

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

OLYMPUS GROWTH FUND VI, L.P.,

LIQUI-BOX, INC.,

and

DS SMITH PLC,

Defendants.

Civil Action No.: 1:20-cv-00464

Hon. Christopher R. Cooper

**JOINT NOTICE REGARDING THE  
DIVESTITURE UNDER THE PROPOSED FINAL JUDGMENT**

Plaintiff United States of America and Defendants Olympus Growth Fund VI, L.P., Liqui-Box, Inc., and DS Smith plc submit this Joint Notice responding to the following questions in the Court's February 21, 2020 Minute Order:

*Do the parties intend, upon entry of the Final Judgment, to require Defendants to divest and relocate the Divestiture Assets within 45 and 180 days, respectively, of entry of the Asset Preservation Stipulation and Order, which the parties are requesting to be entered forthwith?*

Pursuant to the Asset Preservation Stipulation and Order ("APSO"), which requires Defendants to abide by the terms of the proposed Final Judgment ("PFJ") pending entry of the Final Judgment by the Court (APSO, ¶ IV(B)), Defendants would be required to divest the Divestiture Assets within 45 days after the Court's entry of the APSO (PFJ, ¶ IV(A)). Defendants must relocate certain Divested Lines prior to the divestiture taking place (PFJ, ¶ IV(B)) and must relocate the Divested Fitment Equipment within 180 days after the Court's

entry of the APSO (PFJ, ¶ IV(J)).

*If so, how could those requirements be met given that entry of any Final Judgment would come only after compliance with the APPA procedures, which will necessarily take more than 45 days, and potentially more than 180 days?*

As noted above, pursuant to the APSO, which requires Defendants to comply with the PFJ pending entry by the Court, the Divestiture Assets would be divested within 45 days of the entry of the APSO. This would take place prior to the entry of the PFJ and before the APPA, or “Tunney Act,” procedures are complete. For the purpose of maintaining the Divestiture Assets and preserving competition in the relevant markets alleged in the Complaint, the parties intend the divestiture to occur expeditiously and in parallel with the Tunney Act procedures.

This would not, however, bind the Court in any way regarding whether the proposed Final Judgment is in the public interest. Defendants have agreed to accept the risk that this Court may ultimately reject the proposed Final Judgment, but have decided that this risk is offset by the benefit of being able to close their transaction, subject to the terms of the APSO. This process also benefits consumers, as it will preserve the competitive vigor of the Divestiture Assets in the marketplace during the Tunney Act process by placing the assets in the hands of TriMas Corporation, who, as the long-term owner of the assets, has the strongest incentive to use them to compete aggressively in the marketplace.

This is consistent with the procedures in other Tunney Act cases, with the parties and courts anticipating completion of divestitures during the Tunney Act proceedings and before entry of the Final Judgment. *See, e.g.,* Final Judgment in *U.S. v. Nexstar Media Group, Inc.* (D.D.C. Feb. 10, 2020) (Friedrich, J.) (“Defendants are ordered and directed, within thirty calendar days after the Court’s entry of the Hold Separate Stipulation and Order in this matter to

divest the Divestiture Assets in a manner consistent with this Final Judgment . . . .”); Final Judgment in *U.S. v. Amcor Ltd.* (D.D.C. Sept. 11, 2019) (McFadden, J.) (“Defendants are ordered and directed, within 30 calendar days after the entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment . . . .”); Final Judgment in *U.S. v. Vulcan Materials Co.* (D.D.C. Apr. 6, 2018) (Mehta, J.) (“Defendants are ordered and directed, within 45 calendar days after the Court’s signing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment . . . .”); and Final Judgment in *U.S. v. CRH plc* (D.D.C. Nov. 29, 2018) (Friedrich, J.) (“CRH and CRH Americas are ordered and directed, within ten (10) business days after the Court signs the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment . . . .”).

Finally, as the Court noted in its Minute Order, Defendants are requesting the Court to enter the APSO forthwith. Defendant Liqui-Box’s debt financing commitments expire on March 5, 2020. If closing of the Stock Purchase Agreement does not occur by March 5, 2020, there is a risk that Liqui-Box will not be able to secure replacement debt financing in a timely manner. In addition, some time will be needed to prepare for the mechanics of closing; Defendants provided for five business days for those issues in their Stock Purchase Agreement. Due to this timing, Defendants respectfully request a conference call with the Court as soon as possible should the Court have additional questions. The United States does not object to Defendants’ request for prompt entry of the APSO or a joint call with the Court.

Dated: February 25, 2020

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

/s/

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