

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

In the Matter of)	
)	
CHICAGO BRIDGE & IRON COMPANY, N.V.,)	Public Version
a foreign corporation,)	
)	
CHICAGO BRIDGE & IRON COMPANY,)	Docket No. 9300
a corporation, and)	
)	
PITT-DES MOINES, INC.,)	
a corporation.)	

To: Commission

**PETITION FOR RECONSIDERATION TO CLARIFY
RESPONDENTS' OBLIGATIONS AS TO THE PITT-DES MOINES AND CB&I
CORPORATE NAMES**

Pursuant to Rule 3.55 of the Commission's Rules of Practice, 16 C.F.R. § 3.55, Complaint Counsel file this Petition for Reconsideration to request that the Commission modify its Final Order in this matter to clarify that after the divestiture required by the Final Order is accomplished, in connection with the use of the respective corporate names by the divested entity and Chicago Bridge & Iron ("CB&I"), only the divested entity will have rights to the Pitt-Des Moines corporate names, and CB&I will retain all of its rights to the CB&I corporate names.

The Final Order requires CB&I to reorganize its "Relevant Business" into two separate entities and then requires Respondents to divest one of the entities. The Relevant Business includes "Intellectual Property," which in turn includes rights to the Pitt-Des Moines and CB&I corporate names. In addition, the Final Order requires CB&I to grant to the Commission-

approved acquirer a license to all of CB&I's Intellectual Property, including the CB&I corporate names. Accordingly, the Final Order could be interpreted to require CB&I to license its corporate name to the acquirer so that, post-divestiture, the Commission-approved acquirer may have rights to the Pitt-Des Moines corporate names and to the CB&I corporate names. If CB&I retains rights to the Pitt-Des Moines names post-divestiture, both entities may end up with rights to both companies' names. An affirmative obligation on the part of Respondents to divest all of Respondents' rights to the Pitt-Des Moines corporate names, no matter which entity is divested, and corresponding limitations on the CB&I corporate names in the definition of "Intellectual Property" would prevent this result.

The Commission may modify a Final Order in response to a petition for reconsideration filed pursuant to Rule 3.55 of the Commission's Rules of Practice. *See, e.g., American Medical International, Inc., et al.*, 104 F.T.C. 617 (1984), in which the Commission modified its order, as requested by Complaint Counsel, to clarify the procedures to be used when Respondent complies with the Order's prior notice obligations. Pursuant to Rule 3.55, Complaint Counsel thus request that the Commission modify the Final Order to impose an affirmative obligation on Respondents in Paragraph IV to divest all rights to the Pitt-Des Moines names that they possess,¹ with the corollary that Respondents are not required to divest rights to the CB&I corporate names.² Conforming modifications to the definition of "Intellectual Property" excluding the

¹ "The 'Pitt-Des Moines' and 'PDM' names and all variations thereof were licensed to CB&I in the Acquisition." IDF 564 (citations omitted). The successor to Respondent Pitts-Des Moines, Inc., appears to own some, if not all, of the remaining rights to the Pitt-Des Moines corporate names.

² Alternatively, if the Commission concludes that Complaint Counsel have not satisfied the standards of Rule 3.55, the Commission has the power nonetheless to modify an

rights to the CB&I corporate names, and to Paragraph V.A. specifically authorizing a divestiture trustee, if appointed, to divest the rights to the Pitt-Des Moines names no matter which entity is divested will further clarify Respondents' obligations as to the corporate names.

For all of these reasons, Complaint Counsel request that the Commission issue the attached Order Modifying Final Order to modify definition Paragraph I.J., Paragraph IV, and Paragraph V (with modifications shown in red-line) to clarify Respondents' obligations as to the use of the respective corporate names.

DATE: January 31, 2005

Respectfully submitted,

Rhett R. Krulla
Elizabeth A. Piotrowski
Naomi Licker
David von Nirschl
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

order on its own initiative pursuant to Rule 3.72(a) of the Commission's Rules of Practice, 16 C.F.R. § 3.72(a), which states:

(a) *Before statutory review.* At any time prior to the expiration of the time allowed for filing a petition for review or prior to the filing of the transcript of the record of a proceeding in a U.S. court of appeals pursuant to a petition for review, the Commission may upon its own initiative and without prior notice to the parties reopen the proceeding and enter a new decision modifying or setting aside the whole or any part of the findings as to the facts, conclusions, rule, order, or opinion issued by the Commission in such proceeding.

See, e.g., Novartis Corporation, et al., 128 F.T.C. 1 (1999)(Order Modifying Order, Denying Petition for Reconsideration, and Denying as Moot Application for Stay).

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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PROPOSED ORDER MODIFYING FINAL ORDER

The Commission issued its Opinion and Final Order in this matter on December 21, 2004, and all parties were served as of January 18, 2005. Pursuant to Rule 3.55 of the Commission’s Rules of Practice, 16 C.F.R. § 3.55, Complaint Counsel petitioned for reconsideration of the Final Order on January 31, 2005, to clarify certain of Respondents’ obligations in the Final Order. The Commission has determined to grant Complaint Counsel’s request to modify Paragraph I, Paragraph IV, and Paragraph V of the Final Order.

Accordingly:

It is ordered that the Final Order in this matter dated December 21, 2004, be and it hereby is modified to revise Paragraph I, Paragraph IV, and Paragraph V of the Final Order as follows:

I.

J. “Intellectual Property” means, without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, copyrights, and copyright registrations and applications, in both published works and unpublished works; *provided, however, that the preceding shall exclude rights and title in*

and to the use of the corporate names “Chicago Bridge & Iron” and “CB&I,” and any related corporate, firm, or company names, except to the extent necessary to achieve the purpose of, and to assure compliance with, this Order; (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.

IV.

It is further ordered that:

- A. No later than one hundred eighty (180) days from the date 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 that receives the prior approval of the Commission (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); and Respondents Chicago Bridge & Iron, N.V., and Chicago Bridge & Iron Company shall divest and convey to the Acquirer all rights and title in and to the use of the corporate names “Pitt-Des Moines” and “PDM,” any related corporate, firm, or company names, and any variation thereof; and Respondent Pitt-Des Moines, Inc., shall divest and convey to the Acquirer all rights and title in and to the use of the corporate names “Pitt-Des Moines” and “PDM,” any related corporate, firm, or company names, and any variation thereof in connection with the Relevant Business; *provided, however,* that Respondents shall not be required to divest or convey any rights and title in and to the use of the corporate names “Chicago Bridge & Iron,” and “CB&I,” and any related corporate, firm, or company names, except to the extent necessary to achieve the purpose of, and to assure compliance with, this Order; *provided, further, however,* that if the Acquirer, with the concurrence of the Monitor Trustee, determines that acquiring any or all of the following assets is not necessary to achieve the purposes of this Order, then Respondents need not divest assets that involve no Relevant Products and are related exclusively to engineering, designing, estimating, bidding, procuring, fabricating, erecting, rehabilitating, or selling any water storage tank or system; any industrial process system, including but not limited to any digester, absorber, reactor, and tower; any flat bottom tank; any pressure vessel or sphere; any low-temperature or cryogenic tank or system; any vacuum chamber or system; any steel plate fabrication; or any specialty structure.

V.

It is further ordered that:

- A. If Respondents have not divested, absolutely and in good faith, New PDM within the time and in the manner required by Paragraph IV.A of this Order, the Commission may at any time appoint a Divestiture Trustee, who upon his or her appointment shall undertake to divest, in his or her discretion with the approval of the Commission, either New PDM or New CB&I in a manner that satisfies the purposes and requirements of this Order. In the event the Divestiture Trustee divests New CB&I, the terms of Paragraph IV of this Order shall apply to the divestiture of New CB&I in the same way in which they apply to New PDM, **in particular that Respondents Chicago Bridge & Iron, N.V., and Chicago Bridge & Iron Company shall divest and convey to the Acquirer all rights and title in and to the use of the corporate names “Pitt-Des Moines” and “PDM,” any related corporate, firm, or company names, and any variation thereof; Respondent Pitt-Des Moines, Inc., shall divest and convey to the Acquirer all rights and title in and to the use of the corporate names “Pitt-Des Moines” and “PDM,” any related corporate, firm, or company names, and any variation thereof in connection with the Relevant Business; and Respondents shall not be required to divest or convey any rights and title in and to the use of the corporate names “Chicago Bridge & Iron,” and “CB&I,” and any related corporate, firm, or company names, except to the extent necessary to achieve the purpose of, and to assure compliance with, this Order;**

CERTIFICATE OF SERVICE

I hereby certify that I today caused:

One original and twelve copies of Complaint Counsel's Petition for Reconsideration to Clarify Respondents' Obligations as to the Pitt-Des Moines and CB&I Corporate Names to be served by hand delivery and one copy to be served by electronic mail upon:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

One copy to be served by hand delivery upon:

Nada Sulaiman
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

One copy by facsimile and by first-class mail upon:

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Counsel for Respondents

Naomi Licker
Commission Counsel

Dated: January 31, 2005