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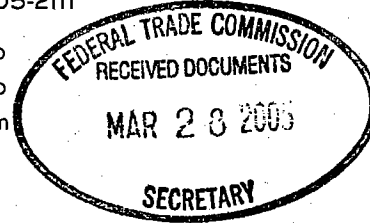
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March 28, 2005

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: *In the Matter of Chicago Bridge & Iron Company N.V.,
Chicago Bridge & Iron Company, Pitt-Des Moines, Inc.
(Docket No. 9300)*

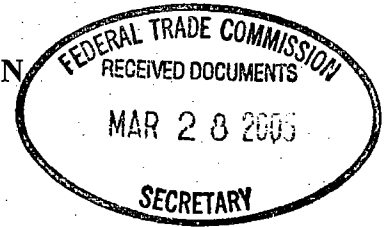
Dear Mr. Clark:

Please find enclosed for filing today *Respondents' Further Briefing on
Complaint Counsel's Motion for Clarification.*

Sincerely,

Sara Bensley / eM
Sara L. Bensley

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
)

CHICAGO BRIDGE & IRON COMPANY N.V.)
a foreign corporation,)

CHICAGO BRIDGE & IRON COMPANY)
a corporation,)

PITT-DES MOINES, INC.,)
a corporation.)

Docket No. 9300

PUBLIC

RESPONDENTS' FURTHER BRIEFING
ON COMPLAINT COUNSEL'S MOTION FOR CLARIFICATION

Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company ("CB&I") file this brief in response to the Order issued March 15, 2005, requesting further briefing on Complaint Counsel's Petition for Reconsideration to Clarify Respondents' Obligations as to the Pitt-Des Moines and CB&I Corporate Names ("Counsel's Petition to Clarify").¹

A. CB&I Does Not Own Nor Have Rights to the Pitt-Des Moines Name.

CB&I objected to those portions of Counsel's Petition to Clarify that would impose an affirmative duty on CB&I to transfer any right or title in and to the corporate name of Pitt-Des Moines ("PDM"), including the PDM mark. When CB&I acquired the Industrial Division of PDM, it acquired only a one-year, non-renewable, non-exclusive transitional license to the use of

¹ Pitt-Des Moines is represented by separate counsel and is expected to file a separate brief on this issue.

the PDM mark. That license expired on February 6, 2002. Accordingly, CB&I has no right or title in or to the PDM corporate name or mark which it could transfer to a purchaser.

CB&I has conferred with counsel for PDM and understands that, if the PDM name is available, PDM would consider granting a transitional license to a purchaser of the divested assets to the use of the PDM name on some commercially reasonable basis in the event the Commission's divestiture order is ultimately upheld on appeal.²

B. Even a Transitional License to the CB&I Name Would Cause Significant Harm and Confusion to the CB&I Name.

CB&I was founded in 1889 as Chicago Bridge & Iron Company and has built a solid reputation as a leading engineering, procurement, and construction company, specializing in lump-sum turnkey projects for customers that produce, process, store, and distribute natural resources. The CB&I name has been in continuous use for more than 115 years. CB&I believes that its name is a valuable asset and uniquely associated with the company.³ In the event of a divestiture, CB&I would continue to operate in the United States under the CB&I name in competition with the purchaser of the divested assets. Accordingly, it would not be feasible to grant a transitional license to the use of the CB&I name to such purchaser. The potential adverse consequences of allowing the competitor to use the CB&I name include the potential for adverse

² CB&I understands that counsel for PDM is investigating whether the PDM name is currently in use and, if so, the conditions of such use. Naturally, PDM is in a better position to inform the Commission of the current use of the PDM name, if any, and CB&I expects that PDM will inform the Commission regarding this matter in its brief.

³ At the same time, and as demonstrated by the numerous recent competitions won by foreign entities, either alone or in conjunction with a U.S. company, having an established brand name is not in and of itself a guarantee of success.

competitive effects, market confusion, loss of branding value, and harm to the CB&I reputation.⁴ Unlike PDM, CB&I will remain a competitor in the businesses made the subject of the divestiture order long after any transitional license could arguably be necessary. A transitional license would subject the reputation built on the CB&I name to risks from which CB&I may not be able to recover upon expiration of the license. CB&I can continue to protect its name through its own operations. CB&I cannot protect its name through the operations of an unrelated third party.

Moreover, CB&I competes in many markets under the CB&I name that are not the subject of the Commission's order. If divestiture is affirmed, it would be untenable to have two companies operate under the CB&I name – one the historical CB&I that operates in many markets including the markets made the subject of the Commission order and one the transitional CB&I that operates in the markets made the subject of the divestiture order.

C. A Transitional License to the Use of the CB&I Name Would Not Address Assignability Issues.


CB&I urged that divestiture would be unreasonable, in part, because a number of the existing contracts that would have to be assigned to "New PDM" and "New CB&I" include

⁴ Although the Commission approved a consent agreement in *In re General Mills Inc.* which included, in part, an agreement to allow the purchaser of the divested assets to sell Pillsbury-branded products and to use the "Doughboy" brand, several Commissioners objected to the licensing of the Pillsbury name, noting the potential for customer confusion and dynamics undermining the parties' incentives to promote the brand. See Statement of Commissioner Mozelle W. Thompson, General Mills, Inc./Diageo plc/Pillsbury Co., FTC No. 001-0213 (Oct. 23, 2001), available at <http://www.ftc.gov/os/2001/10/gmstmtthomp.htm>; Statement of Commissioner Sheila F. Anthony, General Mills, Inc./Diageo plc/Pillsbury Co., FTC No. 001-0213 (Oct. 23, 2001), available at <http://www.ftc.gov/os/2001/10/gmstmtant.htm>; Statement of Commissioners Orson Swindle and Thomas B. Leary, General Mills, Inc./Diageo plc/Pillsbury Co., FTC No. 001-0213 (Oct. 23, 2001), available at <http://www.ftc.gov/os/2001/10/gmstmtswinleary.htm>.

nonassignability clauses that preclude such assignments. A transitional license to the CB&I name would not cure this problem. The purchaser of the divested assets, regardless of name, would be an unrelated third party potentially triggering nonassignability and associated default clauses.

Dated: March 28, 2005

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS
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AND CHICAGO BRIDGE & IRON COMPANY

CERTIFICATE OF SERVICE

I, Charles W. Schwartz, hereby certify that on March 28, 2005, a true and correct copy of the foregoing was served on the following persons by hand delivery:

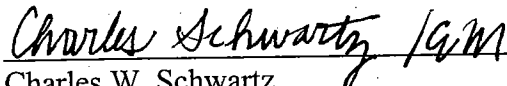
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I further certify that on March 28, 2005, a true and correct copy of the foregoing was served on the following by facsimile and regular mail:

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Charles W. Schwartz