

**[PUBLIC VERSION]**

**IN THE MATTER OF CHICAGO BRIDGE & IRON COMPANY N.V., et al.**

**DOCKET NO. 9300**

**Federal Trade Commission**

**Application for Approval of Divestiture**

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- Exhibit A     Asset Purchase Agreement, dated [REDACTED] (Confidential)
- Exhibit B     Form of Technology Transfer Agreement (Confidential)
- Exhibit C     Form of Transition Services Agreement (Confidential)
- Exhibit D     Indicative Term Sheet and Related Agreement-in-Principle (Confidential)
- Exhibit E     Materials presented to FTC on [REDACTED] (Confidential)
- Exhibit F     Matrix Service Company, Form 10-K, for the fiscal year ended May 31, 2008
- Exhibit G     Matrix Service Company, 2007 Annual Report

Application for Approval of Divestiture

**INTRODUCTION**

Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company (collectively “CB&I”) respectfully submit this application for approval of divestiture in connection with the matter entitled *In the Matter of Chicago Bridge & Iron Company N.V. et al.*, F.T.C. Docket No. 9300, arising out of CB&I’s acquisition of Pitt-Des Moines, Inc. (“PDM”) in 2001. CB&I seeks approval for the proposed divestiture of certain cryogenic tank business operations (collectively “Divestiture Assets”) to Matrix Service Company (“Matrix”) as reflected in the following agreements (hereinafter referred to as “Matrix Agreements”): (i) an Asset Purchase Agreement, dated [REDACTED], attached hereto as Confidential Exhibit A; (ii) a Technology Transfer Agreement, to be dated as of and entered into on the Closing Date, the agreed upon form of which is attached hereto as Confidential Exhibit B; and (iii) a Transition Services Agreement, to be dated as of and entered into on the Closing Date, the agreed upon form of which is attached hereto as Confidential Exhibit C. Also attached hereto as Confidential Exhibit D is the Indicative Term Sheet and Related Agreement-in-Principle [REDACTED], which was provided to FTC Staff that same day.<sup>1</sup>

Although the December 21, 2004 Commission order entered in connection with *In the Matter of Chicago Bridge & Iron Company N.V. et al.*, F.T.C. Docket No. 9300 (“Order”), is

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<sup>1</sup> Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act (codified as amended at 15 U.S.C. §§ 46(f), 57b-2(c)), as well as applicable provisions of the Freedom of Information Act (codified as amended at 5 U.S.C. § 552), CB&I requests that this confidential Application and the exhibits attached hereto that are marked “confidential” be treated by the Commission as strictly confidential and not be made available to the public. These materials contain confidential and sensitive commercial and financial information that neither CB&I nor Matrix disclose in the ordinary course of business. The disclosure of such confidential information could cause harm to CB&I, Matrix, and/or the Divestiture Assets.

still under appeal and thus not final,<sup>2</sup> CB&I has in good faith engaged in a process to divest itself of the assets contemplated by the Order and by the Commission opinion issued with the Order (“Opinion”). As a result of that divestiture process, which started [REDACTED] and involved the outside services of the international investment banking firm UBS and the marketing of the to-be-divested assets to more than 20 companies, CB&I has entered into the Matrix Agreements with Matrix, a well-established and reputable engineering and construction firm, headquartered in Tulsa, Oklahoma. Throughout this process, CB&I has kept the Monitor Trustee and FTC Staff fully informed of the details of the asset package being shopped, the process by which it was being marketed, the firms who expressed an interest in the assets, and the basis of the negotiations leading up to the Matrix Agreements.

The proposed divestiture to Matrix would accomplish the Order’s objectives by “restor[ing] the competition lost as a result of the Acquisition [and] ensur[ing] the continued operation of the Relevant Business . . . in the same manner in which such business was operated at the time of the announcement of the Acquisition.” (Order ¶ IV.H.) Specifically, by divesting the assets and other capabilities contemplated by the Matrix Agreements, the marketplace will have the benefit of another significant competitor fully capable of and engaged in the design, engineering and construction of the Relevant Products.<sup>3</sup>

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<sup>2</sup> On December 21, 2004, the Commission issued its Final Order in *In the Matter of Chicago Bridge & Iron Company N.V. et al.*, F.T.C. Docket No. 9300, 2004 WL 3142892 (F.T.C. Dec. 21, 2004) (“Order”), which was modified by two subsequent orders issued on August 30, 2005. The divestiture provisions of the Order are not currently in effect due to the automatic stay imposed by operation of 15 U.S.C. § 45(g)(4) (Section 5(g)(4) of the FTC Act).

<sup>3</sup> “Relevant Products” is defined in the Order as “those products identified and described in the accompanying Opinion as (1) thermal vacuum chambers [“TVCs”], (2) liquefied natural gas [“LNG”] tanks, (3) liquid petroleum gas [“LPG”] tanks, and (4) liquid nitrogen, liquid oxygen, and liquid argon [“LIN/LOX”] tanks.” (Order ¶ I.R.)

As explained in greater detail below, Matrix is a particularly suitable purchaser for the Divestiture Assets. It is not only an experienced construction and engineering firm, but is also one of the largest cryogenic tank builders in the United States, with significant design, fabrication and construction capabilities. For example, Matrix just completed construction of three LNG tanks for the Sabine Pass LNG project in Texas and is currently engaged in ongoing LPG and LIN/LOX projects. The net result of the proposed divestiture is that competition in the Relevant Products (i.e., LNG storage tanks, LPG storage tanks, LIN/LOX storage tanks, and TVCs), will increase with the addition of the to-be-divested assets and other capabilities to Matrix's already significant expertise and market reputation.

**I. CB&I, WITH THE PROFESSIONAL ASSISTANCE OF UBS, EXTENSIVELY MARKETED THE TO-BE-DIVESTED ASSETS**

In [REDACTED], shortly before oral argument in the appellate proceedings, CB&I met with the FTC Staff and the Monitor Trustee to discuss a proposed divestiture package to resolve the matter. (Materials presented to FTC on [REDACTED], attached hereto as Confidential Exhibit E). Although the statutory stay of the Order's divestiture provisions was (and still is) in place, CB&I explained to the FTC Staff that the company was interested in moving forward to resolve the matter to the satisfaction of the FTC by divesting a package of assets sufficient to create a sustainable business which will be able to effectively compete in all of the Relevant Products and which would meet the goals of the Order. CB&I referred to this package of assets as "PDM Plus" because the assets CB&I intended to market to potential purchasers consisted of essentially assets which were part of PDM at the time of the acquisition as well as other capabilities not possessed by PDM, but which CB&I felt would enhance the divestiture package.

After meeting with Staff and receiving feedback, CB&I retained UBS to set up and run a process to sell the assets, utilizing its years of experience in running similar sales processes in this and other similar industries. CB&I and UBS prepared a “teaser” letter, confidentiality agreement and other materials in connection with the shop process. UBS then contacted approximately 20 potential buyers regarding the opportunity to purchase PDM Plus. These contacts were made at the decision-maker levels with the various potential suitors as determined by the very experienced (and financially motivated) UBS team.<sup>4</sup> FTC Staff and the Monitor Trustee were kept apprised of these efforts on a regular basis.

[REDACTED]  
[REDACTED]  
[REDACTED] submitted indicative offers. After discussions with the Monitor Trustee, UBS and CB&I decided not to pursue [REDACTED]  
[REDACTED]  
[REDACTED]<sup>5</sup> In addition to continuing discussions with Matrix, CB&I also received an expression [REDACTED]  
[REDACTED]  
[REDACTED]

After reporting to the Monitor Trustee and FTC Staff the status of its search for a buyer in the meeting with the FTC Staff in [REDACTED], CB&I and UBS pursued [REDACTED]  
[REDACTED] On [REDACTED], Matrix entered into an indicative

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<sup>4</sup> [REDACTED]  
[REDACTED]

<sup>5</sup> [REDACTED]  
[REDACTED]

term sheet with CB&I, a copy of which was submitted to the FTC Staff on the same date.<sup>6</sup> Beginning even earlier, CB&I provided Matrix with extensive due diligence, lasting [REDACTED] [REDACTED]. Concurrently, CB&I and Matrix engaged in lengthy negotiations, also lasting [REDACTED] [REDACTED], culminating in the Matrix Agreements.

Throughout the process leading up to the Matrix Agreements, FTC Staff and the Monitor Trustee have been kept informed of the process and have had discussions with Matrix and/or its counsel.

**II. MATRIX IS A WELL-QUALIFIED PURCHASER AND IS READY, WILLING AND ABLE TO FULLY COMPETE IN THE CRYOGENIC TANK BUSINESS**

A. Proposed Acquirer's Name and Address

Matrix Service Company  
5100 E. Skelly Drive, Suite 700  
Tulsa, Oklahoma 74135  
(918) 838-8822

B. Proposed Acquirer's Officers

According to publicly available information, the following individuals serve as Matrix's officers:

- Michael J. Bradley, President and Chief Executive Officer
- Joseph F. Montalbano, Vice President and Chief Operating Officer
- Thomas E. Long, Vice President and Chief Financial Officer
- Kevin Cavanah, Vice President, Accounting and Financial Reporting
- John S. Newmeister, Vice President of Marketing and Business Development
- Nancy E. Austin, Vice President, Human Resources

<sup>6</sup> [REDACTED]



- Lansing G. Smith, Vice President, Fabrication, Engineering, and Procurement

See <http://www.matrixservice.com/InvestorOfficers.asp>.

Further, Matrix reports that the following individuals serve as its directors:

- Michael J. Hall, Chairman of the Board
- Michael J. Bradley
- I. Edgar Hendrix
- Paul K. Lackey
- Tom E. Maxwell
- David J. Tippeconnic

See <http://www.matrixservice.com/InvestorBoard.asp>.

#### C. Description of Proposed Acquirer's Business

Matrix was founded in 1984 as a privately held company to provide storage tank repair and maintenance services. By 1989 Matrix expanded to also provide refinery turnaround and maintenance services, and became a publicly traded company. It also has since expanded its original tank and bulk storage capabilities to include engineering, procurement, fabrication and construction ("EPFC") of aboveground storage tanks and turnkey terminal construction, primarily to the energy and energy related industries. Today, Matrix is a full service industrial contractor, headquartered in Tulsa, Oklahoma, with regional offices throughout the United States and Canada. Matrix is licensed to operate in all fifty states and as of May 31, 2008, it had more than 3,200 employees and yearly revenues of approximately \$731 million, representing year-on-year growth of 14.2%.

Matrix's business is organized into two segments: the Construction Services segment and the Repair and Maintenance Services segment. Its Construction Services segment, which reported revenues of \$455,887,000 for the fiscal year ended May 31, 2008, provides

turnkey and specialty EPFC services to many industries, with specialization in aboveground storage tanks for the bulk storage/terminal industry, capital construction for the downstream petroleum industry, specialty construction, and electrical and instrumentation services for various industries.

Matrix's EPFC services include LNG/industrial gas projects, power projects, specialty tanks and vessels and fabrications, precisely the type of work PDM performed before it was acquired by CB&I. Matrix today already has the capabilities to engineer, fabricate and construct refrigerated and cryogenic liquefied gas storage tanks for the storage of ammonia, butane, carbon dioxide, ethane, methane, argon, nitrogen, oxygen, propane and other products. Matrix has designed and/or built tanks in each of the Relevant Products that were the subject of the Commission's Opinion and Order.

Further information about Matrix is available on the company's website, [www.matrixservice.com](http://www.matrixservice.com), and Matrix's most recent Form 10-K and annual report to shareholders are attached hereto as Exhibits F and G.

CB&I does not have any current business relationship with Matrix and is not aware of any sales or other transactions between it or any of its affiliates and Matrix anytime in the past.

D. Matrix Has Developed a Comprehensive Business Plan To Compete Aggressively in the Relevant Products

Matrix has spent considerable effort in connection with its decision to enter into the Matrix Agreements, having made the determination that it sees an excellent business opportunity in the Relevant Products. Matrix has developed a business plan setting forth in detail how it plans to compete aggressively on a going-forward basis, consistent with the

Commission's desire to create a competitor on par with CB&I. That plan is being submitted to FTC Staff under separate cover by Matrix's counsel.

### **III. THE ASSETS AND OTHER CAPABILITIES BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE ORDER**

In the Commission's Opinion, it states that the remedy is intended to "ensure that meaningful and effective competition is restored to the market." (Opinion, at 92). The Commission ordered that CB&I divest assets "fully, equally, and independently engaged in all aspects of the Relevant Business" (Order ¶ III.A.) unless the Acquirer, with the concurrence of the Monitor Trustee, determines that acquiring certain assets (which are not Relevant Product assets) are not necessary to achieve the purposes of the Order. (*Id.* ¶ IV.A.) As outlined below, the terms of the Matrix Agreements will position Matrix as a firm with all of the capabilities necessary to be an "effective competitor" against CB&I in the design, engineering and construction of cryogenic tanks in the United States.

Pursuant to the Matrix Agreements, CB&I will be transferring employees and backlog and selling assets, technologies, support services, and capabilities to Matrix so as to put Matrix on a par with CB&I in the design, engineering and construction of cryogenic tanks in the United States. Specifically, CB&I is conveying engineering, construction, and fabrication (means, methods and techniques) capabilities, technologies, know-how, office space, equipment, and employees to Matrix as well as work under contracts with customers to further enhance Matrix's capabilities and reputation in cryogenic tank design and EPFC services. Because Matrix already has significant fabrication capabilities with available capacity, it did not want any

of the PDM fabrication facilities as part of the asset package.<sup>7</sup> In addition to the conveyance of assets, employees and work under contracts, CB&I has also agreed to transfer technology, know-how, proprietary and third-party software, and business materials (including design, engineering, fabrication, and construction standards, practices and procedure programs, specifications, and manuals, standard operating procedure documents and marketing and sales planning and execution documents relating to future business opportunities), enabling Matrix to exploit CB&I's current design, engineering, fabrication, and construction capabilities throughout not just the U.S., but elsewhere as well.

A. Property and Equipment To Be Divested to Matrix

PDM's engineering capabilities were housed in Pittsburgh, PA. After CB&I acquired PDM, CB&I maintained and enhanced the Pittsburgh engineering facilities and capabilities. For example, CB&I made available updated double (or full) containment technology to Pittsburgh, enhancing the capability over that possessed by PDM. CB&I proposes to divest the entire Pittsburgh engineering operation that was previously owned and operated by PDM to Matrix, which includes office space, equipment, and project files. In addition, CB&I will transfer tools, equipment, and supplies to Matrix to execute the backlog work. These assets are currently being used for the design, engineering and construction of cryogenic tanks.

B. Personnel To Be Transferred to Matrix

To ensure that Matrix would have the requisite experience and know-how to utilize the divested assets (including technology) and to restore competition for the supply of the Relevant Products, CB&I proposes to transfer to Matrix a number of personnel with the

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<sup>7</sup> However, in order to ensure that Matrix has available capacity in times of increased demand without the burden of carrying increased fixed costs, at Closing Matrix and CB&I will enter into the Transition Services Agreement pursuant to which Matrix may request fabrication services and assistance from CB&I.

collective experience to design, engineer and construct all of the Relevant Products. A total of approximately 67 employees will be transferred to Matrix, including all of CB&I's Pittsburgh-based engineering staff, [REDACTED] tank crew, and sales personnel, and nine or ten engineering and construction agency personnel will be made available to Matrix.

C. Work under Contracts To Be Assigned to Matrix

As part of the proposed divestiture, CB&I will transfer to Matrix work under a number of CB&I existing contracts for Relevant Products, which comprises a substantial share of CB&I's U.S. contracts for Relevant Products. These contracts include [REDACTED] for design, engineering, and commissioning and tank construction; [REDACTED] for design and engineering<sup>8</sup>; [REDACTED] for remaining design, engineering, and commissioning; [REDACTED] LIN/LOX tank construction; and [REDACTED] LIN/LOX tank construction.<sup>9</sup> After the sale to Matrix, CB&I will have only one other LNG tank construction project being performed by it remaining in its backlog in the U.S.

D. Technology To Be Transferred to Matrix

Although it is expected that the transfer of employees will enable Matrix to effectively compete in the design, engineering and construction of cryogenic tanks in the U.S., CB&I and Matrix have also entered into a Technology Transfer Agreement ("TTA") to further ensure that Matrix has the necessary technology, know-how, and intellectual property to be an effective competitor for the supply of Relevant Products. Under the TTA, Matrix will have

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<sup>8</sup> If the [REDACTED] project proceeds and the contract is awarded to CB&I, Matrix will perform the follow-on engineering and commissioning and, if certain criteria pertaining to personnel are met by Matrix and the then-contracted price is acceptable to Matrix, the LNG tank construction [REDACTED].

<sup>9</sup> The work that Matrix will perform represents a portion of the overall scope of work for the subject projects. As a result, the work will be subcontracted to Matrix because it is not practicable and in some instances not permissible to novate or to assign the subject contracts in their entirety.

access to the tools currently being used by CB&I in connection with the engineering and design of LNG and LIN/LOX tanks, along with technical job files for completed projects, and all technical standards, test data and research files. Under the TTA, CB&I will also commit to provide Matrix with construction manuals and procedures related to the four Relevant Products. Finally, the TTA specifies that CB&I provide to Matrix software used to produce designs and detailed drawings for LNG and LIN/LOX tanks.

E. Transition Services To Be Provided to Matrix

To ensure a smooth transition of work from CB&I to Matrix, the parties have agreed to a Transition Services Agreement (“TSA”). The parties deem this advisable because, for instance, Matrix will be taking over work on several projects from CB&I that are in progress and Matrix will have to become familiar with CB&I’s means, methods, and techniques in the execution of the work. Pursuant to the TSA, CB&I will provide, at Matrix’s option, various support services to Matrix, including accounting, phone system, PDS administration, technical support, human resources, drafting, fabrication, structural steel design, estimating training, estimating on-call support, welding technical support and engineering services.

F. The Proposed Divestiture Will Position Matrix as a Viable Alternative to CB&I in the Design and Construction of the Relevant Products

Matrix is already a participant in the design, engineering and construction of cryogenic tanks, but with the proposed divestiture package, it will become even a stronger competitor – on a par with CB&I. The sale of the Divestiture Assets to Matrix will restore any competition lost as a result of CB&I’s acquisition of PDM by positioning Matrix to be a full-fledged player in the Relevant Products in the U.S. In addition, with Matrix’s already established position in the overall tank and fabrication businesses, it will remain financially

viable both short-term and long-term, regardless of the current and future demand for Relevant Products.<sup>10</sup>

With the assignment of work on significant LNG and LIN/LOX projects to Matrix as well as the transfer of significant engineering expertise, technology, know-how, and intellectual property, Matrix will have the manpower, the talent and the motivation to compete in the design, engineering and construction of cryogenic tanks going forward. Even though CB&I has no outstanding projects in LPG storage tanks and TVC, Matrix is getting the design, engineering and construction expertise necessary to bid on any such projects, should they become available in the future.<sup>11</sup>

G. The Proposed Divestiture Will Achieve the Remedial Purposes of the Order

According to the Commission Opinion issued with the Order, the divestiture obligations in the Order were imposed in order to restore competition for the supply of the Relevant Products to its “pre-acquisition state.” (Opinion, at 93.) With this same goal in mind, the Order included a number of ancillary provisions that the Commission deemed “crucial to establishing a viable entrant to replace the competition lost from CB&I’s acquisition of PDM.” (*Id.*)

The proposed divestiture would achieve the goal of replacing the competition lost from CB&I’s acquisition of PDM by divesting to an established tank engineering and construction business sufficient assets, including technology, to create a strong competitor in all

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<sup>10</sup> Therefore, Matrix has no need to acquire any CB&I assets that involve no Relevant Products.

<sup>11</sup>



of the Relevant Products. With a solid foothold in tank design, engineering and construction, Matrix is an ideal candidate to acquire the Divestiture Assets in light of the purposes of the Order. The Divestiture Assets will add to Matrix's capabilities in the Relevant Products, and will result in the creation of a competitor on a par with CB&I.

CB&I believes that the TTA and TSA provide necessary support to ensure that Matrix will succeed in the marketplace. In its Opinion issued with the Order, the Commission explicitly recognized that "some level of assistance may be necessary to enable the acquiring firm to compete successfully." (Opinion, at 98; *see also id.* ("Depending on the details of the divestiture package, we . . . find it possible that the provision of technical assistance and administrative services may be needed for the divestiture to be effective.")) The TTA and TSA are carefully calibrated to provide the assistance Matrix needs, as it needs it; however, Matrix's considerable existing EPFC capabilities provides the Commission additional assurances that Matrix is well-poised to succeed in the Relevant Products.

### **CONCLUSION**

Because the proposed divestiture of the Divestiture Assets to Matrix is procompetitive, in the public interest and addresses the competitive concerns raised in the Commission's Opinion, CB&I respectfully requests that the Commission approve the sale to Matrix pursuant to the Matrix Agreements.



Dated: September 12, 2008

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Clifford H. Aronson', written over a horizontal line.

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