

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE MANITOWOC COMPANY, INC.,
ENODIS PLC, and
ENODIS CORPORATION,

Defendants.

Civil Action No.:

Description: Antitrust

Judge:

Case: 1:08-cv-01704

Assigned To : Kennedy, Henry H.

Assign. Date : 10/6/2008

Description: Antitrust

HOLD SEPARATE 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 Hold Separate Stipulation and Order:

A. "Acquirer" means the entity to whom defendants divest the Divestiture Business.

B. "Enodis" means defendant Enodis plc, a corporation registered in England and Wales with its headquarters in London, England, and Enodis Corporation, a Delaware corporation with its headquarters in New Port Richey, Florida, and their successors, assigns, parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "Manitowoc" means defendant The Manitowoc Company, Inc., a Wisconsin corporation headquartered in Manitowoc, Wisconsin, its successors, assigns, parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Closing Date" means the date on which the transfer of the Divestiture Assets from the defendants to the Acquirer has been completed.

E. "Divestiture Business" means Enodis's entire business engaged in the development, production, distribution, and sale of ice machines, ice machine parts, and related equipment (such as ice bins, ice dispensers, and water filtration systems) in the United States, including, but not limited to:

- (1) Enodis's facility located in Fairfax, South Carolina, which is owned by Scotsman Group, Inc. (now known as Scotsman Group L.L.C.);
- (2) Enodis's facility located in Vernon Hills, Illinois, which is leased by Scotsman Group, Inc. (now known as Scotsman Group L.L.C.);
- (3) Enodis's facility located in Denver, Colorado, which is owned by Welbilt Corporation (now known as Enodis Corporation);
- (4) Enodis's facility located in Pomona, California, which is leased by Scotsman Group, Inc. (now known as Scotsman Group L.L.C.);
- (5) All tangible assets used in the Divestiture Business, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and

fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property (including replacement hardware for the Vernon Hills, Illinois facility that defendants are required to purchase pursuant to Section II, Paragraph E below); all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Divestiture Business, including, but not limited to, supply and distribution agreements; all customer lists, accounts, and credit records; all repair and performance records and all other records; and

- (6) All intangible assets used in the development, production, distribution, and sale of ice machines, ice machine parts, and related equipment, including, but not limited to, all contractual rights (to the extent assignable), except for contracts that are not primarily for products or services used by the Divestiture Business; all rights under licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Business; patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names (including any use of the name Scotsman or Ice-O-Matic in the United States), service marks, service names, technical information, computer software and related documentation (including replacement software and related documentation that defendants are required to purchase, and applications and data that defendants are required to transfer to hardware, for the Vernon Hills, Illinois facility pursuant to Section II, Paragraph E below), 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, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts (up to the Closing Date of the divestiture required by Section IV or Section V), including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

except that the Divestiture Business shall not include the servers, applications, and related documentation located at the Vernon Hills, Illinois facility that are not used primarily in the operation of the Divestiture Business, provided that within 45 days after the filing of the Complaint in this matter, defendants take all steps necessary (including the purchase of replacement hardware, the purchase, licensing, or provision of software and related documentation, and the transfer of applications and data) to ensure that all information technology operations used by the Divestiture Business are maintained at levels of functionality equivalent or superior to the levels of functionality that exist as of the filing of the Complaint in this matter. Defendants shall also take all steps necessary to purge any data related to the Divestiture Business from hardware and backup media at Vernon Hills that will not be divested under this provision. The Divestiture Business shall not include the tangible or intangible assets comprising the Enodis facility in New Port Richey, Florida, with the exception of the following:

- (1) any software, electronically stored information, or documents arising from research and

development activities related to the ice machine business; (2) any assets used primarily in the operation of the ice machine business, or (3) any assets necessary for operation of the ice machine business.

F. “Frimont Business” means Enodis plc’s Frimont S.p.A. business, which produces commercial ice machines for the European market and which the European Commission has required to be divested.

G. “Proposed Transaction” means Manitowoc’s proposed acquisition of Enodis pursuant to the Implementation Agreement dated April 14, 2008, and the Amendment Agreement Relating to the Implementation Agreement dated May 27, 2008.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants’ prompt divestiture of the Divestiture Business for the purpose of establishing a viable competitor in the business of developing, producing, distributing, and selling commercial cube ice machines, ice machine parts, and related equipment, in order to remedy the effects that the United States alleges would otherwise result from Manitowoc’s acquisition of Enodis. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Divestiture Business remain an independent, economically viable, and ongoing competitor that will remain independent and uninfluenced by consummation of the Proposed Transaction, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, defendants waive service of summons on the Complaint, 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.

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 as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation 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, Paragraph A above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, 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 the making of this Stipulation 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 Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Business as an independent, ongoing, and economically viable competitor, 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 of any products with those produced by or sold under the Divestiture Business.

Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Business will be maintained and operated as an independent, ongoing, economically viable and ongoing competitor engaged in the development, production, distribution, and sale of commercial cube ice machines, ice machine parts, and related equipment; (2) management of the Divestiture Business will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under the Divestiture Business will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under the Divestiture Business, and shall maintain at 2008 or previously approved levels for 2009, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Business.

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

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

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 assets of the Divestiture Business, provided, however, that defendants may take the steps outlined in Section I, Paragraph E above in connection with reconfiguring information technology assets and transferring to new hardware data and information stored at the Vernon Hills, Illinois facility related to the Divestiture Business.

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 Business.

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

I. Defendants shall not transfer or reassign to other areas within the company (except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy) employees whose primary responsibilities are the operation of the Divestiture Business, or the following three Enodis employees who work at the Vernon Hills, Illinois.

facility: (1) the Senior Business Analyst and Developer; (2) the Unix Administrator and Network Manager; and (3) the Computer Operator and Systems Specialist. Defendants shall provide the United States with ten (10) calendar days notice of any transfers pursuant to bids initiated by employees pursuant to defendants' regular, established job posting policy.

J. Defendants shall appoint a person or persons to oversee the Divestiture Business, and who will be responsible for defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Business, subject to the provisions of this Final Judgment. In the event such person is unable to perform 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 Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment 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 Hold Separate Stipulation and Order.

Dated: *October 6, 2008*

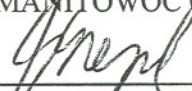
Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:



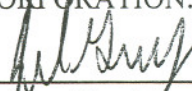
Helena M. Gardner, Esquire
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street N.W., Suite 3000
Washington, D.C. 20530
Telephone: 202/514-8518
Facsimile: 202/514-9033
Email: helena.joly@usdoj.gov

FOR DEFENDANT
THE MANITOWOC COMPANY, INC.:



Gregory E. Neppel, Esquire
District of Columbia Bar No. 453602
Foley & Lardner LLP
Washington Harbour
3000 K Street N.W., Suite 500
Washington, D.C. 20007
Telephone: 202/672-5451
Facsimile: 202/672-5399
Email: gneppel@foley.com

FOR DEFENDANTS ENODIS PLC AND
ENODIS CORPORATION:



Joel R. Grosberg, Esquire
District of Columbia Bar No. 460125
McDermott Will & Emery LLP
600 13th Street N.W.
Washington, D.C. 20005
Telephone: 202/756-8207
Facsimile: 202/756-8087
Email: jgrosberg@mwe.com

ORDER

IT IS SO ORDERED by the Court, this _____ day of _____, 2008.

United States District Judge