

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

UNITED STATES OF AMERICA

Plaintiff,

v.

CONTINENTAL AG

and

VEYANCE TECHNOLOGIES, INC.

Defendants.

CASE NO.: 1:14-cv-02087

JUDGE: Reggie B. Walton

**UNOPPOSED MOTION FOR ORDER REQUIRING COMPLIANCE
BY DEFENDANTS TO DIVEST ASSETS**

Plaintiff United States, by the undersigned attorney, respectfully moves the Court to establish a schedule for Defendants Continental AG (“Continental”) and Veyance Technologies, Inc. (“Veyance”) to divest certain assets as required under the terms of the Final Judgment entered by this Court on March 30, 2015. Defendants Continental and Veyance do not oppose this Motion.

Background

In February 2014, Continental announced its plan to acquire Veyance for \$1.9 billion. The companies both operate large multi-national businesses focused on rubber and related products, with combined sales over \$42 billion per year. After a lengthy investigation of the

proposed transaction, the United States determined that it would substantially lessen competition in the development, manufacture, and sale of commercial vehicle air springs for both original equipment manufacturers (“OEMs”) and the aftermarket in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18. Accordingly, the United States informed Defendants that it intended to file a lawsuit to enjoin the transaction.

As is common practice, Defendants sought to resolve the United States’s competitive concerns by agreeing to divest the Veyance North America Air Springs Business. Divestitures of this type restore competition lost as a result of an anticompetitive transaction by placing the business of one of the parties in the hands of a new competitor that will operate the business independently of and in competition with the merged entity. After extensive negotiations, the United States and Defendants entered into a consent decree that was filed with the Court simultaneously with the United States’s filing of its complaint on December 11, 2014, challenging Defendants’ merger. Following the notice-and-comment period required by the Tunney Act, 15 U.S.C. § 16(b)-(h), on March 4, 2015, the United States moved for entry of the proposed consent decree, and the Court entered the decree as a Final Judgment on March 30, 2015.

When defendants in cases such as this agree to divest a business to resolve competitive concerns, the United States often insists that a buyer of the divested assets be identified and approved by the United States before the underlying merger can be closed, and that the divestiture be completed immediately after the merger is closed. In certain cases, however, the

United States agrees to let the defendants locate a buyer and complete the sale within a relatively short window of time after the merger is completed. This is what was done here.

In order to obtain the United States's consent to allow their merger to proceed, Defendants agreed to a timetable under Paragraph IV.A of the Final Judgment that required them to divest the Veyance North America Air Springs Business within 90 days after the filing of the complaint or five days after notice of entry of the Final Judgment by the Court, whichever was later. As stated in the fifth WHEREAS clause of the Final Judgment, Defendants also "represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below."

This Court entered the Final Judgment on March 30, 2015, which was more than 90 days after the filing of the complaint, so the original deadline for Defendants to complete the divestiture was April 4, 2015.

As a safety valve in the event Defendants were proceeding in good faith but needed limited additional time to complete the divestiture, Paragraph IV.A of the Final Judgment provided that the United States, "in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total." The United States agreed to a 30-day extension of time on April 6, 2015 and again on May 6, 2015, notifying the Court in each instance. Accordingly, the United States provided extensions totaling the full 60 days allowed under the Final Judgment and the divestiture period under Paragraph IV.A of the Final Judgment expired on June 5, 2015.

Defendants thus had an obligation to complete the divestiture of the Veyance North America Air Springs Business by June 5, 2015. Although Defendants made substantial progress during the past five months, they have missed the deadline. As a result, until Defendants come into compliance, there are ongoing adverse competitive consequences and Defendants will continue to earn profits from a business that should already have been divested.

Requested Schedule Going Forward

Under Paragraph V.A of the Final Judgment, the United States has the option of requesting that the Court appoint a trustee to take over the divestiture process and ensure that it is completed. This is in addition to other remedies available under the law for Defendants' failure to comply with their divestiture obligation, such as civil contempt sanctions.

The United States does not believe a divestiture trustee should be appointed at this time. Defendants have made substantial progress toward completing the divestiture and the appointment of a divestiture trustee could slow down, rather than expedite, the divestiture. Although Defendants did not complete all the steps they were required to complete in order to comply with the Final Judgment, they have kept the United States informed about their progress and they have been moving forward with a divestiture buyer that was identified to the United States earlier in the process. Defendants reached agreement with this proposed divestiture buyer on June 1, 2015, and the United States is reviewing that agreement to ensure that it complies with the requirements of the Final Judgment. Defendants expect to close on the sale under this agreement on July 1, 2015, subject to approvals in two foreign jurisdictions that Defendants

anticipate receiving shortly. In view of these circumstances, the United States respectfully requests that the Court order Defendants to complete the divestiture on or before that date.

If Defendants do not complete the sale by July 1, 2015, the United States reserves its right to seek civil contempt sanctions and/or to request the appointment of a divestiture trustee as allowed by the Final Judgment. Based on the historic profitability of the business to be divested, the United States estimates that Defendants will reap a windfall of approximately \$25,000 per day during the period of delay. Competition in the development, manufacture and sale of commercial vehicle air springs for both OEMs and the aftermarket in North America will also suffer as the divested business remains in limbo. Civil contempt would be appropriate because Defendants would be earning ill-gotten profits and competition would continue to be harmed. Accordingly, the United States believes the Court should impose a daily penalty of at least \$30,000 per day as of July 2, 2015, if the Court were to determine that civil contempt sanctions are warranted at that time. Defendants have indicated that they would not oppose a daily penalty of \$30,000 as of July 2, 2015.

Conclusion

For the foregoing reasons, the United States respectfully requests that the Court enter the attached proposed order.

Dated: June 8, 2015

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Suzanne Morris", is written over a horizontal line.

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CERTIFICATE OF SERVICE

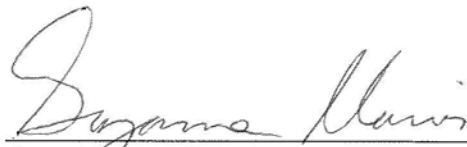
I, Suzanne Morris, hereby certify that on June 8, 2015, I caused a copy of the foregoing Unopposed Motion for Order Requiring Compliance by Defendants to Divest Assets to be served upon Continental AG and Veyance Technologies, Inc. by mailing the documents electronically to their duly authorized legal representatives as follows:

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JUDGE: Reggie B. Walton

ORDER

IT IS ORDERED THAT the Defendants shall complete by July 1, 2015 the divestiture required under Section IV of the Final Judgment entered by this Court on March 30, 2015.

SO ORDERED this _____ day of _____, 2015.

Dated: _____

REGGIE B. WALTON
UNITED STATES DISTRICT JUDGE