

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

_____	)	
In the matter of	)	
	)	
<b>Chicago Bridge &amp; Iron Company N.V.,</b>	)	
a foreign corporation,	)	Docket No. 9300
	)	
<b>Chicago Bridge &amp; Iron Company,</b>	)	
a corporation, and	)	
	)	
<b>Pitt-Des Moines, Inc.,</b>	)	
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. "Customer Contracts" means all agreements and rights under agreements (including sole-source arrangements, phased contracting, and phased bidding arrangements) between Respondents and any Person(s) pursuant to which Respondents supply services or products relating to a Tank Business to such Person(s).
- O. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant assistance or service.
- P. “FTE” means full-time employee, or the equivalent thereof.

- 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. All books, records, and files.
- V. “New PDM Information” means any information relating to New PDM (other than information relating to New PDM existing prior to the date of divestiture of New PDM) obtained in any manner by Respondents, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or governmental body.
- X. “Relevant Products” means those products identified and described in the Commission’s Administrative Complaint in Docket No. 9300, filed October 25, 2001, as (1) thermal vacuum chambers, (2) LNG tanks, (3) LNG peak shaving plants, (4) LNG import terminals, (5) LPG tanks; and (5) LIN/LOX/LAR tanks.
- Y. “Tank Business” means the business of engineering, designing, estimating, bidding, procuring, fabricating, erecting, rehabilitating, or selling any: water storage tank or system; industrial process system, which includes, but is not limited to, any digester, absorber, reactor, and tower; flat bottom tank; pressure vessel or sphere; low temperature or cryogenic tank or system; vacuum chamber or system; steel plate fabrication; and specialty structures. The Relevant Products are included in the Tank Business.
- Z. “Tank Business Employees” means any person currently or previously employed by CB&I in the Tank Business, including, but not limited to, management, sales and marketing personnel, engineers, draftsmen, estimators, purchasers, and field personnel.
- AA. “Technical Assistance” means providing expert advice, assistance, and training with respect to the operation of the Tank Business.
- BB. “Transferred Employees” means the Tank Business Employees transferred to New PDM pursuant to Paragraph II.F. of this Order.

## 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 to all such Relevant Products.

*Provided, however,* that if any customer withholds its consent to the transfer or assignment of its Customer Contract, then CB&I shall use its best efforts to obtain such customer's consents, including, but not limited to, offering any incentive or discount necessary to obtain such consent. If, after such efforts, such customer continues to withhold its consent, then CB&I shall enter into such agreements, contracts, or licenses as are necessary to realize the same effect as such transfer or assignment.

- D. No later than the date New PDM is divested, CB&I shall contribute the PDM Assets to New PDM; *provided however,* that if any assets obtained by CB&I from PDM in the Acquisition no longer exist (except for Customer Contracts), or are no longer controlled by CB&I at the time of divestiture of New PDM, then, no later than the date New PDM is divested, CB&I shall contribute or acquire for contribution (if it does not own) additional assets, tangible or intangible ("CB&I Assets Contribution"), to insure that, as a result of the divestiture, the Acquirer is able to compete in the Tank Business and perform all Customer Contracts and complete all work in progress in substantially the same manner and quality employed or achieved by CB&I in the conduct of its Tank Business prior to the date this Order (without regard to Paragraph II.A.) becomes final.
- E. No later than the date New PDM is divested, CB&I shall grant to the Acquirer a worldwide, royalty-free, perpetual, irrevocable, transferable, sublicensable, non-exclusive license to all Intellectual Property owned by or licensed to CB&I for any use in any Tank Business conducted by the Acquirer ("CB&I License").
- F. Respondents shall transfer to the Acquirer no less than 45% (measured against total FTEs devoted to operation of CB&I's Tank Business in the year 2002) of the Tank Business Employees ("Transferred Employees") who collectively shall possess the technical experience and expertise: (i) to complete all Customer Contracts held by Acquirer, (ii) to bid on and obtain new customer contracts relating to a Tank Business, and (iii) to complete any new customer contracts relating to the Tank Business of the Acquirer in substantially the same manner and quality employed or achieved by CB&I in the conduct of its Tank Business prior to the date this Order (without regard to Paragraph II.A.) becomes final.
- G. Respondent shall take all actions necessary to assure the employment by the Acquirer of any Tank Business Employee whose transfer is required by Paragraph II.F. of this Order, including but not limited to:
  - 1. No later than four weeks before the execution of an agreement to divest New PDM, CB&I shall (i) provide to the Acquirer a list of all Tank Business Employees, (ii) provide any available contact information, including last known

address for any Person formerly employed by Respondents or by PDM in a Tank Business, and whose employment ended after September 8, 2000; (iii) provide the Acquirer an opportunity to interview any Tank Business Employee, and (iv) allow the Acquirer to inspect the personnel files and other documentation relating to such employees and any Person formerly employed by Respondents, or by PDM in the Tank Business, to the extent permissible under applicable laws.

2. CB&I shall: (i) not offer any incentive to any Tank Business Employee to decline employment with the Acquirer, (ii) remove any contractual impediments with CB&I that may deter any Tank Business Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with CB&I that would affect the ability of the Tank Business Employee to be employed by the Acquirer, and (iii) not interfere with the employment by the Acquirer of any Tank Business Employee.
  3. CB&I shall: provide such Tank Business Employees with financial incentives to accept a position with the Acquirer at the time of divestiture, including but not limited to (i) vesting of all current and accrued pension benefits as of the date of transition of employment to the Acquirer, (ii) continuation of all employee benefits offered by CB&I until the date New PDM is divested, and (iii) payment of a bonus no later than thirty (30) days from the date CB&I divests New PDM to any Tank Business Employee who accepts an offer of employment from the Acquirer.
  4. For a period of two (2) years following the date on which the divestiture of New PDM to the Acquirer is completed, CB&I shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Tank Business Employees of Respondents who have accepted offers of employment with the Acquirer to terminate their employment relationship with the Acquirer unless the individual has been terminated by the Acquirer; *provided, however*, a violation of this provision will not occur if: (i) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (ii) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph II.G.4.
- H. Respondents shall submit the following reports to the Monitor: (i) no later than thirty (30) days from the date this Order (without regard to Paragraph II.A.) becomes final, a report that identifies all PDM Assets and all Customer Contracts existing at the time this Order (without regard to Paragraph II.A.) becomes final; and (ii) no later than sixty (60) days from the date this Order becomes final, a report that identifies and lists the CB&I

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 Acquirer to conduct the Tank Business in substantially the same manner as that employed by CB&I prior to the date this Order becomes final.
  2. In connection with such Technical Assistance, CB&I shall allow the Acquirer reasonable and timely access to CB&I's fabrication facilities for the purpose of inspecting fabrication operations relating to the operation of CB&I's Tank Business.

*Provided, however,* that CB&I shall not: (i) require the Acquirer to pay compensation for Technical Assistance that exceeds the Direct Cost of providing such assistance and services, (ii) terminate its obligation to provide Technical Assistance because of a material breach by the Acquirer of any agreement to provide such assistance or services, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of CB&I's breach of any agreement to provide Technical Assistance.

- J. 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, CB&I shall provide Administrative Services to the Acquirer at substantially the same level of quality and efforts as those provided by CB&I in connection with CB&I's Tank Business prior to the date this Order (without regard to Paragraph II.A.) becomes final; *provided, however,* that CB&I shall not: (i) require Acquirer to pay compensation for Administrative Services that exceeds the Direct Cost of providing such assistance and services, (ii) terminate its obligation to provide Administrative Services because of a material breach by Acquirer of any agreement to provide such assistance or services, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of CB&I's breach of any agreement to provide Administrative Services.

- K. The purpose of the divestiture of New PDM is to remedy the lessening of competition alleged in the Commission's complaint in Docket No. 9300, to restore the competition lost as a result of the Acquisition, and to ensure the continued use of the PDM Assets in



the same business in which the PDM Assets were engaged at the time of the announcement of the Acquisition by CB&I and PDM.

### III.

**IT IS FURTHER ORDERED** that from the date this Order (without regard to Paragraph II.A.) becomes final until the date New PDM is divested to an Acquirer pursuant to this Order:

- A. Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of CB&I's Tank Business and the CB&I Tank Assets, and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of CB&I's Tank Business or the CB&I Tank Assets, except for ordinary wear and tear.
- B. Respondents shall maintain the operations of CB&I's Tank Business and the CB&I Tank Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance of the CB&I Tank Assets), and shall use best efforts to preserve the existing relationships with customers, suppliers, vendors, employees, landlords, creditors, agents, and others having business relations with CB&I's Tank Business and the CB&I Tank Assets. Respondents, among other things as may be necessary:
  - 1. use best efforts to maintain and increase sales of CB&I's Tank Business, and to maintain at the year 2002 or budgeted levels for the year 2003, whichever are higher, all administrative, technical, and marketing support for CB&I's Tank Business;
  - 2. use best efforts to maintain the current workforce and to retain the services of employees and agents relating to CB&I's Tank Business, including payment of bonuses as necessary;
  - 3. assure that Respondents' employees with primary responsibility for managing and operating CB&I's Tank Business are not transferred or reassigned to other areas within Respondents' organization except for transfer bids initiated by employees pursuant to Respondents' regular, established job posting policy;
  - 4. provide sufficient working capital to maintain CB&I's Tank Business as an economically viable and competitive ongoing business; and
  - 5. except as part of a divestiture approved by the Commission pursuant to this Order, not remove, sell, lease, assign, transfer, license, pledge for collateral or otherwise disposing of the CB&I Tank Assets.

- 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 their obligations under this Order:
- B. If a Monitor is appointed pursuant to Paragraph V.A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
  - 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order, in consultation with Commission’s staff.
  - 2. Within ten (10) days after appointment of the Monitor, Respondents shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the terms of this Order in a manner consistent with the purposes of this Order. If requested by Respondents, the Monitor shall sign a

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

(without regard to Paragraph II.A.) is final, and every thirty (30) days thereafter (measured from the due date of the first report under this Order) until the divestiture of New PDM is accomplished, and (ii) thereafter, every sixty (60) days (measured from the date of divestiture) until the end of the Initial Business Cycle; *provided, however*, that Respondents shall also file the report required by this Paragraph VIII. at any other time as the Commission may require.

- B. Respondents shall include in their compliance reports, among other things required by the Commission, a description (when applicable) of all substantive contacts or negotiations relating to the divestiture required by Paragraph II. of this Order, the identity of all parties contacted, copies of all written communications to and from such parties, internal documents and communications, and all reports and recommendations concerning the divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission.

#### **IX.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

#### **X.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Order; and
- B. Upon five days' notice to Respondents and without restraint or interference from them, to interview their officers, directors, or employees, who may have counsel present, regarding any such matters.



SO ORDERED:

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D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_, 2003