

Respectfully submitted,

For the Plaintiff United States of America:

/s/ _____

William J. Baer,
Assistant Attorney General.

/s/ _____

David I. Gelfand,
Deputy Assistant Attorney General.

/s/ _____

Patricia A. Brink (Cabn 144499),
Director of Civil Enforcement.

/s/ _____

Kathleen S. O'Neill,
Chief, Transportation, Energy, and Agriculture Section.

/s/ _____

Robert A. Lepore,
Assistant Chief, Transportation, Energy, and Agriculture Section.

/s/ _____

Joseph Chandra Mazumdar, Brian E. Hanna, Tai Milder, *Trial Attorneys.*

United States Department of Justice
Antitrust Division
450 Fifth Street, NW
Suite 8000
Washington, DC 20530
Telephone: (202) 307–2931
kathleen.oneill@usdoj.gov

/s/ _____

Brian J. Stretch (Cabn 163973), *United States Attorney.*
By Jonathan U. Lee (Cabn 148792),
Acting Chief, Civil Division
Assistant U.S. Attorney Office of the United States Attorney
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Telephone: (415) 436–7200
Email: jonathan.lee@usdoj.gov

Kathleen S. O'Neill
Joseph Chandra Mazumdar
Brian E. Hanna
Robert A. Lepore
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Tel: (202) 307–2931
Fax: (202) 307–2874
Email: *kathleen.oneill@usdoj.gov*
Email: *chan.mazumdar@usdoj.gov*
Email: *brian.hanna2@usdoj.gov*
Email: *robert.lepore@usdoj.gov*

Tai Milder
U.S. Department of Justice
Antitrust Division
450 Golden Avenue
Box 36046, room 10–0101
Tel: (415) 934–5300
Fax: (415) 934–5399
Email: *tai.milder@usdoj.gov*

Attorneys for Plaintiff United States of America

United States District Court for the Northern District of California San Francisco Division

UNITED STATES OF AMERICA, Plaintiff, v. *VA Partners I, LLC, et al.,* Defendants.

Case No.: 16–cv–01672
Judge: William Alsup
Filed: 07/12/2016

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. Nature and Purpose of this Proceeding

On April 4, 2016, the United States filed a Complaint against VA Partners I, LLC, (''VA Partners I''), ValueAct Capital Master Fund, L.P. (''Master Fund''), and ValueAct Co-Invest International, L.P. (''Co-Invest Fund'') (collectively, ''ValueAct'' or ''Defendants''), related to Master Fund's and Co-Invest Fund's acquisition of voting securities of Halliburton Co. (''Halliburton'') and Baker Hughes Incorporated (''Baker Hughes'') in 2014 and 2015.

The Complaint alleges that ValueAct violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''). The HSR Act states that ''no person shall acquire, directly or

indirectly, any voting securities of any person'' exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the ''agencies'') and the post-filing waiting period has expired. *Id.* A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

This case arises because ValueAct, an investment manager that is well known for actively involving itself in the management of the companies in which it invests, made substantial purchases of stock in two direct competitors with the intent to participate in those companies' business decisions, without complying with the notification and waiting period requirements of the HSR Act. Through these purchases, ValueAct simultaneously became one of the largest shareholders of both Halliburton and Baker Hughes. ValueAct established these positions as Halliburton and Baker Hughes—the second and third largest providers of oilfield services in the world—were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States. After the United States challenged that merger on April 6, 2016, Halliburton and Baker Hughes abandoned their anticompetitive plan to merge. ValueAct's failure to comply with the HSR Act prevented the agencies from reviewing ValueAct's acquisitions in advance, compromising the agencies' ability to protect competition and consumers.

The Complaint alleges that the Defendants could not rely on the HSR Act's limited exemption for acquisitions made ''solely for the purpose of investment'' (the ''investment-only exemption''). 15 U.S.C. 18a(c)(9) exempts ''acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer.'' Voting securities are held ''solely for the purpose of investment'' if the acquirer has ''no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.'' 16 CFR § 801.1(i)(1). As explained in the Complaint, ValueAct did not qualify for the investment-only exemption because it intended to participate in the business decisions of both companies.

The Complaint seeks a ruling that the Defendants' acquisitions of voting securities of Halliburton and Baker Hughes, without filing and observing the mandatory waiting period, violated the HSR Act. The Complaint asks the Court to issue an appropriate injunction and order the Defendants to pay an appropriate civil penalty to the United States.

On July 12, 2016, the United States filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to prevent and restrain Defendants' HSR Act violations. Under the proposed Final Judgment, which is explained more fully below, Defendants must pay a civil penalty of $11 million. Further, Defendants are prohibited from engaging in future conduct of the sort alleged in the Complaint.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Acquisitions of Halliburton and Baker Hughes Voting Securities

Master Fund and Co-Invest Fund are offshore funds organized under the laws of the British Virgin Islands, with each having a principal place of business in San Francisco, California. VA Partners I is the general partner of the Defendant Funds. VA Partners I is a limited liability company organized under the laws of Delaware, with its principal place of business in San Francisco, California.

ValueAct is well known as an activist investor. ValueAct's website explains that it pursues a strategy of ''active, constructive involvement'' in the management of the companies in which it invests. The website further elaborates: ''[t]he goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders.''

ValueAct entities have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct Capital Partners, L.P. agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

B. The Defendants' Unlawful Conduct

The Complaint in this case alleges that ValueAct violated the HSR Act in connection with acquisitions of voting securities of Halliburton and Baker Hughes in 2014 and 2015. In making these acquisitions, ValueAct improperly relied on the limited investment-only exemption from HSR filing requirements despite the fact that ValueAct intended from the outset to play an ''active role'' at both Halliburton and Baker Hughes. ValueAct's failure to file the necessary notifications prevented the Department from timely reviewing ValueAct's stock acquisitions, which risked harming competition given that they resulted in ValueAct's becoming one of the largest shareholders in two direct competitors that were pursuing an anticompetitive merger.

The Complaint alleges that ValueAct committed three distinct violations of the HSR Act. First, Defendant Master Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Second, Defendant Co-Invest Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Third, Defendant Master Fund acquired voting securities of Baker Hughes in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements.

As described in more detail in the Complaint, ValueAct intended from the time it made these stock purchases to use its position as a major shareholder of both Halliburton and Baker Hughes to obtain access to management, to learn information about the companies and the merger in private conversations with senior executives, to influence those executives to improve the chances that the Halliburton-Baker Hughes merger

would be completed, and ultimately influence other business decisions regardless of whether the merger was consummated. ValueAct executives met frequently with the top executives of the companies (both in person and by teleconference), and sent numerous emails to these the top executives on a variety of business issues. During these meetings, ValueAct identified specific business areas for improvement. ValueAct also made presentations to each company's senior executives, including presentations on post-merger integration. The totality of the evidence described in the Complaint makes clear that ValueAct could not claim the limited HSR exemption for passive investment.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains injunctive relief and requires payment of civil penalties, which are designed to prevent future violations of the HSR Act. The proposed Final Judgment sets forth prohibited conduct, and provides access and inspection procedures to enable the United States to determine and ensure compliance with the proposed Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment is designed to prevent future HSR violations of the sort alleged in the Complaint. Under this provision, the Defendants may not rely on the HSR Act's investment-only exemption if they intend to take, or their investment strategy identifies circumstances in which they may take, the following actions: (1) proposing a merger, acquisition, or sale to which the issuer of the acquired voting securities is a party; (2) proposing to another person in which the Defendant has an ownership stake the potential terms for a merger, acquisition, or sale between the person and the issuer; (3) proposing new or modified terms for a merger or acquisition to which the issuer is a party; (4) proposing an alternative to a merger or acquisition to which the issuer is a party, either before consummation or upon abandonment; (5) proposing changes to the issuer's corporate structure that require shareholder approval; or (6) proposing changes to the issuer's strategies regarding pricing, production capacity, or production output of the issuer's products and services.

The HSR Act exempts acquisitions made ''*solely* for the purpose of investment.'' 15 U.S.C. 18a(c)(9) (emphasis added). As explained in the regulations implementing the HSR Act, an acquirer must have ''*no intention* of participating in the formulation, determination, or direction of the basic business decisions of the issuer'' to qualify for the investment-only exemption. 16 CFR § 801.1(i)(1) (emphasis added).

ValueAct did not have a passive intent when it acquired stock in Halliburton and Baker Hughes. The proposed merger of these competitors was central to ValueAct's investment strategy. As described in the Complaint, ValueAct intended from the outset to use its ownership stake in each firm to influence the firm's management, as necessary, to increase the probability of the merger being consummated or propose alternatives if it could not be completed. An investor who is considering influencing basic business decisions—such as merger and acquisition strategy, corporate restructuring, and other competitively significant business strategies (*e.g.,* relating to price, production capacity, or production output)—is not passive. Therefore, ValueAct was not entitled to rely on the investment-only exemption.

The prohibited conduct provision of the proposed Final Judgment is aimed at deterring future HSR violations of the sort alleged in the Complaint, in particular, those that pose the greatest threat to competition. This provision does not represent a comprehensive list of all conduct that would disqualify an acquirer of voting securities from relying on the investment-only exemption of the HSR Act. Other actions, including but not limited to those described in the Statement of Basis and Purpose accompanying the HSR Rules to implement the Act, may disqualify an acquirer from relying on the investment-only exemption. Premerger Notification: Reporting and Waiting Period Requirements, 43 Fed. Reg. 33,450, 34,465 (July 31, 1978) (identifying conduct that may be inconsistent with the investment-only exemption).

In light of ValueAct's conduct at issue in this case and its past violations, this injunction is an appropriate means to ensure that ValueAct is deterred from violating the HSR Act again. If ValueAct does violate any of the provisions of the proposed Final Judgment, the Court may impose additional sanctions for contempt, if appropriate.

B. Compliance

Section V of the proposed Final Judgment sets forth required compliance procedures. Section V requires the Defendants to designate a compliance officer, who is required to distribute a copy of the Final Judgment to each person who has responsibility for, or authority over, each Defendant's acquisitions of voting securities. The compliance officer is also required to obtain a certification form from each such person verifying that he or she has received a copy of the Final Judgment and understands his or her obligations.

To help ensure that the Defendants comply with the Final Judgment, Section VI grants duly authorized representatives of the United States Department of Justice (''DOJ'') access, upon reasonable notice, to each Defendant's records and documents relating to matters contained in the Final Judgment. The Defendants must also make their personnel available for interviews or depositions regarding such matters. In addition, the Defendants must, upon written request from duly authorized representatives of the Assistant Attorney General in charge of the DOJ's Antitrust Division, submit written reports relating to matters contained in the Final Judgment.

C. Civil Penalties

The HSR Act currently provides a maximum civil penalty of $16,000 per day for each day a defendant is in violation of the Act. This maximum penalty will be adjusted to $40,000 per day as of August 1, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 Fed. Reg. 42,476 (June 30, 2016). The proposed Final Judgment imposes an $11 million civil penalty for the Defendants' failure to comply with the notice and waiting requirements of the HSR Act.

The Department considered several factors in assessing what penalty would be appropriate in this case. First, the facts as described in the Complaint make clear that ValueAct intended to take an active role in the business decisions of both Halliburton and Baker Hughes, and ValueAct should have recognized its filing obligation. To the extent that ValueAct had any doubt about its obligations, it could have sought the advice of the Federal Trade Commission's Premerger Notification Office, but did not do so. Second, as discussed above, ValueAct has previously violated the HSR Act six times. Finally, although the HSR Act is a strict liability statute, the Department considers it an aggravating factor that the transactions at issue raised substantive competitive concerns. ValueAct became one of the largest shareholders of two direct competitors,

and proceeded to actively and simultaneously participate in the management of each company. Moreover, ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States, and planned to intervene to influence the probability that the merger would be completed or to determine the companies' courses if it was not. As a result, the violations prejudiced the Department's ability to enforce the antitrust laws.

Together, these factors call for a substantial penalty. However, the Department did adjust the penalty downward from the maximum because the Defendants are willing to resolve the matter by consent decree and avoid prolonged litigation. Despite the downward adjustment, the penalty in this case will be the largest penalty ever imposed for a violation of the HSR Act. Such a penalty appropriately reflects the gravity of the conduct at issue, and will deter ValueAct and other companies from violating the HSR Act.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to:

Kathleen S. O'Neill
Chief, Transportation, Energy and Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Email: *kathleen.oneill@usdoj.gov*

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, the United States is satisfied that the injunction coupled with the proposed civil penalty is sufficient to address the violations alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that remedies contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not '' 'engage in an unrestricted evaluation of what relief would best serve the public.' '' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,*

[1] The 2004 amendments substituted ''shall'' for ''may'' when setting forth the relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983)); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (stating that ''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: July 12, 2016

Respectfully Submitted,

/s/ Kathleen S. O'Neill

Kathleen S. O'Neill
U.S. Department of Justice
Antitrust Division
450 5th St. NW., 8000
Washington, DC 20530
Tel: (202) 307–2931
Fax: (202) 307–2784
Email: *kathleen.oneill@usdoj.gov*

Kathleen S. O'Neill
Joseph Chandra Mazumdar
Brian E. Hanna
Robert A. Lepore
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW., Suite 8000
Washington, DC 20530
Tel: (202) 307–2931

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Fax: (202) 307–2874
Email: *kathleen.oneill@usdoj.gov*
Email: *chan.mazumdar@usdoj.gov*
Email: *brian.hanna2@usdoj.gov*
Email: *robert.lepore@usdoj.gov*
Tai Milder
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
Box 36046, room 10–0101
Tel: (415) 934–5300
Fax: (415) 934–5399
Email: *tai.milder@usdoj.gov*
Attorneys for Plaintiff United States of America

United States District Court for the Northern District of California San Francisco Division

United States of America, Plaintiff, v. *VA Partners I, LLC, et al.,* Defendants.

Case No.: 16–cv–01672
Judge: William Alsup
Filed: 07/12/2016

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America (''United States'') filed its Complaint on April 4, 2016, alleging that VA Partners I, LLC, ValueAct Capital Master Fund, L.P., and ValueAct Co-Invest International, L.P. (collectively, ''ValueAct'' or ''Defendants'') violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''), and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or an admission by, the Defendants with respect to any such issue of fact or law;

AND WHEREAS Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

The Court has jurisdiction over the subject matter of this action. The Defendants consent solely for the purpose of this action and the entry of this Final Judgment that this Court has jurisdiction over each of the parties to this action and that 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. Definitions

As used in this Final Judgment:

(A) ''Covered Acquisition'' means an acquisition of Voting Securities of an Issuer that is subject to the reporting and waiting requirements of the HSR Act, 15 U.S.C. § 18a, and that is not otherwise exempt from the requirements of the HSR Act, but for which Defendant have not reported under the HSR Act, in reliance on the exemption pursuant to Section (c)(9) of the HSR Act, 15 U.S.C. § 18a(c)(9).

(B) ''Issuer'' means a legal entity that issues Voting Securities.

(C) ''Officer or Director'' means (1) the members of the Issuer's board of directors; (2) those persons whose positions are designated by the bylaws or articles of incorporation of the Issuer, its parent, or any subsidiary of the Issuer; or (3) those persons whose positions are appointed by the board of the Issuer, its parent, or any subsidiary of the Issuer. If there are no persons who meet the criteria listed above, ''Officer or Director'' means those individuals whose capacities and duties are similar to the officers or directors of a corporation, including deciding whether to make the acquisition or sale of a business. Notwithstanding the foregoing, Officer or Director shall not include any persons whose job responsibilities primarily relate to investor relations.

(D) The terms ''Person(s)'' and ''Voting Securities'' have the meanings as defined in the HSR Act and Regulations promulgated thereunder, 16 CFR §§ 801–803.

(E) ''Propose'' means communicating a plan of action for consideration, discussion or adoption.

(F) ''ValueAct Partners I, LLC'' means Defendant ValueAct Partners I, LLC, a limited liability company and general partner of Defendants ValueAct Master Capital Fund, L.P. and ValueAct Co-Invest International, L.P., organized under the laws of Delaware, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

(G) ''ValueAct Master Capital Fund, L.P.'' means Defendant ValueAct Master Capital Fund, L.P., an offshore fund organized under the laws of the British Virgin Islands, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

(H) ''ValueAct Co-Invest International, L.P.'' means Defendant ValueAct Co-Invest International, L.P., an offshore fund organized under the laws of the British Virgin Islands, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

III. Applicability

This Final Judgment applies to all Defendants, including each of their directors, officers, general partners, managers, agents, parents, subsidiaries, successors, and assigns, all in their capacities as such, and to all other Persons and entities that are in active concert or participation with any of the foregoing with respect to conduct prohibited in Section IV when the relevant Persons or entities have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Each Defendant is enjoined from making a Covered Acquisition, without filing and observing the waiting period as required by the HSR Act, 15 U.S.C. § 18a, if at the time of such Covered Acquisition (i) the Defendant intends to take any of the below actions, or (ii) the Defendant's investment strategy specific to such Covered Acquisition identifies circumstances in which the Defendant may take any of the below actions:

(A) Propose to an Officer or Director of the Issuer that the Issuer merge with, acquire, or sell itself to another Person;

(B) Propose to an Officer or Director of any other Person in which the Defendant owns Voting Securities or an equity interest the potential terms on which that Person might merge with, acquire, or sell itself to the Issuer;

(C) Propose to an Officer or Director of the Issuer new or modified terms for any publicly announced merger or acquisition to which the Issuer is a party;

(D) Propose to an Officer or Director of the Issuer an alternative to a publicly announced merger or acquisition to which the Issuer is a party, either before consummation of the publicly announced merger or acquisition or upon its abandonment;

(E) Propose to an Officer or Director of the Issuer changes to the Issuer's corporate structure that require shareholder approval; or,

(F) Propose to an Officer or Director of the Issuer changes to the Issuer's strategies regarding the pricing of the Issuer's product(s) or service(s), its production capacity, or its production output.

V. Compliance

(A) Defendants shall maintain a compliance program that shall include designating, within thirty (30) days of the entry of this Final Judgment, a Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Compliance Officer

shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Compliance Officer shall be responsible for accomplishing the following activities:

(1) Distributing, within thirty (30) days of the entry of this Final Judgment, a copy of this Final Judgment to any Person who has responsibility for or authority over acquisitions by Defendants of Voting Securities;

(2) Distributing, within thirty (30) days of succession, a copy of this Final Judgment to any Person who succeeds to a position described in Section V.A.1; and

(3) Obtaining within sixty (60) days from the entry of this Final Judgment, and once within each calendar year after the year in which this Final Judgment is entered during the term of this Final Judgment, and retaining for the term of this Final Judgment, a written certification from each Person designated in Sections V.A.1 and V.A.2 that he or she: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment.

(B) Within sixty (60) days of the entry of this Final Judgment, Defendants shall certify to Plaintiff that they have (1) designated a Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section V.A.1.

(C) If any of Defendants' directors or officers or the Compliance Officer learns of any violation of this Final Judgment, Defendants shall within ten (10) business days make a corrective filing under the HSR Act.

VI. Plaintiff's Access and Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiff's option, to require Defendants to provide copies of all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

(2) To interview, informally or on the record, Defendants' directors, officers, employees, agents or other Persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Final Judgment shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States or of the Federal Trade Commission, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1) of the Federal Rules of Civil Procedure,'' then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VII. Civil Penalty

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 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74 § 701 (amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), Defendants are hereby ordered to pay a civil penalty in the amount of eleven million dollars ($11,000,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendants shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514–2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to:

Janie Ingalls
United States Department of Justice
Antitrust Division, Antitrust Documents Group
450 5th Street, NW, Suite 1024
Washington, DC 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.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

IX. Expiration of Final Judgment

This Final Judgment shall expire ten (10) years from the date of its entry.

X. Costs

Each party shall bear its own costs.

XI. Public Interest Determination

The entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

Hon. William Alsup,
United States District Judge.

[FR Doc. 2016–17432 Filed 7–22–16; 8:45 am]

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