

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

_____)	
In the matter of)	
)	
Chicago Bridge & Iron Company N.V.,)	
a foreign corporation,)	Docket No. 9300
)	
Chicago Bridge & Iron Company,)	
a corporation, and)	
)	
Pitt-Des Moines, Inc.,)	
a corporation.)	
_____)	

ORDER

I.

IT IS HEREBY ORDERED that for purposes of this Order, the following definitions shall apply:

- A. “CB&I” means Respondent Chicago Bridge & Iron Company N.V. and Respondent Chicago Bridge & Iron Company, individually and collectively.
- B. “Chicago Bridge & Iron Company N.V.” means Chicago Bridge & Iron Company N.V., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Chicago Bridge & Iron Company N.V., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.
- C. “Chicago Bridge & Iron Company” means Chicago Bridge & Iron Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Chicago Bridge & Iron Company, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.
- D. “PDM” means Pitt-Des Moines, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and

affiliates controlled by Pitt-Des Moines, Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

- E. “Commission” means the Federal Trade Commission.
- F. “Respondents” means CB&I and PDM, individually and collectively.
- G. “Acquirer” means an entity approved by the Commission to acquire New PDM pursuant to this Order.
- H. “Acquisition” means the transaction between CB&I and PDM, consummated on February 7, 2001, in which CB&I acquired the assets and business of PDM’s Water Division and Engineered Construction Division.
- I. “Administrative Services” means accounting, purchasing, warehousing, and other administrative services needed to operate a Tank Business.
- J. “CB&I Assets Contribution” means the assets required to be contributed by CB&I to New PDM pursuant to Paragraph II.D. of this Order.
- K. “CB&I Customer Contracts Contribution” means the Customer Contracts required to be contributed by CB&I to New PDM and required to be transferred to the Acquirer, pursuant to Paragraph II.C. of this Order.
- L. “CB&I License” means (i) the license required to be granted by CB&I to the Acquirer pursuant to Paragraph II.E. of this Order and (ii) such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable the Acquirer to utilize the licensed rights.
- M. “CB&I Tank Assets” means all of CB&I’s right, title, and interest in and to all assets, tangible or intangible, relating to CB&I’s Tank Business, including all assets required to be divested as New PDM pursuant to this Order.
- N.

- Q. “Initial Business Cycle” means the time required for the Acquirer to complete 90% (measured by receipt of revenues) of the Customer Contracts initially held by it upon completion of the divestiture required by Paragraph II.A. of this Order.
- R. “Intellectual Property” means, without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, copyrights, copyright registrations and applications, in both published works and unpublished works; (ii) all patents, patent applications, and inventions and discoveries that may be patentable; and (iii) all know-how, trade secrets, confidential information, customer lists, customer records and files, bidding and estimating documents, software, technical information, data, registrations, applications for governmental approvals, processes and inventions, practices, standards, formulae, recipes, methods, and product and packaging specifications.
- S. “Monitor” means the Person appointed pursuant to Paragraph V. of this Order.
- T. “New PDM” means the business entity required to be created by CB&I pursuant to this Order consisting of (1) the PDM Assets; (2) all rights to use of the name “Pitt-Des Moines,” in connection with the Tank Business, all business names, trading names, registered and unregistered trademarks, service marks, and applications relating to PDM’s Tank Business prior to the Acquisition; (3) the CB&I Customer Contracts Contribution; (4) the CB&I Assets Contribution; (5) the CB&I License; and (6) the Transferred Employees.
- U. “PDM Assets” means all right, title, and interest in and to all assets, tangible or intangible, acquired by CB&I from PDM in the Acquisition, and any improvements or additions made to such assets by CB&I subsequent to the Acquisition, including but not limited to:
1. All real property (including fee simple interests and real property leasehold interests), including, but not limited to, the fabrication facilities located at (i) Provo, Utah; (ii) Clive, Iowa; and (iii) Warren, Pennsylvania;
 2. All personal property;
 3. All inventories, stores, and supplies;
 4. All rights under any contract, including, but not limited to, any lease, Customer Contracts, supply agreement, sole-source arrangement, and procurement contract;
 5. All Intellectual Property;

6. All governmental approvals, consents, licenses, permits, waivers, or other authorizations;
7. All rights under warranties and guarantees, express or implied;
8. All items of prepaid expense; and
- 9.

II.

IT IS FURTHER ORDERED that:

- A. No later than 180 days from the date Paragraph II.A. of this Order becomes final, Respondents shall divest New PDM, absolutely and in good faith, at no minimum price, only to an Acquirer that receives the prior approval of the Commission and only in a manner (including an executed divestiture agreement, which shall not vary from or contradict, or be construed to vary from or contradict, the terms of this Order) that receives the prior approval of the Commission.
- B. Respondents shall comply with all terms of the divestiture agreement approved by the Commission pursuant to this Order, which agreement shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such divestiture agreement shall constitute a failure to comply with this Order.
- C. No later than the date New PDM is divested, CB&I shall:
 - 1. transfer and assign to New PDM the Customer Contracts that the Acquirer identifies and nominates, in consultation with Respondents, the Monitor and FTC staff;
 - 2. provide the Acquirer with access to, and an opportunity to review, all Customer Contracts, in advance of the divestiture of New PDM, in order to facilitate the identification and nomination of such Customer Contracts;
 - 3. transfer and assign such Customer Contracts to the Acquirer of New PDM, and shall assure that the Customer Contracts transferred and assigned to the Acquirer of New PDM:
 - (a) have a total monetary value of no less than 45% of the total combined dollar value of CB&I's Tank Business Customer Contracts;
 - (b) include agreements at least 50% of which shall be for work to be performed in the United States;
 - (c) are equitably apportioned among the types of products relating to CB&I's Tank Business; and
 - (d) to the extent possible, as between CB&I and the Acquirer, are apportioned equally among agreements for work relating to the Relevant Products; *provided, however*, that to the extent the Customer Contracts within a Relevant Product cannot be divided equally, then CB&I and the Acquirer

shall divide equally the total number of Customer Contracts with respect

Customer Contracts Contribution, the CB&I Assets Contribution, and the Transferred Employees.

- I. Upon the request of the Acquirer, pursuant to a divestiture agreement that receives the prior approval of the Commission, and for a period not to exceed the Initial Business Cycle:
 1. CB&I shall provide Technical Assistance to the Acquirer sufficient to enable the

- C. Respondents shall cooperate with any Monitor appointed by the Commission pursuant to Paragraph V. of this Order in the performance of his or her obligations.

IV.

IT IS FURTHER ORDERED that:

- A. Except in the course of performing their obligations under this Order, Respondents shall not (i) provide, disclose, or otherwise make available any New PDM Information to any Person or (ii) use any New PDM Information for any reason or purpose.
- B. Respondents shall disclose New PDM Information (i) only to a Person who requires such information for the purposes permitted under this Paragraph IV, (ii) only to the extent such part of the New PDM Information is so required, and (iii) only to such Person who agrees in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV as to any Person and take such action as is necessary, including training, to cause each such Person to comply with the terms of this Paragraph IV, including any actions that Respondents would take to protect their own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

- A. At any time after this Order is final, the Commission may appoint a Person (“Monitor”) to monitor Respondents’ compliance with their obligations under this Order, consult with Commission staff and report to the Commission regarding Respondents’ compliance with

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confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission (or any Person retained by the Monitor pursuant to Paragraph V.B.5. of this Order), of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor, for any purpose other than performance of the Monitor's duties under this Order.

3. The Monitor's power and duties under this Paragraph V. shall terminate three business days after the Monitor has completed his or her final report pursuant to Paragraph V.B.8.(ii), or at such other time as directed by the Commission.
4. Respondents shall provide the Monitor with full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order, or to any other relevant information, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph V.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph V.B.5. of this Order.
7. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor in the same manner as provided by this Order.
8. The Monitor shall report in writing to the Commission (i) every sixty (60) days from the date the Monitor is appointed, (ii) no later than thirty (30) days from the

end of the Initial Business Cycle, and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

- C. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested, absolutely and in good faith, New PDM within the time and manner required by Paragraph II.A. of this Order, the Commission may at any time appoint a Divestiture Trustee to divest New PDM in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including appointment of a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI., Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effect the divestiture for which he or she has been appointed pursuant to the terms of this Order and in a manner consistent with the purposes of this Order.
 - 2. Within ten days after appointment of the Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture for which he or she has been appointed.
 - 3. The Divestiture Trustee shall have twelve months from the date the Commission approves the agreement described in Paragraph VI.C.2. of this Order to

accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed Divestiture Trustee, by the court.

4. Respondents shall provide the Divestiture Trustee with full and complete access to the personnel, books, records and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as such Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
5. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an Acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; *provided, further*, that Respondents shall select such entity within five business days of receiving written notification of the Commission's approval.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The Divestiture Trustee's

compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's divesting the assets.

7. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.C.7., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.C.6. of this Order.
 8. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI. for appointment of the initial Divestiture Trustee.
 9. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
 10. The Divestiture Trustee shall report in writing to the Commission every sixty days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VII.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to each of Respondents' officers, employees, or agents having managerial responsibility for any of Respondents' obligations under Paragraphs II. through V. of this Order, no later than ten days from the date this Order (without regard to Paragraph II.A.) becomes final.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order (i) no later than thirty (30) days from the date this Order

SO ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: _____, 2003