

COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMCOR LTD.,

and

RIO TINTO PLC,

and

ALCAN CORPORATION,

Defendants.

10 0973

CASE NO.:

DESCRIPTION: Antitrust

JUDGE:

DATE STAMP:

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" means the entity to whom Amcor shall divest the Divestiture Assets.

B. "Amcor" means defendant Amcor Ltd., organized under the laws of Australia and headquartered in Melbourne, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Rio Tinto” means defendant Rio Tinto plc, organized under the laws of and headquartered in the United Kingdom, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Alcan Packaging” means defendant Alcan Corporation, a Texas corporation that is a wholly owned subsidiary of Rio Tinto headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divestiture Assets” means:

- (1) Alcan Packaging’s facility located at 100 Kenpack Lane, Marshall, North Carolina 28753 (“Marshall Facility”);
- (2) All tangible assets that comprise the Marshall Facility, including, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the Marshall Facility; all licenses, permits and authorizations issued by any governmental organization relating to the Marshall Facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Marshall Facility, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Marshall Facility; and

- (3) The following intangible assets:
- (a) All intangible assets used exclusively or primarily in the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, including, but not limited to, all patents, licenses and sub-licenses, intellectual property, copyrights, trade names or trademarks, including, but not limited to, “Kwikbreathe,” “Kwiktear,” “Ultimate Header Film,” “Ultimate Header Bag,” “Ultimate Tyvek® Header Bag,” “Ultimate Kwiktear Bag,” “KWAdvent,” “Direct Seal,” or any derivation thereof, service marks, service names, technical information, designs, trade dress, and trade secrets; computer software, databases, and related documentation; know-how, including, but not limited to, recipes, formulas, and machine settings; information relating to plans for, improvements to, or line extensions of, any product produced at the Marshall Facility; drawings, blueprints, designs, design protocols, specifications for materials, and specifications for parts and devices; marketing and sales data; quality assurance and control procedures; design tools and simulation capability; contractual rights; manuals and technical information provided by Alcan Packaging to its own employees, customers, suppliers, agents, or licensees; safety procedures for the handling of materials and substances; research information and data concerning historic

and current research and development efforts, including, but not limited to, designs and experiments and the results of successful and unsuccessful designs and experiments; and

(b) With respect to any intangible assets that are not included in paragraph II(E)(3)(a), above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale both of products produced at the Marshall Facility and products produced at any other Alcan Packaging facility, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, and only products produced at the Marshall Facility, for the period of time that defendants have rights to such assets; provided, however, that any such license is transferable to any future purchaser of all or any relevant portion of the Marshall Facility.¹

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Amcor's prompt divestiture of the Divestiture Assets for the purpose of establishing an independent, economically viable competitor for the development, production, and sale of vented bags for medical use in order to remedy the effects that the United States alleges would otherwise result from Amcor's acquisition of the Alcan Packaging Medical Flexibles

business from Rio Tinto. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Amcor, and that competition is maintained during the pendency of the ordered divestitures.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after Defendants' receipt from the United States of the text of the notice and identity of the newspaper within which the publication shall be made. Defendants shall 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 within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint filed in this matter before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A), above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court 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, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Amcor shall preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Amcor's other operations. Amcor shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, Amcor will inform the United States of the steps it has taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the markets for all products produced at the Marshall Facility; (2) management of the Divestiture Assets will not be influenced by Amcor; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sale of products produced at the Marshall Facility will be kept separate and apart from Amcor's other operations.

C. Amcor shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by the Divestiture Assets, and shall maintain at 2009 or previously approved levels for 2010, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Amcor shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and 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.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale or use of the Divestiture Assets.

I. Alcan Packaging employees with primary responsibility for the design, development, production, marketing, servicing, distribution and/or sale of any product produced by the Divestiture Assets or the operation and maintenance of the Divestiture Assets shall not be transferred or reassigned to other areas within Amcor or Alcan Packaging except for transfer bids initiated by employees pursuant to defendants' regular,

established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Defendants shall appoint, subject to the approval of the United States, a person or persons to oversee the Divestiture Assets, and who will be responsible for defendants' compliance with this Section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the Final Judgment. In the event such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

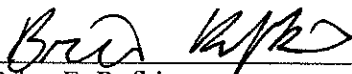
VI. DURATION OF HOLD SEPARATE OBLIGATIONS

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until: (1) consummation of the divestitures required by the proposed Final Judgment; or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: June 10, 2010

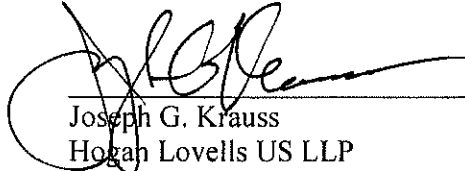
Respectfully submitted:

FOR PLAINTIFF
UNITED STATES OF AMERICA



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Dated: June 10, 2010

Respectfully submitted:

FOR PLAINTIFF
UNITED STATES OF AMERICA

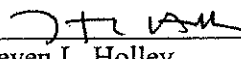


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RIO TINTO PLC and
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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2010.

United States District Judge

CERTIFICATE OF SERVICE

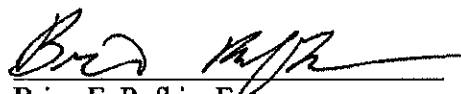
I, Brian E. Rafkin, hereby certify that on June 10, 2010 I caused a copy of the foregoing Hold Separate Stipulation and Order to be served upon defendants Amcor Ltd., Rio Tinto plc, and Alcan Corporation by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

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