

provisions, and thus are stayed pending exhaustion of all appeals. In the alternative

Respondents request that the Commission exercise its discretion to stay the provisions of the Order requiring the separation of assets into New PDM and New CB&I pending resolution of all

- CB&I must "transfer to New PDM and New CB&I all necessary Relevant Business

U.S.C.C.A.N. 1776 (1993) (noting that the mandatory stay of divestiture provisions was retained due to "the substantial impact on business operations of a divestiture order.").

The terms of the Order and the language of the Opinion upon which it is based

intertwined:

We order CB&I to reorganize its Industrial Division (and, to the extent necessary, its other divisions)

"equal" business to divide the Relevant Business shortly before the divestiture, rather than hoping that after a year or more two entities that began as equals would remain so.

Respondents therefore respectfully request that the Commission confirm that the

Divestiture Division Terms are divestiture provisions within the meaning of 56 U.S.C. § 5634(a)(1)

are automatically stayed pending appeal

IV.

will result in irreparable harm to the applicant; (3) whether a stay will harm other parties interested in the proceeding; and (4) the interests of the public. See, e.g., *In re Cal. Dental*

extended operations as separate divisions are outlined below:

1. Nonrecoverable Costs.

The division itself will require CB&I to expend substantial management time and resources and will entail substantial nonrecoverable costs. For example, CB&I will

broad in its definition of the assets to be divided or is reversed in its definition of the assets to be divided

knowing that in two years or so he may be unemployed if the divestiture does not take place and

personnel are again reduced to pre-division levels.

4. **Customer Uncertainty.**

Customers evaluating bids for tank construction in 1971

B. Enforcement of the Divestiture Division Terms During the Pendency of the Appeal Would Result in Harm to Interested Parties and the Public.

Division of the Relevant P... 11-1-1...

ultimate intent in seeing a fully competitive New PDM in the marketplace. It is unlikely that after operating independently for an extended time period New PDM and New CB&I will still be the entirely "equal" assets envisaged by the Commission. Order at ¶ III.A. As a result, the two companies will either have to be "rebalanced," or the Commission's intent to create two equal competitors will be frustrated.

Thus, a stay in this circumstance is merely "a reasonable measure to avoid the..."

appropriateness of the Order before the FTC or any federal court. CR&I understands and agrees

absent the stay."); *In re Novartis Corp.*, 128 F.T.C. 233, 235-36 (1999) (granting stay despite

finding that applicant's "assertions of likelihood of success on the merits merely revisit arguments that we have already considered and rejected"); *see also In re Toys "R" Us, Inc.*, 126 FTC 695, 698-700 (1998).⁶

Accordingly difficulties arising from the application of the law to a complex fact

record will support a finding of a substantial showing on the merits. *Novartis Corp.*, 128 F.T.C. at 235; *see also Toys "R" Us*, 126 FTC at 697 (citing *In re KVG Coffee Shop*, No. 95-B-42791, M-47, 1995 U.S. Dist. LEXIS 15617 (S.D.N.Y. October 18, 1995)) ("The difficulty inherent in

than merely the burden of production of evidence, to Respondents; (5) finding an antitrust violation without proof of probable anticompetitive effects; (6) crafting a remedy intended to

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Respectfully submitted,



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