

JUSTICE NEWS

Department of Justice

Office of Public Affairs

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Justice Department Obtains Record Fine and Injunctive Relief against Activist Investor for Violating Premerger Notification Requirements

ValueAct to Pay \$11 Million for Investing in Halliburton and Baker Hughes without Notifying Antitrust Authorities

The Department of Justice announced today that ValueAct has agreed to pay \$11 million to settle allegations that certain ValueAct entities violated the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”). As part of the settlement, ValueAct has also agreed to injunctive relief designed to prevent future violations.

On Nov. 17, 2014, Baker Hughes and Halliburton – two of the three largest providers of oilfield products and services in the world – announced their plan to merge in a deal valued at \$35 billion. Thereafter, ValueAct, an activist investment firm, purchased over \$2.5 billion of Halliburton and Baker Hughes voting shares without complying with the HSR Act’s notification requirements. According to a complaint filed on April 4, 2016 in the U.S. District Court for the Northern District of California, ValueAct purchased these shares with the intent to influence the companies’ business decisions – including decisions related to the merger – and therefore could not rely on the limited “investment-only” exemption to the HSR Act’s notification requirements. The complaint details how ValueAct used its access to senior executives of both Halliburton and Baker Hughes to attempt to influence the companies’ proposed merger and other aspects of their businesses. Halliburton and Baker Hughes abandoned their proposed merger on May 2, 2016 after the Antitrust Division sued to block it in U.S. District Court for the District of Delaware.

“ValueAct acquired substantial stakes in Halliburton and Baker Hughes in the midst of our antitrust review of the companies’ proposed merger, and used its position to try to influence the outcome of that process and certain other business decisions,” said Principal Deputy Assistant Attorney General Renata Hesse, head of the Justice Department’s Antitrust Division. “ValueAct was not entitled to avoid the HSR requirements by claiming to be a passive investor, while at the same time injecting itself in this manner. The HSR notification requirements are the backbone of the government’s merger review process, and crucial to our ability to prevent anticompetitive mergers and acquisitions. Today’s record penalty and important injunctive relief demonstrate our continued commitment to vigorous enforcement of these important notification and waiting period requirements.”

The HSR Act imposes notification and waiting period requirements for transactions meeting certain size thresholds to ensure that such transactions undergo premerger antitrust review by the department and the Federal Trade Commission. The HSR Act has a narrow exemption for acquisitions of less than 10 percent of a company’s outstanding voting securities if the acquisition is made “solely for the purposes of investment” and the purchaser has no intention of participating in the company’s business decisions.

Federal courts can assess civil penalties for premerger notification violations under the HSR Act in lawsuits brought by the department. The current maximum civil penalty for an HSR violation is \$16,000 per day; however, the maximum penalty will increase to \$40,000 per day effective Aug. 1, 2016.

As part of the settlement, ValueAct agreed to pay a record \$11 million. The highest fine previously paid for an HSR violation was \$5.67 million. ValueAct is also enjoined from relying on the “investment-only” exemption when it intends to influence, or is considering influencing, certain basic business decisions, including those relating to merger and

acquisition strategy, corporate restructuring, and the company's pricing, production capacity, or production output.

ValueAct is an investment firm headquartered in San Francisco that manages over \$16 billion on behalf of investors.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the Northern District of California may enter the final judgment upon finding that it serves the public interest.

[ValueAct Explanation](#)

[ValueAct CIS](#)

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[ValueAct Stipulation with Proposed Order](#)

16-800

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Topic:
Antitrust

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