

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

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UNITED STATES OF AMERICA

Plaintiff,

v.

CONTINENTAL AG

and

VEYANCE TECHNOLOGIES, INC.

Defendants.

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CASE NO.: 1:14-cv-02087

JUDGE: Reggie B. Walton

**UNOPPOSED RESPONSE OF UNITED STATES TO ORDER TO SHOW CAUSE**

Plaintiff, United States, by the undersigned attorney, respectfully requests that the Court retain jurisdiction over this matter for the ten-year term of the Final Judgment entered by this Court on March 30, 2015. Defendants Continental and Veyance do not oppose this Response.

**Background**

In February 2014, defendant Continental AG (“Continental”) announced its intention to acquire defendant Veyance Technologies, Inc. (“Veyance”) for \$1.9 billion, a merger that would have combined two of the three leading suppliers of air springs used in commercial vehicles in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. In order to resolve the United States’s competitive concerns, Defendants agreed to divest the Veyance North

America Air Springs Business, and committed to various additional requirements, to ensure the establishment of a new, independent, and economically viable competitor. Accordingly, a Complaint and Proposed Final Judgment were filed simultaneously with the Court on December 11, 2014, and the Court entered the decree as a Final Judgment on March 30, 2015. On July 1, 2015, Defendants completed the divestiture required under Section IV of the Final Judgment, though many of the ancillary provisions of the Final Judgment are ongoing.

### **Defendants' Continuing Obligations Under the Final Judgment**

On July 1, 2015, Defendants completed the sale of the Divestiture Assets. To ensure the effectiveness of the divestiture in this matter, the Final Judgment includes a number of continuing restrictions and post-divestiture obligations on the part of Defendants. Chief among these is the prohibition against Defendants' reacquisition of the Divestiture Assets for the ten-year term of the Final Judgment. *See* Final Judgment, Section XII. This provision is an essential restriction that the United States includes in each consent decree, because allowing the merged firm simply to reacquire the divested assets would defeat the goal of maintaining competition through the establishment of a competitor. Nonetheless, the restriction is limited in duration in recognition of the fact that market conditions may change over time.<sup>1</sup>

Additionally, while the divestiture of the Veyance North America Air Springs Business largely consisted of a transfer of assets, it also included some provisions designed to allow the Acquirer to quickly replace the competitive presence of the more established firm, Veyance, now lost to the merger. For example, the Final Judgment also recognizes that the Acquirer, a new

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<sup>1</sup> If market conditions change during the term of the Final Judgment, Defendants may file a motion to modify the decree. If appropriate, the United States would not oppose such a motion.

entrant to the commercial vehicle air springs market, may need some time to develop its own supply contracts (Paragraph IV(G)), set up its own information technology system (Paragraph IV(H)), lease a new facility (Paragraph IV(J)), and set up its own research and development laboratory (Paragraph IV(L)). Accordingly, the Final Judgment requires Defendants to offer these services to the Acquirer for up to two years, if an optional renewal is exercised. (Paragraph IV(G)). These services will allow the Acquirer to immediately attract customers and produce air springs that compete directly with the products of the merged entity. The United States required these terms based on its investigation of the likely effect of the merger and on its assessment of the appropriate remedy. These provisions reflect a careful balancing of a new competitor's need for these services against the goal of minimizing entanglements among competitors.

### **Retention of Jurisdiction**

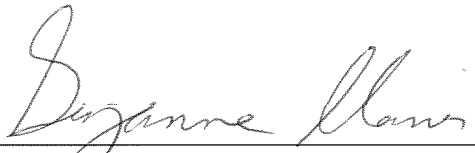
The United States has long recognized the need for judicial oversight of consent decrees that include conduct provisions to "enforce and monitor any obligations." *See Antitrust Division Policy Guide to Merger Remedies* (2011), at 22-23. The United States carefully tailors the required remedy as precisely as possible to the competitive harms associated with the merger to avoid unnecessary distortion of the competitive process. Carefully balanced remedies, however, will not resolve competitive concerns unless they are strictly enforced. The ability to resort to judicial review when disputes arise over interpretation or enforcement assures the availability of a neutral arbiter and swift recourse through the Court's contempt power in the event of violations of the Final Judgment.

The Final Judgment provides for both eventualities, allowing that “[t]his Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.” See Section XIII.

Accordingly, to ensure the United States has the ability to enforce the terms of the Final Judgment, the United States respectfully requests that the Court retain jurisdiction over this matter until the term of the Final Judgment expires on March 30, 2025.

Dated: September 8, 2015

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

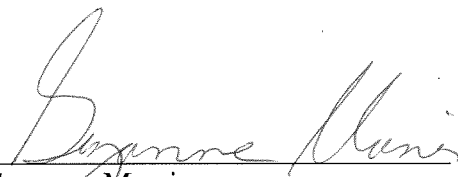
I, Suzanne Morris, hereby certify that on September 8, 2015, I caused a copy of the foregoing Unopposed Response of the United States to Order to Show Cause to be served upon Continental AG and Veyance Technologies, Inc. by mailing the documents electronically to their duly authorized legal representatives as follows:

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