



**1. Respondents' Motion for Clarification or, in the Alternative, for a Stay**

Respondents request clarification that Paragraph III of the Commission's order – which requires CB&I to reorganize its Industrial Division and, to the extent necessary, its water tank unit into two separate, stand-alone divisions for purposes of divesting one of them – is a divestiture provision within the meaning of Section 5(g)(4) of the FTC Act, 15 U.S.C. § 45(g)(4), and is therefore automatically stayed pending Respondents' appeal. In the alternative, Respondents request that the Commission exercise its discretion to stay Paragraph III of its order pending resolution of all appeals. Complaint Counsel supports entry of a discretionary stay of Paragraph III but asserts that Paragraph III is not on its face a divestiture provision and thus would not be stayed. We believe that the provision requiring the division of assets makes sense only as an immediate forerunner to divestiture in this case. It would therefore be premature for CB&I to divide these assets until CB&I's motion for reconsideration and rights of judicial review have been exhausted. We further believe that Paragraph III is, in essence, a divestiture provision within the meaning of Section 5(g)(4) and is subject to the statutory stay.

For these reasons, we conclude that Respondents' motion for clarification should be granted. Accordingly, we deny CB&I's motion for a discretionary stay as moot. CB&I has not requested a stay of any other provision of the Commission's order. As a consequence, Paragraphs III, IV and V of the order are stayed by operation of law; no other provision is stayed.

**2. Complaint Counsel's Motion for Clarification**

Complaint Counsel seeks clarification of the Commission's order to make clear that the purchaser of the assets sold pursuant to the Commission's divestiture order shall not acquire any right or title to the CB&I name. CB&I agrees that this clarification is appropriate.

Complaint Counsel also seeks clarification of the Commission's order to require transfer, along with the divested entity, of the Pitt-Des Moines ("PDM") name and mark. In response, CB&I has represented that its "one-year, non-renewable, non-exclusive transitional license" to the use of PDM's mark expired on February 6, 2002.

We are concerned that a potential purchaser of the divested entity may need to use either the PDM or the CB&I name during a transitional period, in order to restore competition in the relevant markets. PDM remains a party to this proceeding, but it has not objected or otherwise presented its views on the inclusion of the PDM name in assets of the divested entity. CB&I appears to have assumed, in its response to Complaint Counsel's motion to clarify, that it would not be called on to allow use of its own name, in the event PDM's name could not be included in the divested entity's assets.

Accordingly, we direct that CB&I and PDM each file a brief within 10 calendar days of service of this order, addressing the feasibility of granting a transitional license that would allow a purchaser to use its name, and setting forth any consequences of granting such a license that it

wishes to call to the Commission's attention. In addition, because CB&I has argued that certain contract provisions would make it difficult if not impossible to assign its contracts, CB&I should discuss why a transitional license to its name would not address that problem. Complaint Counsel is granted leave but is not required to file a response within 10 calendar days after service of Respondents' briefs on this issue. If Complaint Counsel does not intend to file a response, we direct Complaint Counsel to so inform the Commission within the 10-day time period.

**3. CB&I's Request to Toll Statutory Time Period for Seeking Judicial Review**

CB&I has requested that the Commission toll the time period for filing its petition for judicial review until the Commission has acted on CB&I's petition to the Commission, which seeks reconsideration pursuant to Section 3.55 or, in the alternative, Section 3.72(a) of the Commission's rules. 16 C.F.R. §§ 3.55, 4.72(a). On March 10, 2005, CB&I filed a petition for review in the United States Court of Appeals for the Fifth Circuit. Accordingly, we deny this portion of CB&I's motion as moot.

Accordingly,

**IT IS ORDERED THAT** the Commission's order in this matter, issued on January 6, 2005, is clarified to provide that division of CB&I's assets pursuant to Paragraph III is a divestiture-related provision within the meaning of Section 5(g)(4) of the FTC Act, 15 U.S.C. § 45(g)(4);

**IT IS FURTHER ORDERED THAT** CB&I and PDM each file a brief within 10 calendar days of service of this order, addressing the feasibility and consequences of granting a transitional license allowing the purchaser of the divested entity to use its (CB&I's or PDM's) name for a transitional period after divestiture;

**IT IS FURTHER ORDERED THAT** Complaint Counsel respond to CB&I's and PDM's briefs on this issue within 10 calendar days of service or, in the alternative, give the Commission notice within that 10-day time period that no response is necessary; and

**IT IS FURTHER ORDERED THAT** CB&I's request that the Commission toll the time period for filing its petition for judicial review until the Commission has acted on CB&I's petition to the Commission is denied as moot.

By the Commission.



Donald S. Clark  
Secretary

ISSUED: March 15, 2005