

**PUBLIC RECORD VERSION**

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

**COMMISSIONERS: Deborah Platt Majoras, Chairman**

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<sup>1</sup> Decision and Order Partially Denying Respondents' Petition for Reconsideration and Directing Further Briefing on Specific Remedy Issues, issued May 10, 2005 ("Reconsideration Order").

<sup>2</sup> Respondents' Further Briefing on Specific Remedy Issues, filed June 6, 2005 ("Respondents' Brief").

<sup>3</sup> This Order uses the following abbreviations for citations to the record:

Tr. – Transcript of testimony before the Administrative Law Judge

CX – Complaint Counsel's Exhibit

Op. – Commission Opinion issued December 21, 2004 (*in camera*).

construction of the Relevant Products and water tanks, but also hydrocarbon processing plants, offshore structures, pipelines, hydrocarbon storage tanks, and other steel structures and their associated systems.”<sup>4</sup> According to Respondents, these complementaryh.4 Crt

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<sup>4</sup> Respondents’ Brief at 4.

<sup>5</sup> We note that this position is inconsistent with the position Respondents took at trial. Specifically, Respondents’ closing argument stated that “the companies have been fully integrated at the management level, at the engineering level, at the fabrication level, at the field erection level, every level, purchasing, estimating.” Tr. at 8311. Respondents also noted that CB&I and PDM prior to the acquisition each made numerous products in addition to the Relevant Products and argued that as a result if the Commission were to “spin off some personnel and assets to make products in these [relevant] markets, that company would wilt like a rose left out too long.” *Id.* They added that the Relevant Products did not have enough business and that the Commission would therefore need to include “all this other stuff to make flat bottom tanks, to make gravel tanks, to make all kinds of other stuff.” Tr. at 8311-12.

<sup>6</sup> CX 522 at TAN 1003379.

<sup>7</sup> CB&I’s CEO testified that the hydrocarbon industry is the oil and gas business. Tr. at 4158.

<sup>8</sup> CX 94 at HOU017570 -71 (analyzing the markets in which PDM participated, including “Domestic Petroleum, Petrochemical, Industrial Gas, & Chemical” and specifically discussing refinery and tank projects); *Id.* at HOU017572–73 (discussing pipeline expansion and terminal projects). See also CX 850 at HOU019220 (tracking 2000 sales in the following market segments: Aerospace, LPG, Liquid Elements of Air (LIN/LOX), LNG, Thermal Energy Storage, Wastewater, Power, Terminals, Petroleum/Chemical, and Transportation); CX 1033 at 3-4,

involvement in the petroleum and petrochemical industries and states that the PDM assets would provide CB&I with “substantial exposure to [the] upturn in [the] hydrocarbon industry.”<sup>9</sup> This evidence suggests not only that PDM was actively engaged in the types of complementary products Respondents seek to exclude but also that CB&I specifically evaluated PDM’s involvement in these areas and concluded that acquiring

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(CB&I 10-K noting that PDM “specialize[d] in the design and engineering, fabrication and construction of products for the petroleum, petrochemical, cryogenic, liquified natural gas, defense and aerospace industries, as well as water storage and treatment facilities”).

<sup>9</sup> CX 32 at 1.

<sup>10</sup> See *e.g.*, Tr. at 2906 (Scorsone [former head of PDM’s EC division and current head of CB&I’s Industrial Division] testifying that PDM’s EC division “constructed facilities for the petroleum, petrochemical, natural gas, and aerospace business”).

<sup>11</sup> Tr. at 4843-44 (Scorsone testifying that in addition to the Relevant Products, CB&I’s Industrial Division and PDM’s EC division “constructed virtually any type of structure out of plate steel,” including “ambient-temperature flat-bottom storage tanks, pressure spheres, field-erected pressure vessels, specialty-type plate structures, bins, hoppers, aqueducts, [and] wind tunnels”). See also Tr. at 4807 (Scorsone testifying that CB&I’s “tank-building resources are fluid throughout all of [CB&I’s] organizations,” including the Industrial and Water Divisions).

<sup>12</sup> See CX 1033 at 44 (CB&I 10-K noting that PDM’s EC and Water Division assets have been integrated with CB&I’s business units); Tr. at 4081 (Scorsone noting that CB&I hoped to achieve efficiencies by eliminating duplication in fabrication capability, construction equipment and tools, sales people, sales offices, and other facilities).

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<sup>13</sup> Tr. at 4058.

<sup>14</sup> Tr. at 4159.

<sup>15</sup> Tr. at 4159. We recognize that at least one of the Relevant Markets – the LNG tank Market – has seen an increase in demand since the acquisition. However, Respondents have presented no evidence to suggest that this increased demand has diminished the need for an LNG supplier to have the ability to perform other types of projects to have a sufficient scale of business.

<sup>16</sup> CX 1033 at 41 (“Projects for the worldwide petroleum and petrochemical industry accounted for approximately 60-70% of [CB&I’s] revenues in 2001, 2000, and 1999.”)

<sup>17</sup> We recognize that the lines of business that the Order requires CB&I to divest may not precisely match those it acquired from PDM. For example, it appears that PDM did not perform turnaround work or construct refinery vessels. CX 108 at PDM-HOU00518

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<sup>18</sup> ¶ IV.A. of the Final Order allows the acquirer and monitor trustee to agree to exclude any of the complementary assets if they find them unnecessary for the acquirer to compete effectively in the Relevant Markets.

<sup>19</sup> Respondents' Brief at 7.

<sup>20</sup> Final Order, ¶ I.P, Respondents' Brief at 6-7

<sup>21</sup> See Final Order, ¶ I.P.

<sup>22</sup> In addition, Respondents argue that the Order should be modified to exclude "steel plate fabrication and specialty structures" not relevant to the tank business. Respondents' Brief at 7. Respondents admit, however, that these types of assets were acquired from PDM0 0.00 0(Brief at 7e0

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must reject Respondents' argument.

mix of assets necessary to compete effectively in the Relevant Markets. Because CB&I acquired the PDM assets nearly four and a half years ago and has since integrated those assets into its own operations, we cannot be certain that e integ rated those assets into its own hade PDM0.0600

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<sup>26</sup> The Commission has recognized that assets acquired in a transaction do not necessarily form the basis for an effective divestiture. In analyzing the divestiture in MSC.Software, for example, the Commission reasoned that “[d]ivestiture of the acquired assets alone would not restore the competitive conditions that existed before the acquisitions (the status quo ante), because the 3-year old UAI and CSAR codes are no longer as commercially viable as they were when MSC acquired them. Licensing of the current version of MSC.Nastran is required to give the acquirer or acquirers what UAI and CSAR formerly had: an up-to-date product upon which to base sales and future development efforts.” *MSC.Software Corp.*, Dkt. 9299, (Aug. 14, 2002)(Analysis to Aid Public Comment), available at <<http://www.ftc.gov/os/2002/08/mscsoftwareanalysis.htm>>.

<sup>27</sup> [ ]

<sup>28</sup> See Final Order, ¶ IV.A.



