

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)
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Metso Oyj,
a corporation,)
)

and)
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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 convertible debentures of Respondent Svedala in accordance with the terms and conditions of the recommended public takeover offer announced on 21 June 2000 (offer document dated 7 July 2000).
- E. "Commission" means the Federal Trade Commission.
- F. "Sandvik" means Sandvik AB (publ), Reg. No. 556000-3468, a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its offices and principal place of business located at SE-81181 Sandviken, Sweden.
- G. "Outokumpu" means Outokumpu Mintec Oy, Reg. No. 764.823, a corporation organized, existing and doing business under and by virtue of the laws of Finland, with its offices and principal place of business located at Riihitontuntie 7 B, PO Box 140, FIN-02201 Espoo, Finland.
- H. "Acquirer" means any person or business that purchases the Cone Crusher Business, the Grinding Mill Business, the Jaw Crusher Business or the Primary Gyratory Crusher Business pursuant to this Order. Acquirer includes Sandvik and/or Outokumpu.
- I. "Agency" means any governmental regulatory authority in the world responsible for granting approvals, clearances, qualifications, licenses or permits for any aspect of the research, design, development, engineering, manufacturing, constructing, marketing, distribution, sale, or after-sales support of a Product.
- J. "Autogenous Mill" means a Grinding Mill utilizing a horizontal tube design that breaks rocks down into smaller particles strictly by inducing frequent, high energy impacts between the rocks themselves.
- K. "Ball Mill" means a Grinding Mill utilizing a horizontal tube design that employs a tumbling charge of steel balls to break rocks down into smaller particles as the mill rotates.
- L. "Business Day" means any day excluding Saturday, Sunday and any other United States Federal holiday.
- M. "Classic Products" means the following discontinued and non-U.S. models of Cone Crushers: Hydrocone 30", Hydrocone 36", Superior 36", Hydrocone 45", Superior 45", Hydrocone 51", Superior 50", Hydrocone 60", Hydrocone 84", Hydrocone 200, Hydrocone 300, Hydrocone 400, Hydrocone 500, Hydrocone 600, Hydrocone 700, Loro Prisini Neytrec Cone Crushers, Rollercones, Dracar Cones, BS Cones, Gyrasphere 24FC-24S-245, Gyrasphere 36S-367-

36X10, Gyrasphere 48fc-48s-489-48X13, Gyrasand 24GS-36GS-48GS, 90RB, 120RB, 50T and 60T; and the following discontinued and non-U.S. models of Jaw Crushers: R 2513, TRF 3521, R 5026 = 50 F, TRF 6026, R 6030 = TRF 6030 & 60 F, R 6040 = 60 G-96, R 7550 = 75G-120, RG 8013 = TRF 8013 R, TRG 9060, TRG 9075, R 9075 = 90G-160, R 9090, RG 10015 = TRF 10015, RG 12030 = TRF 12030, R 10580, R 105100, R 120100, R 150120, R 210170, FS 4025, FS 5032, FS 6540, P 7055, P 7550, FS 9060, P 10080, P 100100, P 12090 = FS 12090, P 120100-210, P 120100-240, P 150130, P 180140, A-1 48x60, A-1 60x84, Universal 1536, Universal 1830, Universal 2036, Universal 3042, Universal 3242, Universal 3254, Universal 3648, Universal 4248, Universal 4250, Universal 5060, 8013, 9026, 12040, 2015, 3020, 4230, 6240, 8050, 10060, 10080, 12090, 150120, RT 6090, RT 75105, RT 60120, RT 80120, RT 105120, Cfbk, Altairac, and Dragon & Babbitless.

- N. “Closing Date” means the date on which Respondents and a Commission-approved Acquirer close on a transaction to divest or transfer relevant assets pursuant to this Order.
- O. “Commission-approved Acquirer” means an entity approved by the Commission to acquire particular assets the Respondents are required to divest or transfer pursuant to this Order.
- P. “Cone Crusher” means a fixed or mobile machine, other than a Primary Gyratory Crusher, used to crush rocks in mines, quarries and certain other applications, that achieves crushing by using two cones (one placed inside the other) which crush rock fed into the space between the two cones by elliptical rotation of the inner cone in a manner that causes the gap between the mobile cone and the fixed cone to open and close.
- Q. “Cone Crusher Assets” means all of Respondent Svedala’s rights, title and interest, worldwide, in and to all assets relating to the Cone 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, manufacture, construction, distribution, marketing, sale, or after-sales support of Cone 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, manufacture, construction, distribution, marketing, sale or after-sales support of Cone 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, 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.

- S. “Cone 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 Cone Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Cone Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- T. “Confidential Business Information” means all information owned by Respondents that is not in the public domain relating to the research, design, development, engineering, manufacturing, construction, marketing, commercialization, distribution, cost, pricing, supply, sales, after-sales support, or use of any of Respondents’ Products or Respondents’ Products in development.
- U. “Consignment Stock” means finished Products, including spare parts and wear parts, and second-hand equipment owned by Respondent Svedala’s distribution organization or Respondent Metso and does not include the inventory of work in process, raw materials and components owned by Svedala-Arbrå Aktiebolag, Svedala Mobile Equipment AB, or Svedala SA.
- V. “Contract Manufacture” means the manufacture of a Product supplied pursuant to a Divestiture Agreement by Respondents for sale to a Commission-approved Acquirer.
- W. “Divestiture Agreement” means each of the following agreements individually: the Outokumpu Asset Purchase Agreement, the Sandvik Share Purchase Agreement, and the Jaw Crusher Supply Agreement; or any agreement signed by the Respondents and approved by the Commission to accomplish the requirements of this Order.
- X. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph V.A. of the Decision and Order in this matter.
- Y. “Grinding Mill” means a cylindrical machine used to grind rock to a powder or liquid slurry in mines, industrial mineral processes and certain other applications by inducing movement and motion to the rocks contained within the mill body, which causes them to impact one another or to have impact with some form of grinding media (steel balls, steel rods, or ceramic balls) and, through repetition, causes the rocks to break apart and gradually wear down to small particles.
- Z. “Grinding Mill Assets” means all of Respondent Metso’s rights, title and interest, worldwide, in and to all assets relating to the Grinding Mill 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 Grinding Mills worldwide;

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.

BB. "Grinding Mill Employees" means all of those individuals employed by Respondent Metso with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Grinding Mills, 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 Grinding Mills worldwide within the eighteen (18) month period immediately prior to the Closing Date.

CC. "Intellectual Property" means all: (1) Patents; (2) mask works and copyrights in works of authorship of any type, including, but not limited to, computer software and industrial designs, registrations and applications for registration thereof; (3) Product Trademarks, including the goodwill of the business symbolized thereby and associated therewith, as well as registrations and applications for registration thereof; (4) trade secrets, know-how and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof; (5) rights to obtain and file for Patents and registrations thereof; and (6) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach thereof.

DD. "Interim Monitor" means the Interim Monitor appointed by the Commission pursuant to Paragraph III.A. of the Order to Maintain Assets and/or Paragraph IV. A. of the Decision and Order in this matter.

- 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.

- JJ. “Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information relating to the manufacture, assembly, or construction of the Product.
- KK. “Outokumpu Asset Purchase Agreement” means the *Asset Purchase Agreement* by and between Metso Corporation and Outokumpu Mintec OY dated June 7, 2001, as amended, which is contained in non-public Appendix II attached to this Order.
- LL. “Patents” mean all patents, patents pending, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to any Product of or owned by Respondents as of the Closing Date.
- MM. “Pebble Mill” means a Grinding Mill that either: (a) utilizes a horizontal tube design where the inside of the cylinder is lined with ceramic bricks and employs ceramic balls to break the rocks down into smaller particles to produce a very pure, finely ground product; or (b) operates as the second stage to an Autogenous Mill and uses rocks from the Autogenous Mill discharge as its grinding media.
- NN. “Primary Gyratory Crusher” means a machine used as a primary crusher of rocks in mines, quarries, and certain other applications, that achieves crushing by using two cones (one placed inside the other) in which the interior mobile cone is inverted relative to the fixed outside cone to allow very large rocks to enter the crusher and which crushes rocks fed into the space between the gap in the two cones by movement of the interior cone in an eccentric manner inside the fixed cone with the result that the gap between the two cones opens and closes.
- OO. “Primary Gyratory Crusher Assets” means all of Respondent Metso’s rights, title and interest, worldwide, in and to all assets relating to the Primary Gyratory 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 Primary Gyratory Crushers worldwide;
 2. all rights, title, and interest in all equipment, machinery, tools, furniture, and other tangible property listed in Schedule 1 f) 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

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 solely to Respondent Metso's sales and distribution organization.
- PP. "Primary Gyratory Crusher Business" means Respondent Metso's business of researching, designing, developing, engineering, manufacturing, constructing, distributing, marketing, selling, and providing after-sales support for, Primary Gyratory Crushers, including, but not limited to, the following model designations: Morgardshammer BS, Nordberg GY and Nordberg XP.
- QQ. "Primary Gyratory Crusher Employees" means all of those individuals employed by Respondent Metso with responsibility for the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales or after-sales support of Primary Gyratory Crushers, who directly participated (irrespective of the portion of working time involved) in the research, design, development, engineering, manufacturing, constructing, distributing, marketing, sales, or after-sales support of Primary Gyratory Crushers worldwide within the eighteen (18) month period immediately prior to the Closing Date.
- RR. "Product(s)" means Cone Crushers, Jaw Crushers, Grinding Mills, and Primary Gyratory Crushers.
- SS. "Product Intellectual Property" means all worldwide (1) Product Patents, (2) Product Trademarks, (3) Manufacturing Technology, (4) all copyrights in and to the Product Marketing Materials, (5) all other Intellectual Property relating to a Product, and (6) all Confidential Business Information as of the Closing Date.
- TT. "Product Marketing Materials" means all marketing materials used anywhere in the world with respect to the Products as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials, marketing information (e.g., customer sales and competitor data), promotional materials and other materials associated with the Products.
- UU. "Product Registrations" means all registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and requests therefor, required by applicable Agencies relating to the research, development, engineering, manufacturing, construction, distribution, marketing, sale or after-sales support of the Products worldwide.
- VV. "Product Trademarks" means all trademarks, trade names and brand names including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized by and associated therewith, for a Product. *Provided, however*, that Product Trademarks do not include the trade names, trademarks or logos "Metso," "Nordberg," "Svedala," "Svedala Gold," "Allis Minerals Systems," "Universal," "Superior" and "Faco".

- 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. Respondents shall waive any and all rights to bring legal proceedings or take other legal action against the Commission-approved Acquirer, or any third-party authorized by the Commission-approved Acquirer to provide spare and wear parts for the Classic Products to the Commission-approved Acquirer, alleging infringement of Intellectual Property or Manufacturing Technology rights in connection with the Commission-approved Acquirer's research, design, development, engineering, manufacturing, constructing, distributing, marketing or sale of spare and wear parts for the Classic Products. PROVIDED THAT Respondents do not waive any rights to bring such proceedings or take such action based on a violation by the Commission-approved Acquirer of trademark or tradename rights, Respondents acknowledging for purposes of this proviso that it will not be a violation of trademark or tradename rights for the Commission-approved Acquirer to fairly and accurately describe such spare and wear parts as being for use with the Classic Products.

- D. Respondents shall include in any Divestiture Agreement related to the Jaw Crusher Assets the following provisions, and Respondents shall commit to satisfy the following:
 - 1. Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer in a timely manner and under reasonable terms and conditions, a supply of Jawmaster model Jaw Crushers, for a period of years sufficient to allow the Commission-approved Acquirer to manufacture Jaw Crushers independently of Respondents. The Contract Manufacture agreement shall specify an exact monetary price for each make and model of Jawmaster model Jaw Crusher. Respondents shall provide a detailed explanation of all cost components, including, but not limited to, the specific amount, categories and allocation methodologies of costs for each make and model of Jawmaster model Jaw Crusher to staff of the Commission.

 - 2. After Respondents commence delivery of Jaw Crushers to the Commission-approved Acquirer pursuant to a Divestiture Agreement and for the term of the Contract Manufacture related to Jaw Crushers, Respondents will make inventory of Jawmaster model Jaw Crushers available for sale or resale only to the Commission-approved Acquirer.

 - 3. Respondents shall make representations and warranties that Respondents will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Jawmaster model Jaw Crushers in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of the Respondents and in no part the result of negligence or willful misconduct by Respondents.

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. Respondents shall secure, prior to divestiture, all consents and waivers from all private entities that are necessary for the divestiture of the Cone Crusher Assets, Jaw Crusher Assets or Primary Gyratory Crusher Assets, or for the continued research, development, engineering, manufacturing, construction, distribution, sale, or marketing of Cone Crushers, Jaw Crushers, or Primary Gyratory Crushers by the Commission-approved Acquirer.
- J. Respondents shall require, as a condition of continued employment post-divestiture, that each Cone Crusher Employee, Jaw Crusher Employee and Primary Gyratory Crusher Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information (including, without limitation, all field experience) related to the Cone Crusher Business, Jaw Crusher Business, or Primary Gyratory Crusher 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 1 of the Sandvik Share Purchase Agreement). Respondents shall send such agreement by e-mail with return receipt requested or similar transmission, and keep a file of such return receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such agreement to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall make available at the Commission-approved Acquirer's request copies of all certifications, notifications and reminders sent to Respondents' personnel.
- K. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher Assets and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer is fully capable of independently manufacturing the Cone Crushers, Jaw Crushers, and Primary Gyratory Crushers. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall also divest any additional, incidental assets of Respondents and make any further arrangements for transitional services within the first twelve (12) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Cone Crusher Assets, Jaw Crusher Assets and Primary Gyratory Crusher Assets.
- L. Pending divestiture of the Cone Crusher Assets, Jaw Crusher Assets, and Primary Gyratory Crusher Assets, Respondents shall take such actions as are necessary to maintain the viability and

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 permit the individual to be employed by the Respondents.
- F. 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 Grinding Mill 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.
- G. Respondents shall secure, prior to divestiture, all consents and waivers from all private entities that are necessary for the divestiture of the Grinding Mill Assets, or for the continued research, development, engineering, manufacturing, construction, distribution, marketing, sale, after-sales support, marketing or distribution of Grinding Mills by the Commission-approved Acquirer.
- H. Respondents shall require, as a condition of continued employment post-divestiture, that each Grinding Mill Employee sign a confidentiality agreement pursuant to which such employee shall be

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 shall send such agreement by e-mail with return receipt requested or similar transmission, and keep a file of such return receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such agreement to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall make available at the Commission-approved Acquirer's request copies of all certifications, notifications and reminders sent to Respondents' personnel.

- I. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Grinding Mill Assets, and shall continue providing such personnel, assistance and training, at Respondents' cost, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer is fully capable of independently producing Grinding Mills. At the time of divestiture, and at the Commission-approved Acquirer's option, Respondents shall also divest any additional, incidental assets of Respondents and make any further arrangements for transitional services within the first twelve (12) months after divestiture that may be reasonably necessary to assure the viability and competitiveness of the Grinding Mill Assets.
- J. Pending divestiture of the Grinding Mill Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Grinding Mill Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Grinding Mill Assets except for ordinary wear and tear.
- K. The purpose of the divestiture of the Grinding Mill Assets is to ensure the continued use of the Grinding Mill Assets in the same business in which the Grinding Mill 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.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Divestiture Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of Paragraphs II and III of this Order, and the related Divestiture Agreements.

- B. If one or more Interim Monitors are appointed pursuant to Paragraph IV. A. of this Order, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
 - 1. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

 - 2. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and with the relevant Divestiture Agreement(s) made a part of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.

 - 3. Within ten (10) days after appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the terms of this Order and with the relevant Divestiture Agreement(s) in a manner consistent with the purposes of this Order.

 - 4. The Interim Monitor shall serve until the last obligation under each of the Divestiture Agreements has been fully performed and each of the Commission-approved Acquirers pursuant to Paragraphs II and III of this Order (or as otherwise specified by the Commission) is fully capable of independently manufacturing and selling the Product(s) acquired pursuant to a Divestiture Agreement; provided, however, that the Commission

may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.

5. The Interim Monitor shall have full and complete access to Respondents' personnel, books, records, documents, facilities and technical information relating to the research, development, engineering, and manufacture of the relevant Products, or to any other relevant information, as the Interim Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of the relevant Products and all materials and information relating to Agency approvals. Respondents shall cooperate with any reasonable request of the Interim Monitor. Respondents shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with this Order and the relevant Divestiture Agreement(s).
6. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Commission may, among other things, require the Interim Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Monitor's duties. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Interim Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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 Interim Monitor.
8. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in Paragraph IV.A. of this Order.
9. The Commission may on its own initiative or at the request of the Interim Monitor issue such additional orders or directions as may be necessary or appropriate to assure

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

Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph V.A. of this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
 2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest or transfer the relevant assets that are required by this Order to be divested or transferred.
 3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) or transfer(s) required by the Order.
 4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V. B. 3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; provided, however, the Commission may extend the divestiture period only two (2) times.
 5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities relating to the relevant assets that are required to be divested by this Order or to any other relevant information, as 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 with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence,

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]