

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC CO.

and

BAKER HUGHES INCORPORATED,

Defendants.

Civil Action No. 17-1146 (BAH)

Chief Judge Beryl A. Howell

FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on June 12, 2017, the United States and Defendants, General Electric Co. and Baker Hughes Incorporated, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. “Acquirer” means Suez or another entity to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.

B. “GE” means defendant General Electric Co., a New York corporation with its headquarters in Boston, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Baker Hughes” means defendant Baker Hughes Incorporated, a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Suez” means SUEZ, a French *société anonyme* with its headquarters in Paris, France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Suez is the proposed purchaser of the Divestiture Assets as identified by GE.

E. “GE Water & Process Technologies” means the GE Water & Process Technologies business unit of GE as it operated prior to the filing of the Complaint in this matter, including but not limited to the entities listed in Appendix A.

F. “Divestiture Assets” means all the assets of GE Water & Process Technologies, including:

1. All tangible assets that comprise the GE Water & Process Technologies business, including but not limited to all worldwide manufacturing plants; service centers; labs; warehouse and distribution facilities; offices; the global headquarters located in Trevose, Pennsylvania; all global research and development facilities; manufacturing equipment; tooling and fixed assets; personal property; inventory; office furniture; materials; supplies; other property; all licenses, permits and authorizations issued by any governmental organization relating to GE Water & Process Technologies; assignment and/or transfer of all contracts, agreements (including supply agreements), leases, commitments, certifications, and understandings exclusively relating to GE Water & Process Technologies; all customer lists, contracts, accounts, credit records; all other business and administrative records; and all other assets used exclusively by GE Water & Process Technologies;

2. The following intangible assets:

(a) all intangible assets owned, licensed, controlled, or used primarily by the GE Water & Process Technologies business, including but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name, service mark, or service name containing the GE monogram or the names “GE” or “General Electric”), technical information, computer software and related documentation, 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 provided by GE Water & Process Technologies to its own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Assets, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments; and

(b) a worldwide, non-exclusive, royalty-free license to all intellectual property, including but not limited to all patents, copyrights, trademarks, trade names, service marks, service names, and trade secrets owned by GE or that GE has the right to license and used by the GE Water & Process Technologies business at any time during the period that the GE Water & Process Technologies business has been owned by GE. Such license (except for any license for trademarks, trade names, service marks, and service names containing the names “GE” or “General Electric”) shall be perpetual and shall grant the Acquirer the right to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display,

perform, and enhance the licensed intangible assets. Any improvements or modifications to these intangible assets developed by the Acquirer shall be owned solely by that Acquirer.

III. Applicability

A. This Final Judgment applies to GE and Baker Hughes, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed to divest, and have represented that they already have divested, in a manner consistent with this Final Judgment, all Divestiture Assets in each jurisdiction other than those listed in Appendices B and C. Defendants are further ordered and directed to divest to Suez all the Divestiture Assets in each remaining international jurisdiction in a manner consistent with this Final Judgment by the closing deadlines specified in Appendices B and C. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. To incentivize the Defendants to do so, for each international jurisdiction specified in Appendix C, beginning on the date specified in Appendix C for each jurisdiction, Defendants are ordered to pay to the United States \$1,500 per day until all the Divestiture Assets in that jurisdiction have been divested. All such payments shall be made in

arrears on a monthly basis by the tenth business day of the following month. If Defendants demonstrate to the United States that unanticipated material difficulties have resulted in unavoidable additional delays to the divestiture of any Divestiture Assets in any jurisdiction, the United States may, in its sole discretion, agree to forgo some or all of the payments for that jurisdiction.

B. In the event Defendants are divesting the Divestiture Assets to an Acquirer other than Suez, Defendants shall promptly make known, by usual and customary means, the availability of the Divestiture Assets to be divested.

C. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

D. In accomplishing the divestiture ordered by this Final Judgment, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

E. Defendants shall provide the Acquirer and the United States information relating to the personnel employed by the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is related to the production, operation, development or sale of products and services by GE Water & Process Technologies.

F. Defendants shall permit the prospective Acquirer of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of GE Water & Process Technologies; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

H. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. Defendants shall warrant to the Acquirer (1) that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset and (2) that, following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business providing refinery process chemicals and services. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of

competing effectively in the provision of refinery process chemicals and services; and

- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

Any questions that arise concerning whether particular assets are appropriately considered Divestiture Assets subject to Section IV shall be resolved by the United States, in its sole discretion, consistent with the terms of this Final Judgment.

V. Other Relief

A. Defendants agree to reimburse the United States \$50,000 for attorney's fees and costs incurred to date in connection with the modification of this Final Judgment.

B. The United States reserves the right to petition the Court to impose civil contempt sanctions in the event that Defendants fail to complete the divestitures in any jurisdiction by the deadlines specified in Appendix B or C.

VI. Appointment of Divestiture Trustee

A. If at any time the United States concludes in its sole discretion that the appointment of a Divestiture Trustee is necessary to accomplish the divestitures required by this Final Judgment, the United States may apply to the Court, and the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee

shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.D of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any

professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain

information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VII. Notice of Proposed Divestiture

A. In the event Defendants are divesting the Divestiture Assets to an Acquirer other than Suez, within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be

consummated, subject only to Defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V.C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

IX. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Such affidavit must include a description of (a) the actions that have been taken in the prior month toward completing the divestiture in each jurisdiction, (b) the remaining actions that must be taken before the divestiture can be completed in each jurisdiction, (c) any delays that might affect the

timing of the divestiture in each jurisdiction, and (d) the steps Defendants have taken to expedite the divestiture in each jurisdiction.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

- (2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: October 16, 2017

BERYL A. HOWELL
CHIEF JUDGE

Appendix A

GE Betz, Inc. (US)
Chemical Water Treatment Investments SRL (Argentina)
GE Betz (UK)
GE Betz Ireland Limited (Ireland)
GE Betz South Africa Pty Ltd (South Africa)
GE Betz Pty Limited (Australia) and GE Betz Pty Limited (New Zealand Branch)
GE Infrastructure (Shanghai) Co. Ltd. (China)
GE Ionics Hamma Holdings (IRE) Ltd (Ireland)
GE Power Controls Portugal Unipessoal LDA (Portugal)
GE Water & Process Technologies (Wuxi) Co. Ltd. (China)
GE Water & Process Technologies Asia Pte. Ltd. (Singapore)
GE Water & Process Technologies Austria GmbH (Austria)
GE Water & Process Technologies BVBA (Belgium)
GE Water & Process Technologies France SAS (France)
GE Water & Process Technologies GmbH (Germany)
GE Water & Process Technologies Hungary KFT (Hungary)
GE Water & Process Technologies Mexico, S. de R.L de C.V. (Mexico)
GE Water & Process Technologies Middle East FZE (Dubai)
GE Water & Process Technologies Netherlands BV (NL)
General Electric Water & Process Technologies Caribbean Holdings BV (Netherlands Antilles)
Ionics Iberica S.L.U. (Spain)
Water & Process Technologies SRL (Argentina)
Zenon Services Limited (Virgin Islands)
Zenon Systems Manufacturing and Services Limited Liability Company (Hungary)

Appendix B

**Jurisdictions in which Defendants
Must Divest All Divestiture Assets by December 31, 2017**

Argentina
Aruba
Bangladesh
Romania
Taiwan
Trinidad & Tobago
Turkey
Vietnam

Appendix C

Divestiture Deadlines and Incentive Payments in Other Jurisdictions

	Deadline for Assets to be Divested	\$1,500 Per Day Payment Begins
Bahrain	2/28/2018	1/1/2018
Egypt	2/28/2018	1/1/2018
Iraq	2/28/2018	1/1/2018
Oman	2/28/2018	1/1/2018
Qatar	2/28/2018	1/1/2018
Kazakhstan	2/28/2018	1/1/2018
Russia	2/28/2018	1/1/2018
Saudi Arabia	2/28/2018	1/1/2018
Brazil	9/30/2018	5/15/2018
Indonesia	9/30/2018	5/15/2018
Thailand	9/30/2018	5/15/2018