

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

)
In the Matter of)
)
Metso Oyj,)
a corporation,)
)
and)
)
Svedala Industri AB,)
a corporation.)
)
_____)

Docket No. C-4024

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Respondent Svedala Industri AB (“Svedala”) by Respondent Metso Oyj (“Metso”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Metso is a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its office and principal place of business located at Fabianinkatu 9 A, P.O. Box 1220, FIN-00101, Helsinki, Finland. Metso's principal subsidiary in the United States is located at 133 Federal Street, Suite 302, Boston, MA 02110.

2. Respondent Svedala is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Kaptensgatan 1, Box 4004, SE-203 11, Malmö, Sweden. Svedala's principal subsidiary in the United States is located at 20965 Crossroads Circle, Waukesha, WI 53186.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, 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. "Metso" means Metso Oyj, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Metso Oyj (including, but not limited to, Metso Minerals f/k/a Nordberg), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Svedala" means Svedala Industri AB, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Svedala Industri AB, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. "Respondents" means Metso and Svedala, individually and collectively.
- D. "Acquisition" means Respondent Metso's proposed acquisition of the common stock and

4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, development, engineering, manufacturing, construction, marketing, sale, or after-sales support of Cone Crushers worldwide, listed and described in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Cone Crushers worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Cone Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
8. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
9. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Cone Crusher Assets does not include:

- (i) Consignment Stock; and
 - (ii) Any inventory, drawing, pattern, computer software or program solely related to the Classic Products and previously used by Respondent Svedala.
- R. “Cone Crusher Business” means Respondent Svedala’s business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for Cone Crushers, including, but not limited to, the following model designations: Hydrocone H-22”, Hydrocone S-2000, Hydrocone S-3000, Hydrocone S-4000, Hydrocone S-6000, Hydrocone H-2000, Hydrocone H-3000, Hydrocone H-4000, Hydrocone H-6000, Hydrocone H-8000, Eurocone 942, Eurocone 1152, Eurocone 1362, Eurocone 1572, as well as mobile versions of these models where the crusher is installed on wheel- or track-mounted chassis, Crawlmaster S3000, Crawlmaster S4000, Scorpion 2000, Scorpion 4000, Scorpion 3000, Roadmaster 3000 and Roadmaster 4000.

2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedules 1.2 and 7.9 of the Outokumpu Asset Purchase Agreement;
3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of Grinding Mills worldwide, including, but not limited to, those Patents listed in Schedule 7.14 of the Outokumpu Asset Purchase Agreement;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale or after-sales support of Grinding Mills worldwide, listed and described in Schedule 1.2 of the Outokumpu Asset Purchase Agreement;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Grinding Mills worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Grinding Mills as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
8. at the Acquirer's option, and with the concurrence of the Commission, a contract pursuant to which Respondents will provide to the Acquirer certain services related to Grinding Mills, including administrative services, as provided in Section 5.6 of the Outokumpu Asset Purchase Agreement;
9. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
10. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Grinding Mill Assets does not include:

- (i) one pilot scale grinding mill located in Milwaukee, Wisconsin;

- (ii) a license agreement, dated January 1, 1982, between Nordberg Technology NV, Nordberg Inc., Nordberg Licensing BV and Nordberg Manufacturing Company (SA) (Proprietary) Limited, including all amendments thereto;
- (iii) rights relating to an outstanding dispute with Ashanti Goldfields in Tanzania;
- (iv) any rights, titles and interests in or to owned or leased real property, buildings, office equipment or furniture at Metso's offices in Milwaukee, Wisconsin; Perth, Australia; or Johannesburg, South Africa;
- (v) real property and improvements, office space and personal property related solely to Respondent Metso's sales and distribution organization; and
- (vi) the project contracts listed on Schedule A hereto.

AA. "Grinding Mill Business" means Respondent Metso's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling and providing after-sales support for, Grinding Mills including, but not limited to, Autogenous Mills, Semi-Autogenous Mills, Rod Mills, Ball Mills, and Pebble Mills.

- EE. “Jaw Crusher” means a fixed or mobile machine used in mines, quarries and certain other applications, that crushes rocks by trapping them in between a fixed steel plate and a pivoting, oscillating steel plate, which moves backwards and forwards, being operated by a revolving flywheel mounted on an eccentric shaft.
- FF. “Jaw Crusher Assets” means all of Respondent Svedala’s rights, title and interest, worldwide, in and to all assets relating to the Jaw Crusher Business, including without limitation, the following:
1. all rights, title, and interest in and to Product Intellectual Property relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Jaw Crushers worldwide;
 2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
 3. all rights, title, and interest in and to Patents relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of Jaw Crushers worldwide, including, but not limited to, those Patents listed in Schedules 1 l) and 2.3 of the Sandvik Share Purchase Agreement;
 4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale, or after-sales support of Jaw Crushers worldwide, listed and described in Schedules 1 b), 1 j), 1 k) and 2.3 of the Sandvik Share Purchase Agreement;
 5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Jaw Crushers worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
 6. all Product Marketing Materials;
 7. at the Acquirer’s option, and with the concurrence of the Commission, a contract pursuant to which Respondents will Contract Manufacture Jaw Crushers, in accordance with the Jaw Crusher Supply Agreement;

8. all unfilled customer orders for finished Jaw Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
9. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
10. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Jaw Crusher Assets does not include:

- (i) any rights, titles and interests in or to owned or leased real property or buildings at Svedala's foundry and manufacturing facility in Faco, Brazil;
 - (ii) Consignment Stock; and
 - (iii) any inventory, drawing, pattern, computer software or program solely related to the Classic Products and previously used by Respondent Svedala.
- GG. "Jaw Crusher Business" means Respondent Svedala's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for, Jaw Crushers, including, but not limited to, the following model designations: Jawmaster 806, Jawmaster 907, Jawmaster 1108, Jawmaster 1206, Jawmaster 1208, Jawmaster 1211, Jawmaster 1312, Jawmaster 1511, Jawmaster 1513, as well as mobile versions of these models where the crusher is installed on wheel- or track-mounted chassis, Crawlmaster 907, Crawlmaster 1108, Crawlmaster 1206, Crawlmaster 1208, Crawlmaster 1208F, and Crawlmaster 1211F.
- HH. "Jaw Crusher Employees" means all of those individuals employed by Respondent Svedala with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Jaw Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, marketing, sales or after-sales support of Jaw Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- II. "Jaw Crusher Supply Agreement" means the *Framework Sub-Contracting Agreement*, as amended, attached as Schedule 15 to the Sandvik Share Purchase Agreement, and any modifications and amendments thereto that have been approved by the Commission, which is contained in non-public Appendix I attached to this Order.

Primary Gyratory Crushers worldwide, including, but not limited to, those Patents listed in Schedule 1 l) of the Sandvik Share Purchase Agreement;

4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved Acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacturing, construction, development, engineering, marketing, sale or after-sales support of Primary Gyratory Crushers worldwide, listed and described in Schedule 1 f) of the Sandvik Share Purchase Agreement;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of Primary Gyratory Crushers worldwide, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers;
6. all Product Marketing Materials;
7. all unfilled customer orders for finished Primary Gyratory Crushers as of the Closing Date (a list of such orders to be provided to the Commission-approved Acquirer within five Business Days after the Closing Date);
8. all books, records and files that relate to Product Manufacturing Technology, Product manufacturing, and Product manufacturing processes; and
9. all inventories on hand as of the Closing Date.

PROVIDED, HOWEVER, that the definition of Primary Gyratory Crusher Assets does not include:

- (i) any rights, titles and interests in or to owned or leased real property, buildings, office equipment or furniture at Metso's offices in Milwaukee, Wisconsin and Smedjebacken, Sweden;
- (ii) Consignment Stock;
- (iii) a license agreement, dated January 1, 1982, between Nordberg Technology NV, Nordberg Inc., Nordberg Licensing BV and Nordberg Manufacturing Company (SA) (Proprietary) Limited, including all amendments thereto; and

(iv) real property and improvements, office space and personal property related

- WW. “Rod Mill” means a Grinding Mill utilizing a horizontal tube design that employs a tumbling charge of steel rods to break rocks down into smaller particles by trapping and crushing rocks between the rods as the mill rotates.
- XX. “Sandvik Share Purchase Agreement” means the *Share Purchase Agreement* by and between Metso Corporation and Sandvik AB (publ) dated June 7, 2001, as amended, which is contained in non-public Appendix III attached to this Order.
- YY. “Semi-Autogenous Mill” means a Grinding Mill utilizing a horizontal tube design that breaks rocks down into smaller particles using a combination of rock-on-rock impacts and steel media-on-rock impacts.

II.

IT IS FURTHER ORDERED that:

- A. Not later than twenty (20) Business Days after the Acquisition is consummated, Respondents shall divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets as ongoing businesses to Sandvik pursuant to and in accordance with the Sandvik Share Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission as the Divestiture Agreement for the Cone Crusher Assets, Jaw Crusher Assets and the Primary Gyratory Crusher Assets, is incorporated by reference into this Order and made part hereof as non-public Appendix III. If Respondents do not divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to Sandvik within twenty (20) Business Days after the Acquisition is consummated, the Commission may appoint a trustee to divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets. Provided, however, that if Respondents have divested the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to Sandvik prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Sandvik is not an acceptable purchaser of the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Sandvik and the Commission may appoint a trustee to divest the Cone Crusher Assets, Jaw Crusher Assets, and the Primary Gyratory Crusher Assets to a Commission-approved Acquirer.
- B. Failure by Respondents to comply with all terms of the Sandvik Share Purchase Agreement, if approved by the Commission, shall constitute a failure to comply with this Order. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph V of this Order) and an Acquirer of the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher

Assets that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

C.

4. During the term of the Contract Manufacture between Respondents and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or the Interim Monitor, Respondents shall make available to the Interim Monitor all records that relate to the manufacture of Jawmaster model Jaw Crushers.
- E. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information relating to the Cone Crusher Business, the Jaw Crusher Business, and the Primary Gyratory Crusher Business.
- F. Respondents shall not use, directly or indirectly, any Confidential Business Information relating to the Cone Crusher Business, Jaw Crusher Business, and Primary Gyratory Crusher Business, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. Notwithstanding the foregoing, Respondents shall be permitted to disclose any such Confidential Business Information to the extent legally required or necessary for obtaining appropriate regulatory licenses or approvals or responding to Agency inquiries, to the extent necessary to permit Respondents to comply with obligations under the Divestiture Agreements and this Order, or as required by a court of competent jurisdiction.
- G. For a period of one (1) year following the Closing Date, Respondents shall not, directly or indirectly, solicit or otherwise attempt to induce any employees of the Commission-approved Acquirer with any amount of responsibility relating to Cone Crushers, Jaw Crushers or Primary Gyratory Crushers who are former employees of Respondents to terminate their employment relationship with the Commission-approved Acquirer; provided, however, a violation of this provision will not occur if: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the employees of the Commission-approved Acquirer, (ii) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph, or (iii) the Commission-approved Acquirer has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by the Respondents.
- H. For a period of six (6) months following the Closing Date, Respondents shall not interfere with the employment by the Commission-approved Acquirer of any Cone Crusher Employees, Jaw Crusher Employees or Primary Gyratory Crusher Employees; shall not offer any incentive to such employees to decline employment with the Commission-approved Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any confidentiality provisions relating to the Products or any non-compete or confidentiality provisions of employment or other contracts with the Respondents that would affect the ability of those individuals to be employed by the Commission-approved Acquirer.

I.

marketability of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets except for ordinary wear and tear.

- M. The purpose of the divestiture of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets is to ensure the continued use of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets in the same business in which the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. Not later than twenty (20) Business Days after the Acquisition is consummated, Respondents shall divest the Grinding Mill Assets as an ongoing business to Outokumpu pursuant to and in accordance with the Outokumpu Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), and such agreement, if approved by the Commission as the Divestiture Agreement for the Grinding Mill Assets, is incorporated by reference into this Order and made part hereof as non-public Appendix II. If Respondents do not divest the Grinding Mill Assets to Outokumpu within twenty (20) Business Days after the Acquisition is consummated, the Commission may appoint a trustee to divest the Grinding Mill Assets. Provided, however, that if Respondents have divested the Grinding Mill Assets to Outokumpu prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Outokumpu is not an acceptable purchaser of the Grinding Mill Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Outokumpu and the Commission may appoint a trustee to divest the Grinding Mill Assets to a Commission-approved Acquirer.
- B. Failure by Respondents to comply with all terms of the Outokumpu Asset Purchase Agreement, if approved by the Commission, shall constitute a failure to comply with this Order. Any Divestiture Agreement between Respondents (or a trustee appointed pursuant to Paragraph V of this Order) and an Acquirer of the Grinding Mill Assets that has been approved by the Commission shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of such Divestiture Agreement shall constitute a failure to comply with this Order.

- C. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information relating to the Grinding Mill Business.
- D. Respondents shall not use, directly or indirectly, any Confidential Business Information relating to the Grinding Mill Business, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. Notwithstanding the foregoing, Respondents shall be permitted to disclose any such Confidential Business Information to the extent legally required or necessary for obtaining appropriate regulatory licenses or approvals or responding to Agency inquiries, to the extent necessary to permit Respondents to comply with obligations under the Divestiture Agreement and this Order, or as required by a court of competent jurisdiction.
- E. For a period of one (1) year following the Closing Date the divestiture is accomplished, Respondents shall not, directly or indirectly, solicit or otherwise attempt to induce any employees of the Commission-approved Acquirer with any amount of responsibility relating to Grinding Mills who are former employees of Respondents to terminate their employment relationship with the Commission-approved Acquirer; provided, however, a violation of this provision will not occur if (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the employees of the Commission-approved Acquirer, (ii) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph, or (iii) the Commission-approved Acquirer has terminated the individual's employment or has otherwise granted a release to the individual to re-employ the individual in the Commission-approved Acquirer's business.

required to maintain all Confidential Business Information (including, without limitation, all field experience) related to the Grinding Mill Business, strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents. Such agreement shall provide for the following: (i) restrictions on the use of trade secrets and Confidential Business Information; (ii) retention of such information; (iii) appropriate conduct relating to information that could be used to the detriment of competitors; and (iv) sanctions for violation of the terms of the notification. (A copy of this confidentiality agreement will be in a form substantially similar to Schedule A of the Outokumpu Asset Purchase Agreement). Respondents

IV.

compliance with the requirements of this Order and the relevant Divestiture Agreement(s).

10. Respondents shall report to the Interim Monitor in accordance with the requirements of Paragraph VI.A. of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to it by the Respondents, and any reports submitted by the relevant Commission-approved Acquirer(s), with respect to the performance of Respondents' obligations under the relevant Divestiture Agreement(s). Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of this Order and the relevant Divestiture Agreement(s). These responsibilities of the Interim Monitor shall continue until the last obligation under the relevant Divestiture Agreement(s) has been fully performed, unless otherwise directed by the Commission.
 11. Respondents may require the Interim Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- C. The Interim Monitor(s) appointed pursuant to Paragraph III.A. of the Order to Maintain Assets may be the same person(s) appointed as Interim Monitor(s) pursuant to Paragraph IV.A. of the Decision and Order in this matter, and/or as Divestiture Trustee(s) pursuant to Paragraph V.A. of the Decision and Order in this matter.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations specified in Paragraphs II through IV of this Order, the Commission may appoint a trustee or trustees to divest or transfer the assets required to be divested or transferred pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph, as applicable. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures described in Paragraphs II and III, respectively. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the

Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture 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 Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) Business Days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses

incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute Divestiture Trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Order.
10. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this Order.
11. In the event that the Divestiture Trustee determines that he or she is unable to divest the assets required to be divested pursuant to each of the relevant Paragraphs in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the research, design, development, engineering, manufacturing, construction, distribution, marketing, sale, or after-sales support of the relevant Product or Products, the Divestiture Trustee may divest such additional assets related to the relevant Product or Products of the Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
13. The Divestiture Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
14. Respondents may require the Divestiture Trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- C. The Divestiture Trustee(s) appointed pursuant to V.A. of this Order may be the same person(s) appointed as Interim Monitor(s) pursuant to Paragraph IV.A. of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall submit to the Commission (with simultaneous copies to the Interim Monitor(s) and the Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. These reports are due as follows: the initial report is due thirty (30) days after the date this Order becomes final; the second report is due sixty (60) days after the initial report; and all subsequent reports are due every ninety (90) days thereafter until Respondents have fully complied with Paragraphs II through V of this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II through V of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. One (1) year from the date this Order becomes final, annually for the next five (5) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII.

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

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance

memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 19, 2021.

By the Commission, Chairman Muris not participating.

Donald S. Clark
Secretary

SEAL

ISSUED: October 19, 2001

[Non-Public Appendices I, II, and III Redacted From Public Record Version]