

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

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In the Matter of)	
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General Dynamics Corporation,)	
)	Docket No. C-4181
a corporation.)	
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PETITION OF GENERAL DYNAMICS CORPORATION
FOR APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2006), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in the above-captioned matter (“Decision and Order”), General Dynamics Corporation (“General Dynamics”) hereby petitions the Commission to approve the divestiture of its entire interest in American Ordnance LLC (“AO”)¹ to Day & Zimmerman, Inc. or one or more, direct or indirect, wholly-owned subsidiaries of Day & Zimmerman, Inc. (“DZI”).

¹ For capitalized terms not defined herein, please see the definitions in the Decision and Order.

I. INTRODUCTION

On February 23, 2006, General Dynamics, through General Dynamics Ordnance and Tactical Systems and General Dynamics Land Systems Canada Inc., wholly-owned subsidiaries of General Dynamics, entered into a Share Purchase Agreement with SNC-Lavalin Group Inc. and The SNC-Lavalin Corporation under which General Dynamics would acquire SNC. The Commission concluded that the proposed acquisition would reduce competition among companies that have the capability to provide high explosive melt-pour load, assemble and pack services for artillery and mortar munitions for the United States Military because General Dynamics OTS also holds an interest in AO, which competes with SNC.

AO is a Delaware limited liability company that was formed on July 21, 1998 as a joint venture between General Dynamics Ordnance Systems, Inc. and Mason & Hanger Corporation (“MHC”), a predecessor of DZI,² for the purpose of operating the Milan Army Ammunition Plant (“Milan AAP”) and the Iowa Army Ammunition Plant (“Iowa AAP”) as an operating contractor for the US Army. Under the AO Formation Agreement dated July 21, 1998 (“Formation Agreement”), each of General Dynamics and MHC holds a fifty (50) percent Membership Interest, as that term is defined in the AO Operating Agreement dated July 21, 1998 (“Operating Agreement”), in AO.

On December 8, 2006, General Dynamics and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges related to General Dynamics’ proposed acquisition of SNC. Paragraph II of the Order requires

² On June 1, 1999, DZI acquired all of the stock of The Mason Company, which in turn owns all of the stock of MHC. On December 31, 2001, General Dynamics Ordnance Systems, Inc. assigned all of its rights and obligations under the Formation Agreement to General Dynamics Ordnance and Tactical Systems, Inc.

General Dynamics to divest its entire interest in AO no later than four (4) months after the Acquisition Date to a buyer that would be acceptable to the Commission. On December 28, 2006, the Commission accepted the Consent Agreement for public comment. The Consent Agreement currently awaits final Commission approval.

General Dynamics desires to complete the proposed divestiture of its interest in AO to DZI as soon as possible. On December 15, 2006, General Dynamics and DZI executed a Membership Interest Purchase Agreement (“MIPA”) pursuant to which DZI will acquire General Dynamics’ interest in AO, and the agreement was provided to Commission staff on that same date. The MIPA contemplates a closing date of January 31, 2007.^{3/} Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, General Dynamics and DZI. Furthermore, prompt consummation is uniquely imperative in this case because the United States Army has already commenced a “full and open competition” for the facilities use contracts under which AO currently operates the Milan AAP and Iowa APP, and AO wants to compete to continue to operate those plants. The immediate divestiture of General Dynamics’ interest in AO to DZI will increase DZI’s ability and incentive to make AO a more credible bidder for the contracts to operate the Milan and Iowa AAPs. An expedited divestiture will remove the uncertainty over AO’s ownership that threatens to hamper its ability to compete effectively for these facilities use contracts.

The Commission staff is already familiar with DZI; through its investigation of the proposed acquisition of SNC, the Commission staff has spoken with DZI’s executives and analyzed DZI’s ownership interest in AO and its current operation of the Kansas Army

^{3/} The parties to the MIPA have also executed a letter agreement allowing DZI to extend the closing date beyond January 31, 2007, if necessary, until such time as the FTC approves or disapproves this petition. A copy of the agreement is attached as Confidential Exhibit B. [No copy attached to Public Version.]

Ammunition Plant ("Kansas AAP").⁴ The Commission should be able to use this prior knowledge to expedite its review of DZI, conclude that DZI is an acceptable buyer and permit the divestiture to go forward as soon as possible.

General Dynamics accordingly requests that the Commission eliminate or shorten the period of public comment for this Petition pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2006) and grant this Petition by approving the immediate divestiture of General Dynamics' interest in AO to DZI pursuant to the proposed agreements. If the divestiture to DZI is allowed to proceed but, at the time the Commission determines to make the order final, the Commission notifies General Dynamics that DZI is not an acceptable purchaser of General Dynamics' Membership Interest or that the terms of the MIPA or the manner in which the transaction would be accomplished is not acceptable,

[REDACTED]

[REDACTED]

[REDACTED]. Therefore, expeditious consummation of the ordered divestiture to DZI will facilitate DZI's ability to compete for the Milan AAP and Iowa AAP facilities use contracts while still protecting the Commission's interests before the Consent Agreement is made final.

This Petition describes the principal terms of the MIPA and explains why it satisfies the objectives of the Consent Agreement. A copy of the MIPA and its attachments and schedules is attached as Confidential Exhibit A. **[No copy attached to Public Version.]**

⁴ DZI currently has a facilities use contract to operate the Kansas AAP, which was designated for closure in the 2005 round of Defense Base Closures and Realignment ("BRAC 2005"). General Dynamics understands that the Department of the Army has tentatively scheduled operational closure of Kansas AAP for 2010. Some of the Kansas AAP's functions, including the 60MM, 81MM, and 120MM high explosive melt-pour mortar functions, are currently scheduled to relocate in 2009. The BRAC 2005 recommendations include relocating the 60MM, 81MM, and 120MM Mortar functions at Kansas AAP to the Milan AAP.

II. REQUEST FOR CONFIDENTIAL TREATMENT

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of General Dynamics' interest in AO, General Dynamics has redacted such confidential information from the public version of this petition and its attachments. The disclosure of this information would prejudice General Dynamics and DZI, cause harm to the ongoing competitiveness of AO, and impair General Dynamics' ability to comply with its obligations under the Consent Agreement.

Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2006), General Dynamics requests, on its own behalf and on behalf of DZI, that the confidential version of this Petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this Petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2). The confidential version of this Petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

III. THE PROPOSED ACQUIRER

According to the 2003 *Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies* (the "Merger Remedies Statement"), the divestiture acquirer must be financially and competitively viable to be an acceptable buyer. The buyer must be able to maintain or restore competition in the relevant market with the package of assets to be divested. Key factors to consider in this analysis are whether the proposed acquirer

has (1) the financial capacity and incentives to acquire and operate the package of assets, and (2) the competitive ability to maintain or restore competition in the marketplace.

As described below, DZI has both the financial capacity and the incentives to acquire and operate AO and ensure AO's continued operation as a viable, ongoing business. DZI also has the necessary industry experience, customer relationships and knowledge of AO to operate the business successfully. Therefore, the Commission should find that DZI is an acceptable acquirer suitable for approval by the Commission.

A. DZI Has the Financial Ability and Incentives to Complete the Transaction Successfully and Invest in AO on a Going-Forward Basis.

DZI is one of the largest privately held companies in the US, with annual revenues of approximately \$1.6 billion. DZI has the financial capacity, resources and incentives to acquire General Dynamics' interest in AO and ensure AO's continued operation as a viable, ongoing business. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, it is not anticipated that the Iowa and Milan AAPs

will require significant investments outside the normal course of their operations in the near future. As noted above, the Milan AAP and Iowa AAP facilities use contracts currently held by AO will expire in 2008. The United States Army held an "Industry Day" on August 30, 2006 at Rock Island, Illinois for munitions competitors that expressed interest in bidding for these operating contracts. At that meeting, the Army stated that "No major infrastructure projects are planned by the Government within the next two years at Iowa and Milan." See "Questions from Iowa/Milan AAP Industry Day, 30 August 2006," available at

<http://www.afsc.army.mil/ac/aais/ioc/iowamilan/Q%20&%20A%20Industry%20Day%20-%2030%20Aug.doc>.

The Merger Remedies Statement also establishes that the proposed buyer should have an economic incentive to maintain or restore competition in the relevant market. In this case, [REDACTED] gives DZI an exceptionally strong financial incentive to maintain AO's competitive viability so AO can compete effectively for the contracts to operate the Milan and Iowa AAPs. The US Army plans to close the Kansas AAP – the only high explosive melt-pour mortar facility currently operated by DZI – as early as 2009. [REDACTED]

[REDACTED]

[REDACTED]

B. DZI Has the Competitive Ability to Maintain or Restore Competition In the Marketplace.

The Bureau of Competition's 1999 "Study of the Commission's Divestiture Process" (the "Divestiture Study") cited the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture. "The most successful buyers appear to be the ones that know the most about what they are buying." *See* Divestiture Study at 34, available at <http://www.ftc.gov/os/1999/08/divestiture.pdf>. DZI has unparalleled experience in the provision of high explosive melt-pour load, assemble and pack services for artillery and mortar munitions to the United States Military. DZI participated in the design, construction and operation of the Iowa AAP prior to and during World War II, and it has been the operating contractor of the Kansas AAP since 1970. DZI's operation of the Kansas AAP has given it extensive industry experience and customer relationships that will help ensure AO's continued competitive significance.

Furthermore, DZI is also intimately familiar with AO's operations and is uniquely

positioned to ensure that AO remains competitively significant in the future. As noted above, MHC (now a second-tier subsidiary of DZI) already owns a fifty (50) percent interest in AO that it has held since AO's formation in 1998. Moreover, DZI (through MHC) has considerable practical experience with AO's regular business operations. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The current AO President, Joel Gregory, is a former DZI employee.

IV. THE DIVESTITURE AGREEMENT

The acquisition of General Dynamics' interest in AO by DZI complies with and satisfies the purposes of the Consent Agreement. Pursuant to the Merger Remedies Statement, the divestiture agreement must convey all assets required to be divested and must not contain any provisions inconsistent with the terms of the Commission's Order or with the remedial objectives of the Order. The MIPA conveys all of the assets required to be divested – General Dynamics' entire interest in AO – and it does not contain any provisions inconsistent with the terms of the Consent Agreement or its remedial objectives. Therefore, the MIPA complies with and satisfies the purposes of the Consent Agreement.

Section 5 of the MIPA establishes the purchase price of General Dynamics' interest in AO. The baseline purchase price is [REDACTED], including an initial closing payment of [REDACTED] and two installment payments of [REDACTED] each on the first and second anniversaries of the transaction's closing date. Given the current uncertainty regarding the future of the Iowa and

Milan facilities use contracts – without which AO has no right to operate any of the assets currently under its control – [REDACTED] the purchase price includes potential additional payments [REDACTED] that DZI would make to General Dynamics [REDACTED]

[REDACTED]

[REDACTED]. Alternately, [REDACTED]
[REDACTED], DZI will pay General Dynamics [REDACTED] annually for

[REDACTED]

AO's position as the incumbent on the Milan AAP and Iowa AAP facilities use agreements means that AO has a strong likelihood of winning the recompetes for those contracts, so DZI has a strong incentive to bid aggressively for them. The contingent payment provisions do not change DZI's or General Dynamics' incentives for several reasons.⁵ First, DZI's baseline investment of [REDACTED]

[REDACTED]. Second, [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]. Third, [REDACTED]
[REDACTED]

[REDACTED]. Fourth, [REDACTED]
[REDACTED]
[REDACTED]

⁵ The Commission has approved similar contingent payments related to previous divestitures, often when the divestiture assets include a product whose FDA approval is pending at the time of the divestiture. *See, e.g.*, In the Matter of Boston Scientific Corporation and Guidant Corporation, Docket No. C-4164, Decision and Order, July 21, 2006, at 9, available at <http://www.ftc.gov/os/caselist/0610046/060725do0610046.pdf>; In the Matter of Johnson & Johnson, Decision and Order, December 21, 2005, at 11, available at <http://www.ftc.gov/os/caselist/0510050/051227do0510050.pdf>.

[REDACTED] . Finally, the contingent payments do not affect General Dynamics' incentive to bid aggressively for the contracts because the payments are considerably smaller than the expected revenues over the life of the contracts.

V. CONCLUSION

For the foregoing reasons, General Dynamics respectfully requests that the Commission expeditiously approve the proposed divestiture of General Dynamics' interest in AO to DZI, in the manner provided in the agreement provided in Confidential Exhibit A, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

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Dated: December 29, 2006