

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ODYSSEY INVESTMENT PARTNERS
FUND V, LP,

COMMUNICATIONS & POWER
INDUSTRIES LLC,

and

GENERAL DYNAMICS CORPORATION,

Defendants.

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 (“Stipulation and Order”):

A. “Acquirer” means the entity to whom Defendants divest the Divestiture Assets.

B. “Odyssey” means Defendant Odyssey Investment Partners Fund V, LP, a Delaware limited partnership with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, including Odyssey Investment Partners, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Odyssey Investment Partners” means Odyssey Investment Partners, LLC, an

affiliate of Odyssey and a Delaware limited liability company with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents and employees.

D. “CPI” means Defendant Communications & Power Industries LLC, a Delaware limited liability company with its headquarters in Palo Alto, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. As used in this definition, the terms subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures refer to any person or entity in which CPI holds twenty-five (25) percent or more total ownership or control.

E. “General Dynamics” means Defendant General Dynamics Corporation, a Delaware corporation with its headquarters in Reston, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “GD SATCOM” means General Dynamics SATCOM Technologies, Inc., a Delaware corporation with its headquarters in Fairfax, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. GD SATCOM is a wholly-owned subsidiary of General Dynamics.

G. “ASC Signal” means CPI ASC Signal Division Inc., a Delaware corporation with its headquarters in Plano, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. ASC Signal is a wholly-owned subsidiary of CPI.

H. “Divestiture Assets” means ASC Signal, including but not limited to:

1. The support facility located at 1120 Jupiter Road, Suite 102, Plano, Texas 75074;
2. The manufacturing facility located at 606 Beech Street West, Whitby, Ontario, Canada L1N 0E7;
3. The testing facility located at 9860 Heron Rd., Ashburn, Ontario, Canada L0B 1A0;
4. The testing facility located at 1411 CR 2740, Caddo Mills, Texas 75135;
5. All tangible assets related to or used in connection with ASC Signal, including, but not limited to: research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements and development and production contracts; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records; and
6. All intangible assets related to or used in connection with ASC Signal, including, but not limited to: all patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names; technical information; computer software (including software developed by third parties), and related documentation; customer relationships, agreements, and contracts; 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 ASC Signal provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

I. “Relevant Personnel” means all full-time, part-time, or contract employees of (i) ASC Signal, and (ii) all additional full-time, part-time, or contract employees of CPI, wherever located, primarily involved in the design, manufacture, or sale of geostationary antennas larger than four meters in diameter, including, but not limited to, the reflector, pedestal, and tracking and control mechanisms used in antennas. Notwithstanding the foregoing, Relevant Personnel does not include employees of CPI primarily engaged in human resources, legal, or other general or administrative support functions.

J. “Transaction” means the proposed acquisition of GD SATCOM by CPI.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure CPI’s prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the design, manufacture, and sale of large ground station antennas for geostationary satellites in order to remedy the effects that the United States alleges would otherwise result from CPI’s acquisition of GD SATCOM. This Stipulation and Order ensures, prior to divestiture, that ASC Signal remains an independent, economically viable, and ongoing business concern that will remain uninfluenced by Odyssey and CPI, and that the level of competition that existed between the CPI and GD

Satcom prior to the Transaction 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 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. 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) ("APPA"), 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 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 will be drafted by the United States in its sole discretion. The publication must 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 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 within which the notice was published.

B. Defendants must abide by and comply with the provisions of the proposed Final Judgment, pending the Court's entry of the proposed Final Judgment, or until expiration of time

for all appeals of any Court ruling declining entry of the proposed Final Judgment, and must, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as though the same were in full force and effect as the final order of the Court.

C. Defendants must not consummate the transaction sought to be enjoined by the Complaint filed in this action before the Court has signed this Stipulation and Order.

D. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. If (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered, 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 will be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered by 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 the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

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

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

B. CPI must take all steps necessary to ensure that (1) ASC Signal will be maintained and operated as an independent, ongoing, economically viable and active competitor in the design, manufacture, and sale of large ground station antennas for geostationary satellites; (2) management of ASC Signal will not be influenced by Odyssey and CPI; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by ASC Signal will be kept separate and apart from CPI's other operations.

C. CPI must maintain at 2019 or previously approved levels for 2020, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for ASC Signal.

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

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

F. Odyssey and CPI must 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 (other than sales of inventory in the ordinary course of business).

G. CPI must 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 ASC Signal.

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

I. CPI must maintain the working conditions, staffing levels, and work force training and expertise associated with ASC Signal. Relevant Personnel must not be transferred or reassigned except for transfer bids initiated by employees pursuant to CPI's regular, established job posting policy. CPI must provide the United States with ten (10) calendar days' notice of the transfer of Relevant Personnel. Upon objection by the United States to such transfer, Relevant Personnel may not be transferred or reassigned. CPI 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 the United

States and Defendants; however, financial incentives may not be structured so as to disincentivize employees from accepting employment with an Acquirer.

J. CPI must appoint a person or persons to oversee ASC Signal, and who will be responsible for Defendants' compliance with this Section. This person will have complete managerial responsibility for ASC Signal, subject to the provisions of the Final Judgment. In the event such person is unable to perform his or her duties, CPI must appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should CPI fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants must take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed 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 will remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) 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: May 28, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANTS ODYSSEY
INVESTMENT PARTNERS FUND V, LP
AND COMMUNICATIONS & POWER
INDUSTRIES LLC

/s/ Jay D. Owen

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O R D E R

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

United States District Judge