

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

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GENERAL ELECTRIC COMPANY,

ALSTOM S.A., and

POWER SYSTEMS MFG., LLC,

*Defendants.*

DATE: September 23, 2015

CASE NO.: 1:15-cv-01460-ABJ

JUDGE: Amy Berman Jackson

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
UNOPPOSED MOTION OF THE UNITED STATES  
TO APPOINT ING FINANCIAL MARKETS LLC AS MONITORING TRUSTEE**

The United States files this Memorandum in support of the Unopposed Motion of the United States to Appoint ING Financial Markets LLC as Monitoring Trustee in this case. Pursuant to the Hold Separate Stipulation and Order entered by the Court on September 21, 2015, and the Proposed Final Judgment filed with the Court on September 8, 2015, the United States seeks the Court's appointment of ING Financial Markets LLC ("ING") as Monitoring Trustee, with Mr. Philip Comerford as project manager. ING has been appointed as monitoring trustee in parallel proceedings before the European Commission, and it possesses the experience required to carry out its duties as Monitoring Trustee in the present matter. Mr. Comerford is employed by ING as Managing Director, Corporate Finance, and has the expertise necessary to manage ING's fulfillment of its obligations as Monitoring Trustee.

**I. Appointment and Duties of a Monitoring Trustee**

The United States filed a civil antitrust Complaint on September 8, 2015, seeking to enjoin the acquisition of Alstom S.A. and its wholly owned subsidiary, Power Systems Mfg., LLC (“PSM”), by General Electric Company (“GE”). The Complaint alleged that the proposed acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, for the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States. That loss of competition likely would result in higher prices and decreased innovation and quality of service in the market for these products.

Filed together with the Complaint were a Hold Separate Stipulation and Order (“Hold Separate”) and a Proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. The Court entered the Hold Separate on September 21, 2015. Under the Proposed Final Judgment, Defendants are required to divest PSM. Until the divestiture takes place, the Hold Separate requires Defendants to preserve and continue to operate the assets to be divested as an independent, ongoing, and economically viable business that is held entirely separate, distinct, and apart from Defendants’ other assets. *See* Hold Separate Paragraphs V(A)-(B). Pursuant to Paragraph IV(C) of the Hold Separate, “Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment’s entry by the Court...and shall...comply with all the terms and provisions of the proposed Final Judgment.”

Section X of the Proposed Final Judgment provides for the appointment of a Monitoring Trustee with the power and authority to monitor Defendants’ compliance with the terms of the Hold Separate and the Proposed Final Judgment. Pursuant to Paragraph X(A), “[u]pon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.”

## **II. ING is Highly Qualified to Serve as Monitoring Trustee**

ING has monitored more than 60 antitrust remedies for various competition authorities in the last 12 years, including three acquisitions required by the United States Federal Trade Commission and the United States Department of Justice. ING's monitoring trustee business is managed from its New York office, with support from branches in Europe and Asia. Mr. Comerford, head of ING's trustee practice in the United States, is the ideal choice of project manager. He previously has served as a monitor for the United States Department of Justice, and he is leading ING's monitoring trustee team for another matter before the U.S Federal Trade Commission. He has over 25 years of advisory experience in mergers and acquisitions and is now Head of Mergers and Acquisitions at ING Financial Markets LLC, ING's Broker/Dealer.

Further, ING has no conflicts of interest that would disqualify it from fulfilling its role as Monitoring Trustee. ING holds minimal shares of GE and Astom stock, representing approximately 0.03 percent and 0.02 percent of capital, respectively, which are held by ING in risk-neutral positions on behalf of third-party clients. ING also holds modest credit facilities for GE Company and GE Capital, but those facilities accounted for only 0.05 percent and 0.08 percent, respectively, of ING's total loans and advances to customers' portfolios, as of the end of December 2014.

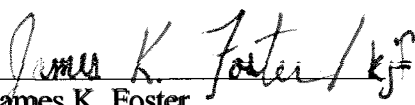
In proceedings before the European Commission in connection with the proposed acquisition, GE has appointed ING, with the Commission's approval, to serve as monitoring trustee for GE's commitments to the Commission. GE also has recommended the appointment of ING as Monitoring Trustee pursuant to Paragraph X(A) of the Proposed Final Judgment. Following further discussions with the Defendants and ING, the United States has selected ING as Monitoring Trustee in this matter. The appointment of the same entity that has been

appointed monitoring trustee for GE's commitments to the Commission will help ensure that the agencies' respective divestitures will be consistent and will be accomplished effectively.

For the foregoing reasons, the United States respectfully requests this Court to appoint ING as Monitoring Trustee pursuant to Section X of the Proposed Final Judgment.

Dated: September 23, 2015

Respectfully submitted,

  
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