

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANFOSS A/S,

and

EATON CORPORATION PLC,

Defendants.

Case No. 1:21-cv-1880

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order (“Stipulation and Order”):

A. “Danfoss” means Defendant Danfoss A/S, a Danish corporation with its headquarters in Nordborg, Denmark, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Eaton” means Defendant Eaton Corporation plc, an Irish corporation with its headquarters in Dublin, Ireland, its successors and assigns, and its subsidiaries, divisions, groups,

affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Interpump” means Interpump Group S.p.A., an Italian corporation with its headquarters in Sant’Ilario d’Enza, Reggio Emilia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Acquirer” means Interpump Group S.p.A. or another entity approved by the United States in its sole discretion to which Defendants divest the Divestiture Assets.

E. “Danfoss Orbital Motor Business” means Danfoss’s global business of designing, manufacturing, and selling its OMP X, OMR X, OMEW, OMH, OMS, OMM, OML, CE, RE, RC, RS, DH, DS, DT, DR, D9, HB, HK, and WS models of orbital motor products.

F. “Danfoss Hydraulic Steering Unit Business” means Danfoss’s global business of designing, manufacturing, and selling its OSPM, OSPP, LAGB, LAGU, LAGS, LAGC, LAGL, and LAGZ models of hydraulic steering unit products.

G. “Danfoss Hydraulic Steering Unit IP Licenses” means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 1 of the proposed Final Judgment.

H. “Eaton Orbital Motor Assets” means all of Eaton’s assets used to manufacture its HP 30, VIS 30, VIS 40, and VIS 45 models of orbital motor products.

I. “Eaton Hydraulic Steering Unit Assets” means all of Eaton’s assets used to manufacture its Series 10 and Series 20 models of hydraulic steering unit products.

J. “Eaton Orbital Motor IP Licenses” means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 2 of the proposed Final Judgment.

K. “Eaton Hydraulic Steering Unit IP Licenses” means worldwide, non-exclusive, royalty-free, perpetual, paid-up, irrevocable licenses to the intellectual property listed in Exhibit 3 of the proposed Final Judgment.

L. “Char Lynn IP License” means a non-exclusive, irrevocable, fully paid-up, royalty-free, perpetual license to use the “Char Lynn” trademark to market models HP 30, VIS 30, VIS 40, and VIS 45, or their equivalents, of orbital motors.

M. “Divestiture Assets” means the Danfoss Divestiture Assets and the Eaton Divestiture Assets.

N. “Divestiture Date” means the date on which the Divestiture Assets are divested to the Acquirer pursuant to the proposed Final Judgment.

O. “Danfoss Divestiture Assets” means (i) all assets, located in Zhenjiang, China as of January 21, 2020, including lapping machines, grinders, testers, measurement devices, and any other assets that the United States, in its sole discretion, deems to be necessary for the manufacture of Danfoss’s S70 model hydraulic steering unit product and (ii) all of Defendants’ rights, titles, and interests in and to the Danfoss Orbital Motor Business, the Danfoss Hydraulic Steering Unit Business, and all other property and assets, tangible and intangible, wherever located, relating to or used in connection with the Danfoss Orbital Motor Business or Danfoss Hydraulic Steering Unit Business, including:

1. the facility located at 110 Bill Bryan Blvd, Hopkinsville, KY 42240 (the “Hopkinsville Facility”);
2. the facility located at ul. Logistyezna 1, 55-040 Kobierzyce, Wroclaw (Poland) (the “Wroclaw Facility”);
3. the facility located at Ludwigscluster Chaussee 5, 19370, Parchim (Germany) (the “Parchim Facility”);
4. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;
6. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;
7. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;
8. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;
9. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and

technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

10. the Danfoss Hydraulic Steering Unit IP Licenses;

11. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

12. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.*, for the handling of materials and substances), quality assurance and control procedures, and design tools, and (d) rights in internet web sites and internet domain names.

Provided, however, that the Danfoss Divestiture Assets do not include (i) rights, titles, or interests in real property or tangible personal property located in Zhenjiang, China that is used to manufacture CE, RE, RC, and WS model orbital motor products that, at the Divestiture Date, are sold exclusively to customers outside of the United States; (ii) rights, titles, or interests in real property or tangible personal property located in Nordborg, Denmark that is used to manufacture OMEWF model orbital motor products that, at the Divestiture Date, are sold exclusively to

customers outside of the United States; or (iii) intellectual property listed in Exhibit 1 of the proposed Final Judgment.

P. “Eaton Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to the Eaton Orbital Motor Assets, the Eaton Hydraulic Steering Unit Assets, and all other property and assets, tangible and intangible, wherever located, relating to or used in connection with the Eaton Orbital Motor Assets or the Eaton Hydraulic Steering Unit Assets, including:

1. the Char Lynn IP License;
2. the Eaton Orbital Motor IP Licenses;
3. the Eaton Hydraulic Steering Unit IP Licenses;
4. the Eaton Divested Equipment and all other tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;
5. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;
6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;
7. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents,

or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

8. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

9. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.*, for the handling of materials and substances), quality assurance and control procedures, and design tools, and (d) rights in internet web sites and internet domain names.

Provided, however, that the Eaton Divestiture Assets do not include: (i) real property, (ii) tangible property, including fixed assets, machinery, and manufacturing equipment, used to manufacture Eaton's Series 20 model of hydraulic steering unit products; (iii) the Char Lynn trademark; (iv) intellectual property listed in Exhibit 2 of the proposed Final Judgment; (v) intellectual property listed in Exhibit 3 of the proposed Final Judgment; (vi) paint line assets used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets; or (vii) at the option of Acquirer, heat treat ovens, phosphate lines, or 80 ton broach used for the Eaton Orbital Motor Assets; or the HMS line used for the Eaton Hydraulic Steering Unit Assets.

Q. “Eaton Divested Equipment” means machining, assembly, and test assets relating to or used in connection with the production lines used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets. *Provided, however,* that the Eaton Divested Equipment does not include paint line assets used for the Eaton Orbital Motor Assets or Eaton Hydraulic Steering Unit Assets.

R. “Including” means including, but not limited to.

S. “Danfoss Relevant Personnel” means all full-time, part-time, or contract employees of Danfoss wherever located, that the United States, in its sole discretion, deems to be primarily involved in the design, manufacture, or sale of Danfoss’s OMP X, OMR X, OMEW, OMH, OMS, OMM, OML, CE, RE, RC, RS, DH, DS, DT, DR, D9, HB, HK, and WS models of orbital motor products and Danfoss’s S70, OSPM, OSPP, LAGB, LAGU, LAGS, LAGC, LAGL, and LAGZ models of hydraulic steering unit products, at any time between January 21, 2020 and the Divestiture Date.

Provided, however, Danfoss Relevant Personnel does not include employees of Danfoss that the United States, in its sole discretion, deems to be primarily engaged in human resources, legal, or other general or administrative support functions. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Danfoss Relevant Personnel.

T. “Eaton Relevant Personnel” means all full-time, part-time, or contract employees, wherever located, that the United States, in its sole discretion, deems to be primarily involved in the design, manufacture, and sale of Eaton’s HP 30, VIS 30, VIS 40, and VIS 45 models of orbital motor products and Eaton’s Series 10 and Series 20 models of hydraulic steering unit

products at any time between January 21, 2020 and the Divestiture Date.

Provided, however, Eaton Relevant Personnel does not include employees of Eaton that the United States, in its sole discretion, deems to be primarily engaged in human resources, legal, or other general or administrative support functions. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Eaton Relevant Personnel.

U. “Transaction” means the proposed acquisition by Danfoss of certain assets and equity interests from Eaton, pursuant to the Stock and Asset Purchase Agreement between Eaton Corporation PLC as the Seller and Danfoss A/S as the Buyer, dated January 21, 2020.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the design, manufacture, and sale of hydraulic orbital motors (“orbital motors”) and hydraulic steering units (“steering units”) for mobile off-road equipment in order to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of Eaton Corporation plc’s (“Eaton”) hydraulics business by Danfoss A/S (“Danfoss”). This Stipulation and Order ensures that, prior to divestiture, the Divestiture Assets remain economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

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III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over the parties to it. Venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and Defendants, may be filed with and entered by the Court as the Final Judgment, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by Defendants until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment

as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XV of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. Defendants agree to arrange, at their expense, publication of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged as quickly as possible and, in any event, no later than three business days after Defendants' receipt of (1) the text of the notice from the United States and (2) the identity of the newspaper or newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and filed with the Court.

F. Defendants represent that the divestiture ordered by this Stipulation and Order and the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION

From the date of the signing of this Stipulation and Order by Defendants and until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must take all actions necessary to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) operating the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. Defendants must use all reasonable efforts to maintain and increase the sales and revenues of the products provided by the Divestiture Assets and must maintain at 2021 or previously approved levels for 2022, whichever are higher, all promotional, advertising, sales, technical assistance, customer support and service, marketing, research and development, and merchandising support for the Divestiture Assets.

C. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. Defendants must maintain, in accordance with sound accounting principles, accurate and complete financial ledgers, books, or other records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

E. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Danfoss Relevant Personnel. Danfoss Relevant Personnel must not be transferred or reassigned except to Acquirer or via transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with 10 calendar days' notice of the transfer of Danfoss Relevant Personnel, and, upon objection by the United States to such transfer, Danfoss Relevant Personnel may not be

transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Danfoss Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by Defendants, and financial incentives may not be structured so as to disincentivize employees from accepting employment with Acquirer.

F. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Eaton Relevant Personnel. Until the divestiture ordered by the proposed Final Judgment has been completed, Eaton Relevant Personnel must not be transferred or reassigned except via transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with 10 calendar days' notice of the transfer of Eaton Relevant Personnel, and, upon objection by the United States to such transfer, Eaton Relevant Personnel may not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Eaton Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by Defendants.

G. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

H. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and level of sales, with the same level of quality, functionality, access, and customer support, and must, consistent

with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

I. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

J. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

K. Danfoss must appoint, subject to approval of the United States in its sole discretion, a person or persons to oversee the preservation of the Danfoss Divestiture Assets, and Eaton must appoint, subject to approval of the United States in its sole discretion, a person or person to oversee the preservation of the Eaton Divestiture Assets. Such persons will be responsible for Defendants' compliance with this Section VI and for ensuring the preservation of the Danfoss Divestiture Assets and Eaton Divestiture Assets for the duration of this Stipulation and Order. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within 10 working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

L. Within 20 days after the entry of this Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestiture required by the proposed Final Judgment or unless otherwise ordered by the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: July 14, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

/s/ Rebecca Valentine
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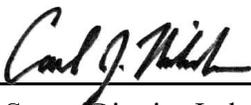
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ORDER

IT IS SO ORDERED by the Court, this 19th day of July, 2021.



United States District Judge