



the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Insilco is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 425 Metro Place N., Dublin, Ohio 43017.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

**ORDER**

I

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

A.

F. "Thin-Wall Welded-Seam Aluminum Tubes" means welded-seam aluminum heat exchanger tubes with wall thickness less than 0.65 millimeters used in the manufacture of heat exchangers, which are devices that transfer heat from one fluid or gas to another medium, generally air. These heat exchangers generally are used in automotive applications. Thin-Wall Welded-Seam Aluminum Tubes does not include tubes used as spacers between thermal pane windows, condenser headers, or manifolds.

G. "Welded Tube Mill" means a high frequency welding machine capable of producing Thin-Wall Welded-Seam Aluminum Tubes.

H. "Lingemann Mill" means a Welded Tube Mill manufactured by Lingemann and operated by Helima-Helvetion International, Inc., or ARUP Alu-Rohr und Profil GmbH prior to the Helima Acquisition.

I. "Marketability, Viability, and Competitiveness" means that the specified assets, when used in conjunction with the assets of the acquirer, are capable of operating in substantially the same manner, quality, and efficiency employed or achieved by the respondent prior to divestiture.

J. "Non-Aggregated, Customer-Specific Information" means information about a product's cost and/or price that is in such a form that the cost and/or price of a product for an identifiable individual customer can be identified.

K. "Strategies or Policies Related to Competition" means

ability to influence prices or pricing or an attorney regularly employed by the company that does not have and will not have direct or indirect responsibility for prices or pricing or the ability to influence prices or pricing.

O. "Assets To Be Divested" include the following:

(a) one (1) fully functioning and operational Lingemann Mill, consisting of a high frequency welder, a rollforming base, a cutoff saw, a finished product drop table, a stock reel decoder, a vacuum coil lifter, and control cabinets, capable of producing Thin-Wall Welded-Seam Aluminum Tubes with a diameter of less than forty (40) millimeters;

(b) one (1) fully functioning and operational Lingemann Mill, consisting of a high frequency welder, a rollforming base, a cutoff saw, a finished product drop table, a stock reel decoder, a vacuum coil lifter, and control cabinets, capable of producing Thin-Wall Welded-Seam Aluminum Tubes with a diameter of greater than seventy-five (75) millimeters; and

(c) one (1) set of tooling capable of operating on both mills.

P. "Technology and Know-How" means all of Respondent's drawings, patents, specifications, tests, and other documentation, and all information contained therein or available to Respondent's personnel relating to the design, and the production methods, processes, and systems used in the production of Thin-Wall Welded-Seam Aluminum Tubes utilizing Lingemann Mills or the operation and maintenance of Lingemann Mills for use in the production of Thin-Wall Welded-Seam Aluminum Tubes. Technology and Know-How does not include the drawings, patents, specifications, tests, and other documentation, and all information not acquired by Respondent in the Helima Acquisition and not developed by Respondent following the Helima Acquisition specifically relating to the design, and the production methods, processes, and systems used in the production of Thin-Wall Welded-Seam Aluminum Tubes utilizing Lingemann Mills or the operation and maintenance of Lingemann Mills for use in the production of Thin-Wall Welded-Seam Aluminum Tubes.

Q. "Sole Source Replacement Parts" means all parts needed to operate and maintain the Assets To Be Divested that are not readily available from a source other than Respondent.

R. "Helima Assets" means all Welded Tube Mills, including machinery, fixtures, equipment, and tooling used in the

maintenance or operation of such mills, acquired by Insilco in its acquisition of the assets of Helima-Helvetion International, Inc., from Lingemann.

II

**IT IS FURTHER ORDERED** that:

A. Respondent shall divest, absolutely and in good faith, no later than four (4) months after the date on which this Order

F. On reasonable notice to Respondent from the acquirer of the Assets To Be Divested, Respondent shall provide assistance and training to the acquirer to enable the acquirer to design, manufacture, and produce Thin-Wall Welded-Seam Aluminum Tubes at a comparable cost in substantially the same manner and quality employed or achieved by the respondent with the Assets To Be Divested prior to divestiture. Such assistance and training shall include, without limitation, consultation with employees of Insilco knowledgeable about Lingemann Mills and training at the North American manufacturing facilities of Insilco utilizing Lingemann Mills. If training at the North American manufacturing facilities of Insilco utilizing Lingemann Mills is not possible, Respondent shall provide training at any manufacturing facility of Insilco utilizing Lingemann Mills. Respondent shall charge no more than its own direct costs incurred in providing such assistance and training, including reimbursement (commensurate

than two (2) years after the date on which the divestiture required by this Order is made.

H. The Assets To Be Divested shall be supplied as completely wired and piped systems, requiring only the placement and bolting together of the sub-bases, the reconnection of the electrical wires at numbered terminal block junctions, and the connection of the piping to the union joints.

I. Qualification, performance, and the acquirer's acceptance of the Assets To Be Divested shall be performed at the facility of the acquirer in a manner to ensure that the Assets To Be Divested are capable of producing Thin-Wall Welded-Seam Aluminum Tubes in substantially the same manner and quality employed or achieved by the respondent with the Assets To Be Divested prior to divestiture.

J. On reasonable notice to Respondent by a customer, Respondent shall provide the approved acquirer tooling owned by, assigned to, or licensed to the Respondent, which was produced prior to the date this Order becomes final and not included in the Assets To Be Divested, and which was manufactured specifically for and used solely for that customer's products. Respondent may charge the reasonable costs incurred in the manufacture of the tooling.

K. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are reasonably necessary to maintain the Marketability, Viability, and Competitiveness of the Assets To Be Divested and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested.

L. Pending divestiture of the Assets To Be Divested, Respondent shall take such actions as are reasonably necessary to maintain the Marketability, Viability, and Competitiveness of the Helima Assets to prevent the destruction, removal, wasting, deterioration, or impairment of the Helima Assets.

### III

#### **IT IS FURTHER ORDERED** that:

A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within four (4) months of the date this Order becomes final, then the Commission may appoint a trustee to divest the

Helima Assets and effect such additional arrangements as are necessary, in order to assure the Marketability, Viability, and Competitiveness of the Helima Assets. In the event the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by the Respondent to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III(A) of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposition, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Helima Assets and effect such additional arrangements as are necessary, in order to assure the Marketability, Viability, and Competitiveness of the Helima Assets.

3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Helima Assets and effect such additional arrangements as are necessary to assure the Marketability, Viability, and Competitiveness of the Helima Assets, in order to expeditiously accomplish the remedial purposes of this Order.



4. The trustee shall have twelve (12) months to accomplish the divestiture required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Helima Assets or to any other relevant information necessary to permit the trustee to effect the divestiture of the Helima Assets, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the Respondent shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission

(and, in the case of a court-appointed trustee, by the court), of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at

**IT IS FURTHER ORDERED** that:

A. For a period of twenty (20) years from the date this Order becomes final, Respondent shall not, in any proposed acquisition of stock, share of capital, or production assets of any person that is a competitor of Respondent in the design, manufacture, or sale of Thin-Wall Welded-Seam Aluminum Tubes, to which Respondent is a party, prior to consummating the acquisition, obtain, seek, provide, or agree to obtain, seek, or provide the following types of information with respect to Thin-Wall Welded-Seam Aluminum Tubes except to the extent that such information is publicly available: (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or future Strategies or Policies Related to Competition; and (4) Analyses or Formulas Used to Determine Costs or Prices.

B. For a period of ten (10) years from the date this Order becomes final, Respondent shall not, in any proposed acquisition of stock, share of capital, or production assets of any person that is a competitor of Respondent in the design, manufacture, or sale of any product or service, to which Respondent is a party, prior to consummating the acquisition, obtain, seek, provide, or agree to obtain, seek, or provide the following types of information with respect to any competing product or service except to the extent that such information is publicly available: (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or future Strategies or Policies Related to Competition; and (4) Analyses or Formulas Used to Determine Costs or Prices.

C. Nothing contained in Paragraphs V(A) or V(B) of this Order shall prohibit respondent or any other person from obtaining, seeking or providing, or agreeing to obtain, seek or provide (1) current or future Non-Aggregated, Customer-Specific Information; (2) current or future pricing plans; (3) current or

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without prior notification to the Commission:

(a) directly or indirectly acquire any production assets of Maschinenbau if the cumulative value of all such acquisitions in the prior twelve (12) months exceeds \$1 million; and

(b) directly or indirectly acquire any stock, share of capital, or production assets, other than assets acquired in the ordinary course of business, of any person engaged in the design, manufacture, or sale of Welded Tube Mills or any person engaged in the design, manufacture, or sale of Thin-Wall Welded-Seam Aluminum Tubes in North America; provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph if, after such acquisition of securities, Respondent will hold no more than five (5) percent of the outstanding shares of any class of securities of such person and provided further that an acquisition of assets will be exempt from the requirements of this paragraph if the acquisition price is less than one (1) million dollars.

## VII

**IT IS FURTHER ORDERED** that the prior notifications required by Paragraph VI of this Order 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 will 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.

Provided, however, that prior notification shall not be required by Paragraph VI of this Order 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.

#### VIII

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and III of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which Respondent intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted Respondent or that have been contacted by Respondent. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

#### IX

**IT IS FURTHER ORDERED** that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV, V, VI, and VII of this Order.

#### X

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent that may affect compliance obligations arising out of the Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference, to interview officers, employees, or agents of Respondent.

By the Commission, Commissioner Swindle not participating.

Benjamin I. Berman  
Acting Secretary

SEAL

ISSUED: January 27, 1998