

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THALES S.A. and GEMALTO N.V.,

Defendants.

Case No.:

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 Stipulation and Order:

- A. “Acquirer” means the entity to whom Defendants divest the Divestiture Assets.
- B. “Thales” means Defendant Thales S.A., a French corporation with its principal office in Paris, France; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.
- C. “Gemalto” means Defendant Gemalto N.V., a Netherlands corporation with its headquarters in Amsterdam; its successors and assigns; and its subsidiaries, divisions, groups,

affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Transaction” means Thales’ acquisition of Gemalto through a public offer by Thales for all issued and outstanding ordinary shares of Gemalto pursuant to the Merger Agreement between Thales and Gemalto dated December 17, 2017.

E. “Defendants” means Thales and Gemalto, acting individually or collectively.

F. “Divestiture Assets” means Thales’ GP HSM Products business, including:

- (1) all tangible assets primarily related to the production, operation, research, development, sale, or support of any GP HSM Product, including but not limited to manufacturing equipment, tooling and fixed assets, computers, tapes, disks, other storage devices, other IT hardware, equipment used in research and development, testing equipment, tools used in design or simulation, personal property, inventory, office furniture, materials, supplies, and other tangible property;
- (2) all Shared Intangible Assets; and
- (3) all other intangible assets primarily related to the production, operation, research, development, sale, or support of any GP HSM Product, including but not limited to (i) licenses, permits, certifications, and authorizations issued by any governmental organization; contracts or portions of contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; customer lists, histories, contracts, accounts, and credit records; repair and performance records; documentation relating to software development and changes; manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees; data and records relating to

historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful experiments; records relating to designs or simulations, safety procedures for the handling of materials and substances, and quality assurance and control procedures; and other records; and (ii) intellectual property rights, including but not limited to patents, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, and specifications for parts and devices (but not including the name “THALES” in any trademark, domain name, trade name, or service).

The Divestiture Assets include but are not limited to: CodeSafe, nShield Remote Administration, nShield Bring Your Own Key, Key Authority (at the option of Acquirer), and Security World Architecture and monitoring tool nShield Monitor. The Divestiture Assets do not include any assets owned by Gemalto prior to the closing of the Transaction.

G. “Divestiture Closing Date” means the date on which Thales divests the Divestiture Assets to Acquirer.

H. “GP HSM Product” means a hardened, tamper-resistant general purpose hardware security module and includes all add-ons, value-added features, and accessories. “GP HSM Product” does not include the Vormetric Data Security Manager, but does include any GP HSM Product that is incorporated into or otherwise used with the Vormetric Data Security Manager

I. “Relevant Personnel” means all Thales employees who have supported or whose job related to the Divestiture Assets at any time between July 1, 2017 and the Divestiture Closing Date.

J. “Shared Intangible Assets” means intangible assets that are used, or have been under development for use as of January 7, 2019, in relation to (i) Thales’ GP HSM Products business and (ii) Thales’ business relating to products other than GP HSM Products.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the GP HSM Products business in order to remedy the effects that the United States alleges would otherwise result from the Transaction. This Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by Defendants, and that competition is maintained during the pendency of the ordered divestiture.

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. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall 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 within which the notice was published.

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 Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XII (Compliance Inspection), as though the same were in full force and effect as the final order of the Court.

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

D. This 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 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, then the parties are released from all further obligations under this Stipulation and Order, and the making of this 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 AND ASSET PRESERVATION PROVISIONS

Until the Divestiture Closing Date:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable and competitive business, with management, sales, and operations of such assets held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants shall not coordinate their production, marketing, or terms of sale or service of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable, and active competitor in the GP HSM Products business; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing

and pricing information, and decision-making concerning production, operation, research, development, sale, and support of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other operations except as otherwise permitted by Paragraph XI(A) of the Proposed Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales, service, and revenues of the products produced by or sold under Divestiture Assets, and shall maintain at 2018 or previously approved levels for 2019, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets.

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

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

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

I. Defendants' employees with primary responsibility for the management, research and development, production, operation, distribution, sale, and servicing of products by or under the Divestiture Assets shall not be transferred or reassigned to other areas within Defendants except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice of any such transfer.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete, independent managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment, and shall make all business decisions relating to the operations of the Divestiture Assets, including but not limited to all research and development, sales, pricing, marketing, bidding, discounting, and servicing decisions. In the event such person is unable to perform her or 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.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

**VI. DURATION OF HOLD SEPARATE AND
ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Stipulation and Order shall remain in effect until (1) the Divestiture Closing Date or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Stipulation and Order.

Dated: February 28, 2019

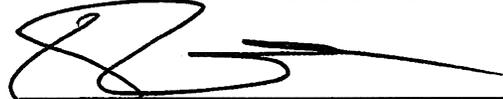
Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA



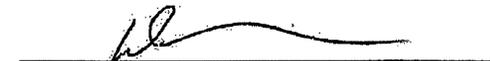
Kelly Schoolmeester
United States Department of Justice
Antitrust Division, Technology and Financial Services Section
450 Fifth Street, N.W., Suite 7100
Washington, D.C. 20530
Phone: (202) 598-2693
Fax: (202) 616-8544
Email: kelly.schoolmeester@usdoj.gov

FOR DEFENDANT THALES S.A.



Elaine Ewing
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Phone: (202) 974-1668
Email: eewing@cgsh.com

FOR DEFENDANT GEMALTO N.V.



Daniel L. Wellington
Norton Rose Fulbright US LLP
799 9th Street, N.W., Suite 1000
Washington, D.C. 20001
Phone: (202) 662-4574
Email: dan.wellington@nortonrosefulbright.com

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2019.

United States District Judge