

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

OLYMPUS GROWTH FUND VI, L.P.,

LIQUI-BOX, INC.,

and

DS SMITH PLC,

Defendants.

ASSET PRESERVATION 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 Asset Preservation Stipulation and Order:

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

B. “Liqui-Box” means Defendant Liqui-Box, Inc., a Delaware corporation with its headquarters in Richmond, Virginia; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Olympus Growth” means Defendant Olympus Growth Fund VI, L.P., a Delaware limited partnership with its headquarters in Stamford, Connecticut; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “DS Smith” means Defendant DS Smith plc, a United Kingdom corporation with the U.S. headquarters of its Plastics Division in Romeoville, Illinois; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “TriMas” means TriMas Corporation, a Delaware corporation with its headquarters in Bloomfield Hills, Michigan; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “BiB Products” means all components of Bag-in-Box (“BiB”) packaging and solutions, including, but not limited to, bags and fitments, whether the bags or fitments are sold as part of a complete BiB solution or individually. The term “BiB Products” does not include components used solely for tea or coffee.

G. “Rapak Business” means the development, manufacture, and sale of BiB Products and filler machines for BiB Products by the Plastics Division of DS Smith in the United States.

H. “Divestiture Assets” means the Rapak Business, including:

1. All of Defendants’ rights, title, and interests in the facilities located at the following addresses (the “Divestiture Facilities”):

- a. 7430 New Augusta Road, Indianapolis, Indiana 46268
 (“Indianapolis Plant”);

- b. 6907 Coffman Road, Indianapolis, Indiana 46268 (“Indianapolis Warehouse”);
- c. 29959 Ahern Avenue, Union City, California 94587 (“Union City Plant”); and
- d. 1020 Davey Road, Woodbridge, Illinois 60517;

2. The DS Smith production lines listed in Appendix A of the proposed Final Judgment (the “Divested Lines”);

3. The DS Smith injection molding machines listed in Appendix B of the proposed Final Judgment and all molds and dies, fitment assembly machines, and machinery used to manufacture fitments for the Rapak Business (the “Divested Fitment Equipment”);

4. At the option of Acquirer, all other tangible assets related to or used in connection with the Rapak Business, including but not limited to: all manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly 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; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

5. All intangible assets related to or used in connection with the Rapak Business, including but not limited to: all patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (including the Rapak name and all trademarks, service marks, and service names associated with the Rapak brand);

technical information; computer software 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 DS Smith 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; and

6. At the option of Acquirer, inventory of BiB Products up to the amount sold by the Rapak Business in any two (2) months in 2019, with the specific months to be determined by Acquirer.

I. “Relevant Employees” means all employees engaged in the Rapak Business.

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 development, manufacture, and sale of BiB Products for dairy, post-mix, smoothie, and wine in order to remedy the effects that the United States alleges would otherwise result from Liqui-Box’s acquisition of the Plastics Division of DS Smith. This Asset Preservation Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets will remain economically viable, competitive, and saleable, and that Defendants will preserve and maintain the Divestiture Assets.

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. 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), 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 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 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 must, 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 will have the full rights and enforcement powers in the proposed Final Judgment, including Section X, 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 before the Court has signed this Asset Preservation Stipulation and Order.

D. This Asset Preservation 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. In the event: (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above; or (2) the proposed Final Judgment is not entered pursuant to this Asset Preservation 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 Asset Preservation Stipulation and Order, and the making of this Asset Preservation Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that Defendants will not later raise any claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. PRESERVATION OF THE DIVESTITURE ASSETS

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

A. Defendants must preserve, maintain, and continue to operate the Divestiture Assets to ensure that the products and services produced by or sold under the Divestiture Assets continue to be ongoing, economically viable competitive product lines. Within twenty (20) days after the entry of the Asset Preservation Stipulation and Order, Defendants must inform the United States of the steps they have taken to comply with this Asset Preservation Stipulation and Order.

B. Defendants must maintain at 2019, or previously approved levels for 2020, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets.

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

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

E. Defendants must ensure that all orders for BiB Products produced by the Rapak Business are produced and shipped at the Rapak Business's average on-time in-full levels for 2019, and that all service calls relating to the Rapak Business are completed in a time period consistent with the Rapak Business's average for 2019.

F. Defendants 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.

G. Defendants 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 the Divestiture Assets.

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

I. Defendants must maintain the working conditions, staffing levels, and work force training and expertise associated with the Divestiture Assets. Relevant Employees must not be transferred or reassigned except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States with ten (10) calendar days' notice of the transfer of Relevant Employees. Upon objection by the United States to such transfer, Relevant Employees may not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Employees to continue in the positions held as of the date of the signing of this Asset Preservation 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. Defendants must appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this Section V. This person will have complete managerial responsibility for the Divestiture Assets, subject to the provisions of

the Final Judgment. In the event such person is unable to perform his or her duties, Defendants must appoint a replacement, subject to the approval of the United States, within ten (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.

K. Defendants must 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 an Acquirer acceptable to the United States.

VI. DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Asset Preservation Stipulation and Order must remain in effect until: (1) consummation of the divestiture 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 Asset Preservation Stipulation and Order.

Dated: February 19, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2020.

United States District Judge