
¹ Final Order, ¶¶ I.P, IV.A.

² Petition for Reconsideration to Clarify Respondents' Obligations as to the Pitt-

to ensure that CB&I would retain all rights in its corporate name.³ However, CB&I pointed out that when it acquired PDM's Engineered Construction ("EC") and Water Divisions, it received only a "one-year, non-renewable, non-exclusive transitional license to the use of the PDM mark."⁴ As a result, CB&I has no rights in PDM's corporate name to transfer. Because we had concerns that the acquirer of the divested assets might need to use the CB&I and PDM tradename and marks to compete effectively, we ordered both PDM and CB&I to submit briefs addressing the feasibility and consequences of granting a license to their respective corporate names.

II. PDM's Tradename and Marks

PDM's brief⁵ states that when PDM sold its various divisions, it entered into covenants not to compete that impact the use of the PDM tradename and marks and suggests that obtaining waivers from some of those buyers might be advisable.⁶ These covenants notwithstanding, however, the brief concludes that PDM likely owns the right to use the tradename "Pitt-Des Moines" and the marks "PITT-DES MOINES" and "PDM" in connection with the EC and Water Division businesses

³ Response to Complaint Counsel's Petition for Reconsideration to Clarify Respondents' Obligations as to the Pitt-Des Moines and CB&I Corporate Names, filed Feb. 10, 2005 ("CB&I's Response").

⁴ *Id.* at 2.

⁵ Pitt-Des Moines, Inc. Briefing on Complaint Counsel's Motion for Clarification, filed Apr. 6, 2005 ("Pitt-Des Moines Brief").

⁶ For example, in connection with PDM's sale of its Oregon Culvert Co. to Contech Construction, PDM entered into a covenant not to compete with "any business, venture or activity engaged anywhere in the world in the Oregon Culvert Business under the names . . . 'Pitt-Des Moines, Inc.'" through January 31, 2006. *Id.* at 4. The brief also states that the sale of PDM's steel bridge division to Steel Bridges may impact PDM's rights to the PDM mark and concludes that consent of Steel Bridges (and the bridge lender that holds a security interest in the same property) is advisable. *Id.* at 9-12.

⁷ *Id.* at 13.

⁸ *Id.*

the acquirer to compete effectively in the Relevant Markets. In making his recommendation about the acquirer's needs for access to the PDM tradename or marks, the Monitor Trustee should ascertain whether the acquirer's ability to bill itself as a successor to PDM necessarily depends on the use of the PDM name or marks.

For purposes of finality, we wish to make clear what the terms of such a license would be. If the Commission determines, based on the Monitor Trustee's recommendation, that a license to the PDM name and marks is necessary for the acquirer to compete effectively in the Relevant markets, this Order requires PDM to grant to the acquirer of the divested assets a perpetual, worldwide, exclusive, royalty-free license to all the rights it has in its tradename or marks for use with the Relevant Products as defined in our Final Order. If the acquirer determines that it needs such a license, it would be (1) permanent rather than transitional, because PDM's brief makes clear that it no longer uses or plans to use its tradename or marks in connection with the types of assets CB&I is required to divest under the Final Order, and (2) royalty-free, because PDM is not currently obtaining any revenue from the use of its tradename or marks, and it is questionable whether it could do so in the future given certain restrictions it agreed to when it sold its EC and

⁹ PDM agreed not to allow "any successor or person which in competition with CB&I or its affiliates, sells, markets, distributes or deals in all or any portion of the Engineered Construction/Water Division Business to use, the names 'Pitt-Des Moines' or 'PDM,' or any variation materially derived therefrom, in connection with any business which is competitive to all or any portion of the Engineered Construction/Water Division Business." *Id.* at 6.

