

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

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In the Matter of)	
)	
SOLERA HOLDINGS, INC.,)	Docket No. C-
a corporation.)	Public Version
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)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of Actual Systems of America (“Actual Systems”) by Solera Holdings, Inc. (“Respondent Solera”), and Respondent Solera having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Solera 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

Respondent Solera, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent Solera of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Solera 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 that it had reason to believe that Respondent Solera has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”).

1. Respondent Solera is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 7 Village Circle, Suite 100, Westlake, TX 76262.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Solera, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Solera” means Solera Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to Actual Systems of America, Hollander and Audatex), divisions, groups, and affiliates controlled by Solera Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Actual Systems” means Actual Systems of America, a subsidiary of Solera.
- C. “Actual Systems UK” means Actual Systems (UK) Limited, a subsidiary of Solera.
- D. “Commission” means the Federal Trade Commission.
- E. “Beech Systems” means Beech Systems Ltd., a corporation organized, existing and doing business under and by virtue of the laws of Nevis, having a registered address of Main Street, P.O. Box 556, Charlestown, Nevis, West Indies.
- F. “ASA Holdings” means Actual Systems of America Holdings LLC, a limited liability corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its headquarters address located at 313 South Vaughn Way #134, Aurora, Colorado 80014.
- G. “Acquisition” means Respondent Solera’s acquisition of Actual Systems on May 29, 2012.
- H. “Acquirer” means:

1. an entity that is specifically identified in this Order to acquire particular assets that Respondent Solera is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or
 2. an entity that receives the prior approval of the Commission to acquire particular assets that Respondent Solera is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- I. "Actual Systems Intellectual Property" means all of the intellectual property held by Actual Systems, Beech Systems, Actual Systems UK, and any additional intellectual property used in the development, manufacturing, storage, distribution and sale of the Actual Systems Products in North America obtained, created, or used by Respondent Solera since the Acquisition up to the Date of Divestiture including, but not limited to:
1. the names, Trademarks, and websites of the Actual Systems Products for use and sale in North America including, but not limited to, www.actual-america.com website;
 2. Actual Systems Products manufacturing copyrights;
 3. Software owned by Respondent Solera or for which Respondent Solera has licensed rights that may be transferred;
 4. source code, scripts, procedures developed by Actual Systems for application on the Actual Systems computers or client/customer computers, and all documentation related to such source code, scripts, and procedures;
 5. computer programs owned by Respondent Solera or for which Respondent Solera has licensed rights that may be transferred;
 6. Patents including, but not limited to, the right to obtain and file for patents;
 7. Actual Systems Products sales copyrights;
 8. licenses including, but not limited to, licenses to third-party software if transferable and sub-licenses to software modified by Respondent Solera;
 9. know-how (including, but not limited to, flow sheets, process and instrumentation), diagrams, risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications), drawings, utility models, designs, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions;

10. technical information (including, but not limited to, material and final product specifications);
 11. protocols (including, but not limited to, operational manuals);
 12. quality control information and methods, and other confidential or proprietary technical, business, development and other information;
 13. trade secrets;
 14. all rights to limit the use or disclosure thereof of Trade Dress, and the modifications or improvements to such intellectual property; and
 15. subject to any mutually agreed covenant between Respondent Solera and Acquirer, rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.
- J. “Actual Systems North American Business” means all of Respondent Solera’s assets, tangible and intangible, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of Actual Systems Products in North America including, without limitation, the following:
1. all of the Actual Systems assets acquired in the Acquisition and located in North America;
 2. contracts, service arrangements, and on-going business with the Actual Systems Yards in North America, and the personnel and offices supporting the Actual Systems Yards in North America;
 3. a Cloned Form of the Actual Systems Products as those products exist as of the Divestiture Date;
 4. all inventory, including raw materials, packaging materials, work-in-process and finished goods, in each case to the extent consisting of, or intended for use in the manufacture or sale of, the Actual Systems Products in North America;
 5. all commitments and orders for the purchase of goods that have not been shipped, to the extent such goods are, or are intended for use in the manufacture or sale of, the Actual Systems Products in North America;
 6. all rights under warranties and guarantees, express or implied, with respect to the Actual Systems Products in North America;

7. all items of prepaid expenses, to the extent related to the Actual Systems Products in North America; and
8. all books, records and files related to the Actual Systems Products in North America;

Provided, however, that “Actual Systems North American Business” does not include any portion of any of the foregoing assets, businesses and goodwill that relates only to the Actual Systems Products and Actual Systems Yards outside of North America;

Provided further, however, that “Actual Systems North American Business” does not include assets or groups of assets specifically excluded in the Solera/ASA Holdings Divestiture Agreement.

- K. “Actual Systems Products” means the Pinnacle Professional (or Pinnacle Pro), Pinnacle Classic, or any other product made by or supported by Actual Systems before the Acquisition including, but not limited to, its handheld inventory and bar code device, integrated inter trading, Pinnacle Net, and the eBay interface.
- L. “Actual Systems Yards” means auto recyclers or other entities who use Actual Systems Products.
- M. “Aurora Facility” means the facilities located at 313 South Vaughn Way #134, Aurora, Colorado 80014.
- N. “Cloned Form” means a program (*e.g.*, an operating system or an application program) that has functions and behavior identical to another program including all source code. The Cloned Form of the software will include fully paid-up licenses or sub-licenses or shared ownership to the appropriate licenses that are owned or transferable by Respondent Solera and come with the software.
- O. “Confidential Business Information” means all competitively sensitive, proprietary, and all other information that is not in the public domain relating to the Actual Systems North American Business, and includes, but is not limited to, pricing lists, customer lists, contracts, cost information, marketing methods, or processes; *provided, however,* that Confidential Business Information does not include any information that a person demonstrates: (i) was or becomes generally available to the public other than as a result of a disclosure by such person in violation of any contractual, legal, fiduciary, or other obligation to maintain the confidentiality, or (ii) was available, or becomes available, to such person on a non-confidential basis, but only if, to the knowledge of such person, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information. Confidential Business

Information includes information regardless of the form, including written and electronic versions.

- P. “Designated Employee” means a Person listed in Confidential Exhibit B to this Order.
- Q. “Divestiture Date” means the date on which the divestitures, licensing, and assignments pursuant to Paragraph II or Paragraph VI of this Order are consummated.
- R. “Hollander Interchange” means the numeric indexing system maintained and sold or licensed by Solera and used to identify automotive parts and assemblies and their ability to be interchanged.
- S. “North America” means the United States of America and Canada.
- T. “Patents” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- U. “Person” means any natural person, partnership, corporation, association, trust, joint venture, limited liability company, government, government agency, division, or department, or other business or legal entity.
- V. “Remedial Agreement” means the following:
1. the Solera/ASA Holdings Divestiture Agreement if such agreement has not been rejected by the Commission pursuant to Paragraph II of this Order; and
 2. any agreement between Respondent Solera and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, Related To the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- W. “Software” means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.

- X. “Solera/ASA Holdings Divestiture Agreement” means the stock purchase agreement, together with all licenses, assignments, and other agreements entered into by Respondent Solera and ASA Holdings for the sale of Actual Systems, which conducts the Actual Systems North American Business, and all other agreements, leases, transfers, and licenses required by this Order. The Solera/ASA Holdings Divestiture Agreement is attached as Confidential Exhibit A to this Order.
- Y. “Third Party(ies)” means any Person other than Respondent Solera or the Acquirer.
- Z. “Trade Dress” means the current trade dress of a particular product or Person including, without limitation, product packaging, logos, and the lettering of the product trade name, brand name, or corporate name.
- AA. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights therein, and the goodwill symbolized thereby and associated therewith.
- BB. “Yard Management System” means point-of-sale systems used by an auto recycler to operate its business including, but not limited to, managing inventory and selling parts.
- CC. “Yard Management System Business” means any and all assets, tangible and intangible, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of a Yard Management System.

II. (Divestiture)

IT IS FURTHER ORDERED that:

- A. Within ten (10) days after the Commission accepts this Order for public comment, Respondent Solera shall divest the Actual Systems North American Business, grant a royalty-free, fully-paid-up, irrevocable, perpetual exclusive license or equivalent grant (even as to the Respondent Solera during the term of the Order) in North America to the Actual Systems Intellectual Property, with rights to sublicense in North America; and as part of the Remedial Agreement, grant a license to the Hollander Interchange, absolutely and in good faith, to ASA Holdings pursuant to, and in accordance with, the Solera/ASA Holdings Divestiture Agreement. The Solera/ASA Holdings Divestiture Agreement (which shall include, among other things, the stock purchase agreement, a transition services agreement, and an IP Transfer Agreement between Respondent Solera and ASA Holdings) shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of ASA Holdings, or to reduce any obligations of Respondent Solera

under such agreements, and such agreements, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

Provided, however, that with respect to documents or other materials included in the Actual Systems North American Business that contain information (a) that relates to both the Actual Systems North American Business and to other products or businesses of Respondent Solera, or (b) for which Respondent Solera has a legal obligation to retain the original copies, Respondent Solera shall be required to divest to the Acquirer only copies or, at its option, relevant excerpts of such documents and materials, but Respondent Solera shall provide the Acquirer access to the originals of such documents as necessary, it being a purpose of this proviso to ensure that Respondent Solera not be required to divest itself completely of records or information that relate to products or businesses other than the Actual Systems North American Business;

Provided further, however, that with respect to any contract or agreement included in the Actual Systems North American Business that relates both to the Actual Systems Products and to any other product, Respondent Solera may, concurrently with assigning such contract or agreement to the extent it relates to the Actual Systems Products, retain its rights under such contract or agreement for purposes of such other product(s).

Provided further, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Solera that ASA Holdings is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondent Solera shall immediately notify ASA Holdings of the notice received from the Commission and shall as soon as practicable effect the rescission of the Solera/ASA Holdings Divestiture Agreement; and (2) Respondent Solera shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Actual Systems North American Business, and enter into licenses, other agreements, and, if required, leases as described in Paragraph II.A., and divest any other assets or enter into any other relief required to satisfy the purposes of this Order, absolutely and in good faith, at no minimum price, to or with an Acquirer, that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission;

Provided further, however, that if Respondent Solera has complied with the terms of Paragraphs II.A. and II.B. before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Solera that the manner in which the divestiture and assignments were accomplished is not acceptable, the Commission may direct Respondent Solera, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture and assignments including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Divestiture Date, Respondent Solera shall secure all consents, assignments, and waivers, if required, from all Third Parties, that are related to the Actual Systems North American Business including securing a lease for the Aurora Facility, if required, and securing consents, if required, from all customers of the Actual Systems North American Business whose contracts are being assigned or extended to the Acquirer pursuant to Paragraph II.A.

Provided, however, Respondent Solera may satisfy this requirement with respect to any one or more leases or agreements by certifying that the Acquirer has executed such relevant agreements directly with each of the relevant Third Parties.

- C. Respondent Solera shall include, as part of a Remedial Agreement, any transition services agreement by which Respondent Solera contemplates providing services or assistance it will provide the Acquirer. Such transition services agreement shall include, but not be limited to:

1. the scope of services, term, and prices or costs for such services; and
2. the option for the Acquirer to terminate a particular service being provided to the Acquirer:
 - a. at any time, with prior notice not greater than thirty (30) days, without penalty or payment for the remainder of the original service period; and
 - b. without automatically terminating, or incurring a penalty or additional cost for continuing, that particular service in another part of the world.

- D. Any Remedial Agreement that has been approved by the Commission between Respondent Solera (or a Divestiture Trustee) and a Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent Solera to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

- E. Respondent Solera shall not terminate or modify any agreement that is part of a Remedial Agreement before the end of the term approved by the Commission without prior approval of the Commission pursuant to Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

- F. The purposes of this Paragraph II of the Order are: (1) to ensure that the Acquirer will have the intention and ability to produce, sell, and maintain the Actual Systems Products in North America independently of Respondent Solera; (2) to ensure that the Acquirer will have the intention and ability to maintain and grow the customer base using the Actual Systems Products in North America; and (3) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that for the term of this Order, Respondent Solera shall not sell, market, or otherwise distribute any Yard Management System or part thereof in North America that was translated or copied from, or in the same computer code as the Cloned Form of the Actual Systems Products licensed as part of the Remedial Agreement pursuant to Paragraph II or Paragraph VI of this Order.

Provided, however, that Respondent Solera is not prohibited from creating similar products to the Actual Systems Products and selling, marketing, or otherwise distributing such products as part of the current Yard Management System products sold by Respondent Solera.

IV. (Confidentiality)

IT IS FURTHER ORDERED that

- A. Except in the course of performing its obligations under a Remedial Agreement, or as expressly allowed pursuant to this Order:
1. Respondent Solera shall not use any Confidential Business Information, or provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to any Person. Among other things, Respondent Solera shall not use such Confidential Business Information:
 - a. to assist or inform Respondent Solera employees who develop, manufacture, solicit for sale, sell, or service Respondent Solera products that compete with the products divested, sold, or distributed pursuant to this Order including, but not limited to, the employees of the Hollander business owned and operated by Solera;
 - b. to interfere with any suppliers, distributors, resellers, or customers of the Acquirer;
 - c. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to this Order; or
 - d. to interfere in any other way with the Acquirer pursuant to this Order or with the Actual Systems North American Business divested pursuant to this Order.

2. Respondent Solera shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to any Person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;
 3. Respondent Solera shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to the employees associated with the Solera Yard Management System Business; and
 4. Respondent Solera shall institute procedures and requirements to ensure that:
 - a. Respondent Solera employees with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order; and
 - b. Respondent Solera employees associated with the Solera Yard Management System Business do not solicit, access or use any Confidential Business Information that they are prohibited under this Order from receiving for any reason or purpose.
- B. The requirements of this Paragraph IV do not apply to Confidential Business Information that Respondent Solera demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Solera in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 2. is necessary to be included in mandatory regulatory filings; *provided, however,* that Respondent Solera shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 3. was available, or becomes available, to Respondent Solera on a non-confidential basis, but only if, to the knowledge of Respondent Solera, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 4. is information the disclosure of which is consented to by the Acquirer;
 5. is necessary to be exchanged in the course of consummating the transactions under the Remedial Agreement;
 6. is disclosed in complying with this Order;

7. is information the disclosure of which is necessary to allow Respondent Solera to comply with the requirements and obligations of the laws of the United States and other countries;
 8. is disclosed in defending or pursuing legal claims, investigations or enforcement actions threatened or brought against or by Respondent Solera or the Actual Systems North American Business; or
 9. is disclosed in obtaining legal advice.
- C. The purpose of this Paragraph IV is to maintain the full economic viability, marketability and competitiveness of the Actual Systems North American Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Actual Systems North American Business, to minimize the risk of disclosure and unauthorized use of Confidential Business Information of the Actual Systems North American Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Actual Systems North American Business, except for ordinary wear and tear.

V. (Monitor)

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Solera signs the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent Solera expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Solera, which consent shall not be unreasonably withheld. If the Respondent Solera has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Solera of the identity of any proposed Monitor, Respondent Solera shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondent Solera shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Solera's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.

D. If a Monitor is appointed pursuant to this Paragraph V, Respondent Solera 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 Respondent Solera's compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Solera expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order; and
 - b. Monitoring any agreements between Respondent Solera and the Acquirer.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Solera's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Solera's compliance with its obligations under the Order. Respondent Solera shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Solera's compliance with the Order.
4. The Monitor shall serve, without bond or other security, at the expense of Respondent Solera on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Solera, 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 services rendered, subject to the approval of the Commission.
5. Respondent Solera 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 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.

6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Solera of its obligations under the Order.
 7. Respondent Solera may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph V.
 - G. 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.
 - H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VI. (Divestiture Trustee)

IT IS FURTHER ORDERED that:

- A. If Respondent Solera has not fully complied with the obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Actual Systems North American Business, and enter any other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order.

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, Respondent Solera shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraph II. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief

available to it, including 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 Respondent Solera to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Solera, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Solera has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Solera of the identity of any proposed Divestiture Trustee, Respondent Solera shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Solera shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondent Solera 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 divest the Actual Systems North American Business, and enter into all other agreements, licenses and assignments as described in Paragraph II of this Order.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Actual Systems North American Business, and enter into all other agreements, licenses and assignments as described in Paragraph II of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request.

Respondent Solera shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee.

Respondent Solera shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Solera shall extend the time for divestiture under this Paragraph VI in an amount equal to the delay, as determined by the Commission.

4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Solera's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order.

provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for assets and businesses to be divested pursuant to Paragraph II, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Solera from among those approved by the Commission;

provided further, however, that Respondent Solera shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Solera, 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 Respondent Solera, 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 of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Solera, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent Solera 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 losses, claims,

damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Respondent Solera and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondent Solera may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- F. 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 obligations under Paragraph II of this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VI of this Order may be the same Person appointed as the Monitor pursuant to Paragraph V of this Order.

VII. (Employees)

IT IS FURTHER ORDERED that:

- A. Beginning no later than the time Respondent Solera signs the Consent Agreement in this matter until ninety (90) days after the Divestiture Date:

1. Respondent Solera shall provide the Designated Employees with reasonable financial incentives to continue in their positions for such period. Such incentives shall include a continuation of all employee benefits offered by Respondent Solera until the Designated Employee has been hired, the Acquirer has decided not to hire such Designated Employee, or the Designated Employee has declined, in writing, the Acquirer's offer, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives to such Designated Employee as may be necessary to transition the Actual Systems North American Business to the Acquirer;
2. Respondent Solera shall not interfere with the interviewing, hiring, or employing of the Designated Employees by the Acquirer and shall remove any impediments within the control of Respondent Solera that may deter, or otherwise prevent or discourage the Designated Employees from accepting employment with the Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Solera that would affect the ability or incentive of those individuals to be employed by the Acquirer. *Provided, however,* that in no event shall Respondent Solera be required to accelerate any contingent payments that may become payable to the respective seller parties in connection with Respondent Solera's acquisition of Actual Systems, Actual Systems UK, and the assets of Beech Systems. In addition, Respondent Solera shall not make any counteroffer to a Designated Employee who receives a written offer of employment from the Acquirer, unless and until the Designated Employee has declined, in writing, the Acquirer's offer.
3. Respondent Solera shall, in a manner consistent with local labor laws:
 - a. facilitate employment interviews between each Designated Employee and the Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer, and shall not discourage such employee from participating in such interviews;
 - b. not interfere in employment negotiations between each Designated Employee and the Acquirer;
 - c. with respect to each Designated Employee who receives an offer of employment from the Acquirer:
 - (1) not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with the Acquirer;

- (2) cooperate with the Acquirer in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts an offer of employment from the Acquirer;
- (3) eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the manufacture and sale of the Actual Systems Products in North America; and
- (4) unless alternative arrangements are agreed upon with the Acquirer, retain the obligation to pay the benefits of any Designated Employee who accepts employment with the Acquirer including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits (except for payments that are excepted in Paragraph VII.A.2., above).

Provided, however, that subject to the conditions of continued employment prescribed in this Order, this Paragraph VII.A. shall not prohibit Respondent Solera from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer to such employee.

- B. Respondent Solera shall not, for a period of two (2) years following the Divestiture Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any employee of the Acquirer, to terminate his or her employment relationship with the Acquirer.

Provided, however, Respondent Solera may place general advertisements for or conduct general searches for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees;

Provided further, however, Respondent Solera may hire Designated Employees who apply for employment with Respondent Solera as long as such employees were not solicited by Respondent Solera in violation of this Paragraph.

VIII. (Prior Notice)

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order is issued, Respondent Solera shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VIII, directly or indirectly, acquire:

- A. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that produces, designs, manufactures, or sells Yard Management Systems in or into North America; or
- B. any business, whether by asset purchase or otherwise, that engages in or engaged in, at any time after the Acquisition, or during the six (6) month period prior to the Acquisition, the design, manufacture, production, or sale of Yard Management Systems in or into North America.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent Solera and not of any other party to the transaction. Respondent Solera shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Solera shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

Provided, further, however, that prior notification shall not be required by this Paragraph VIII for any acquisition after which Respondent Solera would hold no more than one percent (1%) of the outstanding securities or other equity interest in any Person described in this Paragraph VIII.

IX. (Compliance Reports)

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is issued, and every thirty (30) days thereafter until Respondent Solera has fully complied with Paragraphs II.A., II.B., II.C., II.D., and VII.A. of this Order, Respondent Solera shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Solera shall submit

at the same time a copy of its report concerning compliance with this Order to the Monitor or Divestiture Trustee, if any Monitor or Divestiture Trustee has been appointed pursuant to this Order. Respondent Solera shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order.

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order is issued, for the next nine (9) years, Respondent Solera shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent Solera shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Respondent Solera shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph VIII. Respondent Solera shall include a description of such acquisitions.

X. (Reorganization)

IT IS FURTHER ORDERED that Respondent Solera shall notify the Commission at least thirty (30) days prior to any proposed:

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

XI. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Solera, Respondent Solera shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Solera 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 Respondent Solera Relating To compliance with this Order, which copying services shall be provided by Respondent Solera at its expense; and

- B. to interview officers, directors, or employees of Respondent Solera, who may have counsel present, regarding such matters.

XII. (Termination)

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

CONFIDENTIAL EXHIBIT A

SOLERA/ASA HOLDINGS DIVESTITURE AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EXHIBIT B

DESIGNATED EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]