

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCOA INC., ACX TECHNOLOGIES,
INC., and GOLDEN ALUMINUM
COMPANY,

Defendants.

Civil Action No.: **99 2943**

Filed: **Nov 5, 1999**

HOLD SEPARATE STIPULATION AND ORDER

It is hereby STIPULATED 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. “Alcoa” means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. “ACX” means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. “Golden” means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San

Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. “Fort Lupton Assets” means all assets included within Golden’s Fort Lupton, Colorado operation including:

1. all tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621-0207 (“the Fort Lupton Facility”) and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility (“the Engineering Facilities”), and any real property associated with those facilities; manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Golden in connection with the

- operations of the Fort Lupton Facility and of the Engineering Facilities;
2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, 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, design tools and simulation capability, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities; except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility ("the San Antonio block caster"), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc. or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and
 3. all research data concerning historic and current research and development

efforts relating to the operation of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. “Lid stock” means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Alcoa’s prompt divestiture of the Fort Lupton Assets for the purpose of maintaining a viable competitor in the manufacture and sale of lid stock to remedy the effects that the United States alleges would otherwise result from Alcoa’s proposed acquisition of Golden.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Fort Lupton Assets, which are being divested, be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III.

HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Fort Lupton Assets as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from the Fort Lupton Assets with its existing lid stock business. Within twenty (20)

calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Fort Lupton Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of lid stock; that the management of the Fort Lupton Assets will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Fort Lupton Assets will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Fort Lupton Assets shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Fort Lupton Assets to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain lid stock manufacturing and sales levels at the Fort Lupton Facility, and to maintain research and development activities and engineering support at the Engineering Facilities. Alcoa shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Fort Lupton Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Fort Lupton Assets as an economically viable, ongoing business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Fort Lupton Assets as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Fort Lupton Facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Fort Lupton Facility.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Fort Lupton Assets, including the intangible assets that are described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, 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, income, profit and loss of the Fort Lupton Assets.

I. Until such time as the Fort Lupton Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, Alcoa shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Golden employees who on the date of the signing of this Agreement work for the Fort Lupton Facility, or for the Engineering Facilities, unless such individual has a written offer of employment from a third party for a like position.

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

K. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court. Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

_____/s/_____

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Dated this _5th_ day of November, 1999.

FOR DEFENDANT
ALCOA, INC.:

_____/s/_____

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1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2700

FOR DEFENDANTS
ACX Technologies, Inc. and Golden Aluminum
Company:

_____/s/_____

W. Todd Miller
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915 15th Street, Suite 1000
Washington, DC 20005-2302

ORDER

It is SO ORDERED, this _____ day of _____, 1999.

United States District Court Judge