

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTINGHOUSE AIR BRAKE
TECHNOLOGIES CORP.

FAIVELEY TRANSPORT S.A.,

and

FAIVELEY TRANSPORT NORTH AMERICA,

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:

- A. “Acquirer” means Amsted Rail Company, Inc., or another entity to which defendants divest the Divestiture Assets.
- B. “Wabtec” means defendant Westinghouse Air Brake Technologies Corp., a Delaware corporation with its headquarters in Wilmerding, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Faiveley” means defendant Faiveley Transport S.A., a French corporation with its headquarters in Gennevilliers, France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. “Faiveley” includes defendant Faiveley Transport North America (“FTNA”), a New York corporation headquartered in Greenville, South Carolina, a wholly-owned subsidiary of Faiveley Transport S.A.

D. “Amsted” means Amsted Rail Company, Inc., an Illinois corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Amsted is a wholly-owned subsidiary of Amsted Industries Incorporated of Chicago, Illinois.

E. “Amsted Rail Faiveley LLC” means the ongoing business and all associated assets of a joint venture that currently exists between Faiveley and Amsted, was established in 2010 for the purpose of manufacturing and selling freight car brake components, and has headquarters located in Greenville, South Carolina.

F. “Closing” means the closing of Wabtec’s acquisition of Faiveley.

G. “FTEN control valve” means the ongoing project and all associated assets of the freight car brake control valve for freight car brake systems developed or under development by Faiveley.

H. “Divestiture Assets” means:

1. Faiveley’s full and complete interest, rights, and property in Amsted Rail Faiveley LLC and the FTEN control valve;

2. All tangible assets relating to Amsted Rail Faiveley LLC and the FTEN control valve, including, but not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, including, at the option of the Acquirer, the braking simulation testing equipment known as the “whale” located at the Greenville, South Carolina, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits 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; and

3. All intangible assets relating to Amsted Rail Faiveley LLC and the FTEN control valve, 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 and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, and design tools and simulation capability; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; all manuals and technical information Faiveley provides to its own employees, customers, suppliers, agents or licensees; and all research data, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure defendants’ prompt divestiture of the Divestiture Assets to the Acquirer for the purpose of establishing and preserving a viable, independent competitor in the business of designing, developing, manufacturing, and

selling freight car brake systems or freight car brake system components, in order to remedy the effects that the United States alleges would otherwise result from Wabtec's acquisition of Faiveley and its wholly-owned subsidiary FTNA. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that FTNA remains an independent, economically viable, and ongoing business that will remain independent and uninfluenced by defendants, and that competition 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 of this action is proper in the United States District Court for the District of Columbia.

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 ("APPA"), 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.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall 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 shall be made. Defendants shall 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.

C. Defendants shall 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 shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall 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.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. 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 Hold Separate 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 Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no 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. Defendants shall preserve, maintain, and continue to operate FTNA as an independent, ongoing, economically viable competitive business. After Closing, Wabtec shall hold the management, sales, and operation of FTNA entirely separate from Wabtec's other assets and shall not coordinate the operation, production, marketing, or terms of sale of any products or services with those produced by or sold by FTNA. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. After Closing, Wabtec shall take all steps necessary to ensure that (1) FTNA will be maintained and operated as an independent, ongoing, economically viable and active competitor in the design, development, manufacture, and sale of products relating to freight car brake systems or freight car brake system components; (2) management of FTNA will not be influenced by Wabtec; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production or sales of products or services by or under FTNA will be kept separate and apart from Wabtec's other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products and services produced by or sold under FTNA, and shall maintain at

2015 or previously approved levels for 2016, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for FTNA.

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

E. Defendants shall 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 shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall 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 FTNA.

G. Defendants shall 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 FTNA.

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

I. Defendants shall not transfer or reassign any Faiveley employees whose primary responsibility is the design, development, manufacture, and sale of products relating to Amsted Rail Faiveley LLC or the FTEN control valve. Notwithstanding the foregoing, the United States in its sole discretion may consent to such a transfer.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets, who will be responsible for defendants' compliance with this section. This person shall have

complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment. In the event such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall 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 Hold Separate Stipulation and Order shall 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 Hold Separate Stipulation and Order.

Dated: October 26, 2016

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



Doha G. Mekki
United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530
Telephone: (202) 598-8023
doha.mekki@usdoj.gov

FOR DEFENDANT
WABTEC



Craig A. Waldman
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 875-5765
cwaldman@jonesday.com

FOR DEFENDANT
FAIVELEY



Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1247
ikgotts@wlrk.com

ORDER

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

UNITED STATES DISTRICT JUDGE