

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill

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| In the Matter of |) | |
| |) | |
| CARPENTER TECHNOLOGY CORPORATION |) | Docket No. C-4349 |
| a corporation; |) | |
| |) | |
| and |) | |
| |) | |
| LATROBE SPECIALTY METALS, INC. |) | |
| a corporation. |) | |
| |) | |

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Carpenter Technology Corporation (“Carpenter”) of 100 percent of the outstanding voting securities of Respondent Latrobe Specialty Metals, Inc. (“Latrobe”) from HHEP-Latrobe, L.P., and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Carpenter Technology Corporation is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its headquarters address located at 101 West Bern Street, Reading, Pennsylvania 19601.
2. Respondent Latrobe Specialty Metals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 2626 Ligonier Street, Latrobe, Pennsylvania 15650. HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc., has its headquarters address at 100 Crescent Court, Suite 1200, Dallas, Texas 75201. “Latrobe” also includes HHEP-Latrobe, L.P., the ultimate parent entity of Latrobe Specialty Metals, Inc.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Carpenter” means Carpenter Technology Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Carpenter (including, but not limited to, Hawke Acquisition Corp.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Carpenter shall include Latrobe.
- B. “Latrobe” means Latrobe Specialty Metals, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Latrobe, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” mean Carpenter and Latrobe, individually and collectively.

- D. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- E. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- F. “Orders” means the Decision and Order and this Order to Maintain Assets.
- G. “Commission” means the Federal Trade Commission.
- H. “Specialty Metals Product Business(es)” means Respondent Latrobe’s business throughout the United States of America related to all of the Specialty Metals Products, including the research, Development, manufacture, distribution, marketing, and sale of each Specialty Metals Product and the assets related to such business, including, but not limited to, the Specialty Metals Product Assets.
- I. “Pre-Acquisition Marketing Plan” means any marketing or sales plan that was planned or implemented within the period immediately prior to the Acquisition and without consideration of the influence of the pending Acquisition for the Specialty Metals Product Business.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business, to minimize any risk of loss of competitive potential for the Specialty Metals Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Specialty Metals Product Business except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Specialty Metals Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Specialty Metals Product Business.
- B. Prior to the Acquisition Date and as a condition precedent to the consummation of the Acquisition, Respondents shall secure all consents and waivers from all Third Parties that

are necessary to permit Respondents to divest the Specialty Metals Product Assets required to be divested pursuant to the Decision and Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Specialty Metals Products;

provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- C. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall maintain the operations of the Specialty Metals Product Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such Business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Specialty Metals Product Business and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Specialty Metals Product Business. Respondents' responsibilities shall include, but are not limited to, the following:
1. Respondents shall provide the Specialty Metals Product Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Specialty Metals Product Business;
 2. Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Specialty Metals Product Business authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;
 3. Respondents shall provide such resources as may be necessary to respond to competition against the Specialty Metals Products and/or to prevent any diminution in sales of the Specialty Metals Products during and after the Acquisition process and prior to divestiture of the related Specialty Metals Product Assets;
 4. Respondents shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Specialty Metals Products at the High Volume Accounts;
 5. Respondents shall make available for use by the Specialty Metals Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including the Specialty Metals Product Assets;

6. Respondents shall provide the Specialty Metals Product Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business; and
 7. Respondents shall provide such support services to the Specialty Metals Product Business as were being provided to these Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- D. Until Respondents fully deliver the Specialty Metals Product Assets to the Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Specialty Metals Products for the relevant Specialty Metals Product's most recent Pre-Acquisition Marketing Plan.
- E. Respondents shall, during the Specialty Metals Product Employee Access Period, not interfere with the hiring or employing by the Acquirer of Specialty Metals Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any non-compete or non-disclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Specialty Metals Product Core Employee who receives a written offer of employment from the Acquirer;
- provided, however,* subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E. shall not prohibit Respondents from continuing to employ any Specialty Metals Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.
- F. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- G. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Specialty Metals Product Business through its full and complete delivery to the Acquirer, to minimize any risk of loss of competitive potential for the Specialty Metals Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Specialty Metals Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent Carpenter, which consent shall not be unreasonably withheld. If Respondent Carpenter has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Carpenter of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
and
 3. The Interim Monitor shall serve until, the latter of:
 - a. the date of completion by Respondents of the divestiture of all Specialty Metal Product Assets and the delivery of the Manufacturing Technology and Product Intellectual Property in a manner that fully satisfies the requirements of this Order;
and

- b. with respect to each Specialty Metal Product, the date the Acquirer has obtained or achieved all Product Approvals and Specifications necessary to manufacture, market, import, export, and sell such Specialty Metal Product for use for aerospace applications and is able to manufacture such Specialty Metal Product in commercial quantities independently of Respondents;

provided, however, that the Interim Monitor's service shall not exceed five (5) years from the date the Decision and Order is issued;

provided further, that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim 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 Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *provided, however,* beginning ninety (90) days after Respondent has filed its final report pursuant to Paragraph VI.B. of the Decision and Order,

and every ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward:

1. obtaining all of the relevant Product Approvals and Specifications necessary to manufacture in commercial quantities, the Specialty Metals Products independently of Respondents and;
 2. to secure sources of supply of the raw materials, inputs and components for the Specialty Metals Products from entities other than Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;
- provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued, and every thirty (30) days thereafter until Respondents have fully complied with their obligations under Paragraphs II.A., II.B., II.C. II.D., II.E., II.F. and II.H. of the Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the Decision and Order; *provided,*

however, that, after the Decision and Order becomes final and effective, the reports due under this Order to Maintain Assets shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph V of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of any Respondent;
- B. any proposed acquisition, merger or consolidation of any Respondent; or
- C. any other change in any Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
 - 1. the day after the divestiture of all of the Specialty Metals Product Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or
 - 2. the day after the day the Decision and Order becomes final and effective.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: February 28, 2012