

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No: 1: 99CV02706
)	(J. Kessler)
HARSCO CORPORATION,)	
PANDROL JACKSON LIMITED,)	Filed: 10/14/99
PANDROL JACKSON INC.)	
)	
Defendants.)	
)	

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. "Harsco" means defendant Harsco Corporation, a Delaware corporation with its corporate headquarters in Camp Hill, Pennsylvania, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "Charter" means Charter plc, a United Kingdom corporation, with its corporate headquarters in London, England, and includes its successors and assigns, and its subsidiaries,

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

C. “Pandrol” means defendant Pandrol Jackson Ltd., a United Kingdom corporation, with its corporate headquarters in Surrey, England and defendant Pandrol Jackson Inc. with its corporate headquarters in Ludington, Michigan, both of which are indirectly owned by Charter, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees; Pandrol submit to the jurisdiction of this Court solely for purposes of this action to permit the contemplated sale of assets of Harsco; nothing contained herein shall be deemed an admission of personal jurisdiction or an appointment of any agent for service of process for any other purpose.

D. “Switch and Crossing Grinding Equipment” means rail grinders and any related equipment used to remove surface irregularities and restore the profile of the rail used in transit systems, railroad track switches and railroad track crossings, thereby providing longer rail life and reducing the wear on rolling stock and track components.

E. “Switch and Crossing Grinding Services” means switch and crossing grinding services provided commercially to railroads and transit systems.

F. “Switch and Crossing Grinding Assets” means all of the assets acquired by Harsco from Pandrol related to the Switch and Crossing Grinding Equipment manufactured by Pandrol and to the Switch and Crossing Grinding Services provided by Pandrol inclusive of all tangible and intangible assets used in the manufacture and sale of Switch and Crossing Grinding Equipment and the providing of Switch and Crossing Grinding Services, including all intellectual property rights, technical information, know-how, trade secrets, blueprints, licenses, permits,

product trade names (other than the “Jackson” name), product trade dress, tooling, existing inventory and work in progress, accounts receivable, pertinent correspondence, files and databases, books of account, customer lists, supplier lists, advertising materials, contracts with third parties (to the extent assignable), but not including any manufacturing or assembly facility, or any real estate owned or leased by Harsco or Pandrol.

II.

OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Harsco’s prompt divestiture of the Switch and Crossing Grinding Assets for purposes of creating a viable competitor in the manufacture and sale of switch and crossing grinding equipment and services. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of Harsco’s and Pandrol’s switch and crossing grinding businesses as independent, viable competitors until the required divestiture is complete.

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 proposed Final Judgment in the form attached hereto 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 entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's 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. 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.

D. 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.

E. Harsco represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

A. Harsco shall preserve, maintain, and operate the Switch and Crossing Grinding Assets as an independent competitive business, with management, research, development, production, sales and operation of such assets held entirely separate, distinct and apart from those of Harsco. Harsco shall not coordinate its production, marketing or sale of any products with that of any of the Switch and Crossing Grinding Assets, except to the limited extent provided in this Section V below. Within fifteen (15) days of the entering of this Order, Harsco will inform the United States of the steps taken to comply with this provision.

B. Harsco shall take all steps necessary to ensure that the Switch and Crossing Grinding Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the development, production and sale of their respective products and services, that the management of the Switch and Crossing Grinding Assets will not be influenced by Harsco, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Switch and Crossing Grinding Assets, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Harsco. Harsco's influence over the Switch and Crossing Grinding Assets shall be limited to that necessary to carry out Harsco's obligations under this Order and the proposed Final Judgment.

C. Harsco shall provide and maintain sufficient working capital to maintain the Switch and Crossing Grinding Assets as a viable, ongoing business, consistent with current business plans.

D. Harsco shall provide and maintain sufficient lines and sources of credit to maintain the Switch and Crossing Grinding Assets as a viable, ongoing business.

E. Harsco shall maintain, on behalf of the Switch and Crossing Grinding Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the business on a monthly and quarterly basis.

F. Harsco shall use all reasonable efforts to maintain and increase the sales of the Switch and Crossing Grinding Assets to be divested, such as maintaining at 1998 or previously approved levels for 1999, whichever are higher, internal research and development funding, sales, marketing, and support for the Switch and Crossing Grinding Assets.

G. Harsco shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

H. Harsco shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

I. Except in the ordinary course of business or as is otherwise consistent with this Order, Harsco shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this Order, works for the Switch and Crossing Assets. Harsco shall not solicit to hire any individual

who, on the date of entry of this Order, was an employee of any of the assets to be divested under the proposed Final Judgment.

J. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, Harsco shall appoint one or more persons who shall have complete managerial responsibility for the Switch and Crossing Grinding Assets, subject to the provisions of this Order and the proposed Final Judgment, until such time as this Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Harsco shall appoint from the current management of the Switch and Crossing Grinding Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Harsco fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

K. Harsco shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed Final Judgment to a suitable purchaser.

L. This Order shall remain in effect until the divestiture of the Switch and Crossing Grinding Assets required by the proposed Final Judgment is complete, or until further Order of the Court.

Dated: October 14, 1999

FOR PLAINTIFF UNITED STATES
OF AMERICA:

_____/s/_____
John F. Greaney, Esquire
U.S. Department of Justice
Antitrust Division
Litigation II Section
1401 H Street, N.W.
Suite 3000
Washington, D.C. 20005
(202) 305-9965

FOR DEFENDANT HARSCO CORPORATION:

_____/s/_____
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Timi E. Nickerson, Esquire
DC Bar # 457231
Eckert Seamans Cherin & Mellott, LLC
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(412) 566-6058

FOR DEFENDANTS PANDROL JACKSON
LIMITED, AND PANDROL JACKSON INC.:

_____/s/_____
Wayne Dale Collins, Esquire
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Shearman & Sterling
599 Lexington Ave.
New York, NY 10022-6069
(212) 848-4127

IT IS SO ORDERED by the Court, this _____ day of October, 1999.

United States District Judge