

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZEN-NOH GRAIN CORP.,

and

BUNGE NORTH AMERICA, INC.,

Defendants.

Civil Action No.:

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and among the undersigned parties, subject to approval and entry of this Order by the Court, as follows.

I. DEFINITIONS

As used in this Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Acquirer” or “Acquirers” means Viserion or another entity or entities to which Defendants divest the Divestiture Assets.

B. “ZGC” means Zen-Noh Grain Corp., a Louisiana corporation headquartered in Covington, Louisiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates (including CGB), partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Bunge” means Bunge North America, Inc., a New York corporation headquartered in Chesterfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Bunge Elevators” means the elevators located on the properties owned or leased by Bunge listed among the Divested Elevators.

E. “CGB” means CGB Enterprises Inc., a Louisiana corporation headquartered in Covington, LA, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “CGB Elevator” means the elevator located on the property owned or leased by CGB listed among the Divested Elevators.

G. “Viserion” means Viserion Grain, LLC and Viserion International Holdco, LLC, Delaware limited liability companies headquartered in Colorado, their successors and assigns, their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures and their directors, officers, managers, agents, and employees.

H. “Divested Elevators” means the following elevators:

Geographic Area	Elevator(s) to Be Divested
McGregor, IA	The Bunge Elevator located at 311 E. B St., McGregor, IA 52157
Albany, IL	The Bunge Elevator located at 1002 N. Main St., Albany, IL 61230 OR the CGB Elevator located at 561 Broderick Drive, Savanna, IL 61074

Shawneetown, IL	The Bunge Elevator located at 218 Market St., Shawneetown, IL 62984
Caruthersville, MO	The Bunge Elevator located at 100 Ward Ave, Caruthersville, MO 63830
Huffman, AR	The Bunge Elevator located at 7058 E. County Rd. 54, Hwy. 37, Blytheville, AR 72315
Osceola, MO	The Bunge Elevators located at 2220 E. State Hwy. 198 and Mississippi River, Osceola, AR 72370 and at Mississippi County 661 S, Monroe Township, AR 72370
Helena, AR	The Bunge Elevator located at 103 Hanks Ln., Helena, AR 72342
Lake Providence, LA	The Bunge Elevator located at 337 Port Rd., Lake Providence, LA 71254
Lettsworth, LA	The Bunge Elevator located at 17783 Hwy. 418, Lettsworth, LA 70753

- I. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to:
1. the Divested Elevators;
 2. all contracts, contractual rights, and relationships, including customer and supplier relationships, and all other agreements, commitments, and understandings, including, supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement that relate exclusively to the Divested Elevators; and
 3. all other property and assets, tangible and intangible, wherever located, relating to or used in connection with each Divested Elevator, including:
 - a. all real property and real property rights, fee simple interests;

buildings, facilities, and other structures, including bins, silos, other grain storage facilities, and dock facilities; easements; leasehold and rental rights, including all renewal or option rights; prepaid rent and security deposits; and fixtures, improvements, and assignable improvement warranties;

b. all tangible personal property; equipment, machinery, and tools, such as those used for handling, receiving, unloading, weighing, sampling, grading, elevating, storing, drying, conditioning, loading, and buying and selling grain; vehicles and furniture; supplies, replacement parts, and spare parts; and inventory;

c. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

d. all records and data, including (a) customer and supplier lists, accounts, sales, and credit records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (d) accounting and operating records and ledgers; (e) sales and marketing records, including local marketing plans and sales and advertising materials, (f) records and research data concerning historic and current research and development activities, and (g) drawings, blueprints, and designs; and

e. all other intangible property, including, (a) technical information, (b) design tools and simulation capabilities, (c) computer software and related

documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), and quality assurance and control procedures, provided, however, that any intellectual property associated with the brand names Bunge, CGB, Zen-Noh, and ZGC is not included in the Divestiture Assets.

J. “Divestiture Date” means the date[s] on which the Divestiture Assets are divested to Acquirer[s] pursuant to this Final Judgment.

K. “Including” means including, but not limited to.

L. “Relevant Personnel” means: (1) all full-time, part-time, or contract employees employed at the Divested Elevators at any time between August 21, 2020, and the Divestiture Date; (2) all elevator managers, grain merchandisers, and elevator superintendents employed by Bunge or CGB whose job responsibilities are shared between or among Divested Elevators and any non-divested elevators, at any time between August 21, 2020, and the Divestiture Date; and (3) all regional managers employed by Bunge one organizational level above the elevator manager level, wherever located, whose job duties support the grain purchasing business of any of the Bunge Elevators, at any time between August 21, 2020, and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

M. “Transaction” means ZGC’s proposed acquisition of 35 operating and 13 idled grain elevators from Bunge.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing one or more viable competitors in the grain purchasing business in certain areas near the Mississippi and Ohio Rivers to remedy the anticompetitive effects that the United States alleges would otherwise result from the Transaction. This Stipulation and Order ensures that, prior to divestiture, the Bunge Elevators, and all property and assets relating to or used in connection with the Bunge Elevators, remain independent; that the Divestiture Assets remain economically viable, competitive, and saleable; that Defendants will preserve and maintain the Divestiture Assets; and that the level of competition that existed between Defendants prior to the Transaction is maintained during the pendency of the required divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of and the parties to this action. Venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The proposed Final Judgment filed with this Stipulation and Order, or any amended proposed Final Judgment agreed upon in writing by the United States and Defendants, may be filed with and entered by the Court as the Final Judgment, upon the motion of the United States

or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or any other proceeding, as long as the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. From the date of the signing of this Stipulation and Order by Defendants until the Final Judgment is entered by the Court, or until expiration of time for all appeals of any ruling declining entry of the proposed Final Judgment, Defendants will comply with all of the terms and provisions of the proposed Final Judgment.

C. From the date on which the Court enters this Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as if the proposed Final Judgment were in full force and effect as a final order of the Court, and Section XIV of the proposed Final Judgment will also apply to violations of this Stipulation and Order.

D. Defendants agree to arrange, at their expense, publication of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged as quickly as possible and, in any event, no later than three business days after Defendants' receipt of (1) the text of the notice from the United States and (2) the identity of the newspapers or newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and filed with the Court.

F. Defendants represent that the divestitures ordered by this Stipulation and Order and the proposed Final Judgment can and will be made and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION AND HOLD SEPARATE

From the date of the signing of this Stipulation and Order by Defendants and until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must take all actions necessary to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the Divestiture Assets including by (1) operating the Divestiture Assets in the ordinary course of business and consistent with past practices and (2) providing sufficient working capital and lines and sources of credit.

B. Defendants must use all reasonable efforts to maintain and increase the purchases, sales, and revenues of the Divestiture Assets and must maintain at 2020 levels all promotional, advertising, sales, technical assistance, customer support and service, marketing, and merchandising support for the Divestiture Assets.

C. Defendants must use all reasonable efforts to maintain and preserve existing relationships with customers, suppliers, governmental authorities, vendors, landlords, creditors, agents, and all others having business relationships relating to the Divestiture Assets.

D. Defendants must maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, or other 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.

E. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel must not be transferred or reassigned except to an Acquirer or via transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with 10 calendar days' notice of the transfer of Relevant Personnel, and, upon objection by the United States to such transfer, Relevant Personnel may not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by Defendants, and financial incentives may not be structured so as to disincentivize employees from accepting employment with an Acquirer.

F. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

G. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity, purchases, and sales, with the same level of quality, functionality, access, and supplier and customer support, and must, consistent with past practices, maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

H. Except as approved by the United States in accordance with the terms of the proposed Final Judgment, Defendants must not remove, sell, lease, assign, transfer, pledge, encumber, or otherwise dispose of any of the Divestiture Assets.

K. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

L. Management, sales, and operations of the Bunge Elevators, and all property and assets relating to or used in connection with the Bunge Elevators, must be held entirely separate, distinct, and apart from Defendants' operations. Defendants must not coordinate the purchasing, marketing, or terms of sale of any products purchased or sold by the Bunge Elevators with the purchasing, marketing, or terms of sale of any other products purchased or sold by Defendants.

M. Defendants must appoint, subject to approval of the United States in its sole discretion, (1) a person or persons to oversee the Bunge Elevators, and all property and assets relating to or used in connection with the Bunge Elevators, and (2) a person or persons to oversee the CGB Elevator, and all property and assets relating to or used in connection with the CGB Elevator. Such person or persons will each be responsible for Defendants' compliance with this Section VI with respect to the Divested Elevator(s) that each oversees. The person or persons appointed to oversee the Bunge Elevators will be responsible for managing the sales and operations of the Bunge Elevators, and all property and assets relating to or used in connection with the Bunge Elevators, separately from Defendants' operations and for ensuring the preservation of the Bunge Elevators for the duration of this Stipulation and Order. The person or persons appointed to oversee the CGB Elevator will be responsible for ensuring the preservation of the CGB Elevator for the duration of this Stipulation and Order. In the event any such person

is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within 10 working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

N. Within 20 days after the entry of this Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

VII. DURATION OF OBLIGATIONS

Defendants' obligations under Section VI of this Stipulation and Order will expire upon the completion of the divestiture required by the proposed Final Judgment or until further order of the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V(A) of this Stipulation and Order; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any 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, Defendants are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

ORDER

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

United States District Judge