

may be appropriate in the public interest in certain limited circumstances. For example, a narrow prior approval provision may be appropriate "where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger," and "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." Id. at 3. The need for prior approval or prior notice will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

When a petition is filed to reopen and modify an order pursuant to the Prior Approval Policy Statement, the rebuttable presumption is that the public interest requires reopening the order and modifying it consistent with the announced policy. Setting aside the prior approval requirement in the Order would be consistent with the announced policy. Characteristics of the markets identified in the complaint and Order suggest, however, that a limited prior notice provision would be appropriate. The markets identified in the complaint remain concentrated, and an acquisition by Oerlikon of a significant competitor in one of the markets may not be reportable under the Hart-Scott-Rodino Act. A prior notice requirement would ensure the opportunity to review any such transactions. Therefore, consistent with the Prior Approval Policy Statement, Paragraph VII of the Order should be modified to substitute a prior notification provision for the prior approval provision.

Accordingly, IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that Paragraph VII of the Order be, and it hereby is, modified as of the effective date of this order as follows:

VII

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this order becomes final, Oerlikon Buhrle shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-

corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the manufacture of turbomolecular pumps;

B. acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the manufacture of compact disc metallizers; or

D. acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this Paragraph VII shall not apply to the acquisition of products or services in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

The prior notifications required by this Paragraph VII shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee shall be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate,

granted by letter from the Bureau of Competition.
Notwithstanding, prior notification shall not be

required by this paragraph for a transaction for which notification is required to be made and has been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

By the Commission.

Donald S. Clark
Secretary

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