

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

INGERSOLL-DRESSER PUMP COMPANY,

INGERSOLL-RAND COMPANY,

and

FLOWSERVE CORPORATION,

Defendants.

Civil Action No. 001818

Judge Jackson

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(s)" means the entity or entities to whom defendants divest the Divestiture Assets.

B. "Divestiture Assets" means the "Divestiture Plant," "Divestiture Pump Lines," and "Divestiture Repair Facilities," as defined below.

C. "Divestiture Plant" means Flowserve's pump plant in Tulsa, Oklahoma, including manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property used in connection with the manufacture of the

SCE, VLT, VMT and HQ pump lines; manufacturing equipment and tooling dedicated to the production of the J and CGT pump lines and located in IDP's pump plant in Phillipsburg, New Jersey; all contracts, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Plant, including supply agreements; and all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Plant. D. "Divestiture Pump Lines" means Flowserve's SCE, VLT, VMT, HQ, HX and WX (excluding the 93 inch size of the WX) pump lines, including parts for said lines, and IDP's J and CGT pump lines, including parts for said lines; and also including all customer lists, contracts, accounts, credit records, repair and performance records and all other records relating to said pump lines; and all intangible assets used in the development, production, servicing and sale of Divestiture Pump Lines, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding names and marks that relate to the corporate owner of said pump lines such as "Flowserve" and "IDP," and predecessor acquired companies), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, molds, patterns and design tools, manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and research and development activities and data concerning historic and current research and development efforts, including, but not limited to, designs of possible modifications or improvements, relating to said pump lines.

E. "Divestiture Repair Facilities" means the IDP service centers in Batavia, Illinois and La Mirada, California, including production, repair and service equipment at said facilities.

F. “Flowserve” means defendant FLOWSERVE CORPORATION, a New York corporation with its headquarters in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. “IDP” means defendant INGERSOLL-DRESSER PUMP COMPANY, a Delaware general partnership with its headquarters in Liberty Corner, New Jersey, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. “Tulsa Plant” means Flowserve’s pump plant in Tulsa, Oklahoma, including manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property used in connection with the manufacture of the SCE, VLT, VMT and HQ pump lines; and excluding dedicated manufacturing equipment and tooling, inventory, materials and supplies not used in connection with the manufacture of the SCE, VLT, VMT and HQ pump lines.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure defendants’ prompt divestitures of the Divestiture Assets for the purpose of establishing one or more viable competitors in the production and sale of certain types of centrifugal pumps used in oil refineries (hereinafter “API pumps”) and certain power plant pumps used in combined cycle, co-generation and solid fuel power plants (hereinafter “power plant pumps”) in order to remedy the effects that the United States alleges would otherwise result from Flowserve’s acquisition of IDP. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain independent, economically viable, and ongoing business assets that will remain

independent and uninfluenced by defendants except as stated herein, 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.

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 Hold Separate Stipulation and Order 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 herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order 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 Hold Separate Stipulation and Order, 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, or (3) Flowserve fails to acquire IDP and certifies to the United States in writing that Flowserve will not seek to acquire IDP without first filing a new pre-merger notification under the Hart-Scott-Rodino Act, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order 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 proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Tulsa Plant as an independent, ongoing, economically viable competitive business unit, with management and operations of the Tulsa Plant held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate its production, marketing, or terms of sale of any products with those produced by the Tulsa Plant except as necessary to effectuate the terms

of the Hold Separate Stipulation and Order and the proposed Final Judgment. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Tulsa Plant will be maintained and operated as an independent, ongoing, economically viable and active competitive business unit in the API pumps and power plant pumps businesses; (2) management of the Tulsa Plant will not be influenced by defendants except to the extent required herein; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products from the Tulsa Plant will be kept separate and apart from defendant Flowserve's other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Divestiture Pump Lines. Defendants shall not alter the commissions, incentives or compensation of sales personnel in any way that might negatively impact sales of the Divestiture Pump Lines.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Tulsa Plant as an economically viable and competitive, ongoing business unit, consistent with the requirements of Sections V (A) and (B).

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

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' employees with primary responsibility for the production and sale of the Divestiture Pump Lines at the Tulsa Plant shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees. Defendant shall provide the United States with ten (10) calendar days notice of such transfer.

I. Defendants shall appoint persons to oversee the Divestiture Assets, subject to the approval of the United States, and who will be responsible for defendants' compliance with this section. These persons shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this proposed Final Judgment. In the event such a person(s) is unable to perform his 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 at the expense of the defendants.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the Final Judgment to Acquirer(s) acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order

of the Court.

Date: July 28, 2000

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/S/_____
Arnold C. Celnicker, Georgia Bar No. 118050
U.S. Department of Justice, Antitrust Division
325 7th Street, N.W., Suite 400
Washington, DC 20530
(202) 305-7498

FOR DEFENDANT
INGERSOLL-DRESSER PUMP COMPANY

_____/S/_____
David I. Gelfand, D.C. Bar No. 416596
Mark W. Nelson, D.C. Bar No. 442461
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006-1801
(202) 974-1500

FOR DEFENDANT
FLOWSERVE CORPORATION

_____/S/_____
Stephen J. Marzen, D.C. Bar No. 413164
Shearman & Sterling
801 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004-2604
(202) 508-8174

FOR DEFENDANT
INGERSOLL-RAND COMPANY

_____/S/_____
David I. Gelfand, D.C. Bar No. 416596
Mark W. Nelson, D.C. Bar No. 442461
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006-1801
(202) 974-1500

O R D E R

IT IS SO ORDERED by the Court, this 28th day of July, 2000.

_____/S/_____
United States District Judge