GUIDELINES ON REMEDIES

THAT ARE ACCEPTABLE BY THE TURKISH

COMPETITION AUTHORITY IN MERGER/ACQUISITION

TRANSACTIONS

TURKISH COMPETITION AUTHORITY

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TABLE OF CONTENTS

I. INTRODUCTION

(1) Article 7 of the Act No. 4054 on the Protection of Competition (the Act) prohibits those mergers and acquisitions that would result in significant lessening of competition through creating or strengthening a dominant position and empowers the Competition Board (the Board) to issue a Communiqué to determine which merger and acquisition transactions require to be notified to and authorized by the Board in order to gain legal validity.

(2) In some cases competition problems that arise in certain concentration[1] transactions notified to the Turkish Competition Authority (the Authority) and that cause the notified transaction to fall in the scope of the prohibition under Article 7 of the Act can possibly be eliminated subsequent to certain corrections or changes to be made to the transaction concerned. Instead of prohibiting such a concentration transaction, authorizing it on condition of the fulfillment of remedies -which are to be proposed by the parties and accepted by the Authority- to address the competition problems pointed out by the Authority will ensure the protection of competition in the market together with the efficiencies likely to be obtained from the said concentration transaction.

(3) Article 14 of the Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board allows undertakings to propose remedies related to the concentration with a view to eliminating the competition problems that may arise under Article 7 of the Act and allows the Authority to impose requirements and obligations to ensure the fulfillment of such remedies.

(4) The purpose of this Guidelines is to provide guidance concerning remedies to be proposed by the parties to the Authority with a view to eliminating the competition problems to be caused by a transaction in case of a concentration transaction that may be prohibited under Article 7 of the Act.

(5) The Guidelines deals with the general principles concerning those types of remedies that are acceptable in case of concentration transactions falling in the scope of the

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[1] The term "concentration" is used in the text to refer to mergers, acquisitions, and joint ventures that are to carry out all functions of an independent economic entity.

prohibition under Article 7 of the Act, and the characteristics to be fulfilled by the remedies, and the main requirements and methods for the fulfillment of the remedy. However, the Board shall also take into consideration the peculiarities of the case in terms of acceptable proposed remedies and commitments in every transaction.

II. GENERAL PRINCIPLES

(6) If the Board has determined that there are serious concerns that a concentration transaction might constitute an infringement of Article 7 of the Act, it notifies this situation to the parties of the transaction. In order to eliminate the said concerns and obtain an authorization decision from the Board, the parties of the transaction may choose to make suitable remedy proposals to make changes to the concentration transaction. The parties to the transaction may submit their remedy proposals and attendant commitments together with the notification.

(7) It is the responsibility of the Board to demonstrate during an examination conducted under Article 7 that a concentration transaction may result in significant lessening of competition through creating or strengthening a dominant position in the market(s) concerned. Both during the preliminary examination and final examination stages, competition problems expected to arise in the transaction file shall be notified to the parties so as to ensure that the parties can make suitable and effective proposed remedies.

(8) It is within the parties' discretion whether or not to make proposals aimed at eliminating the competition problems. Although the Board made such decisions in the past, as concerns future concentration transactions, the Board - also in line with its recent practices - is no longer in a position to unilaterally impose a certain remedy as a condition to the parties and shall neither be able to unilaterally change the proposed remedies of the parties or their commitments to fulfill them. If the Board is in the opinion that the proposed remedy is insufficient, it may allow the parties to make changes to their commitments. If the commitments still do not attain the sufficiency to eliminate the competition problems, the Board may prohibit the transaction after following through the necessary procedural stages.

(9) In order for the Board to be able to authorize a concentration transaction conditionally within the framework of the remedy proposed, it must be sure that the competitive

concerns related to the transaction will be eliminated following the implementation of the proposed remedies. It is the parties to the transaction who hold the most comprehensive information needed to carry out a full and correct analysis of the feasibility of the commitments, or of the sufficiency of the remedies in eliminating the competitive concerns. Therefore, during the Board's examination of the proposed remedy, it is the responsibility of the parties to provide all information that is capable of showing the sufficiency of the commitment in eliminating the competitive concerns. At this juncture, as is also stated in the Commitment Form attached to the Guidelines, the parties are also required to submit, together with the proposed remedy, detailed information regarding the content of the proposed remedy, how it will be implemented and how it will eliminate the problem of significant lessening of competition. For instance, in cases of proposed remedies designed to divest a viable and competitive business[2], the parties must provide detailed information as to how the divestment business operates presently and how it will survive in the future as a viable economic unit. This information shall ensure that the Board evaluates the viability, competitiveness and marketability of the divestment business by way of comparing its actual status to its status that would apply in case of the proposed remedy. As the need may be, the Board may ask for additional information within the scope of these evaluations.

(10) Although it is the responsibility of the parties to propose the sufficient and suitable remedies to eliminate competitive concerns and to provide relevant information, it is part of the Board's powers and duties to evaluate whether or not a concentration together with the proposed remedy causes an infringement of Article 7 of the Act.

(11) After the commitments made by the parties are adopted with a Board decision and the transaction is authorized based on these commitments, as a matter of principle, no changes are made to these commitments.

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[2] A business is an economic unit - with or without a distinct legal personality - that is in the form of one or more companies or has the capability to operate in the market by itself and that provides a product or service.

Basic requirements for acceptable proposed remedies

(12) The parties must take into consideration the following principles while submitting proposed remedies.

- If the concentration transaction does not result in the infringement of Article 7 of the Act, proposed remedies shall not be taken into account by the Board and the transaction shall be authorized without any condition.
- Proposed remedies must be drawn up as based on legal and economic principles in a manner peculiar to the filed transaction. Effective solutions must aim at the protection of the competitive structure of the market, and of the efficiencies arising from the concentration as much as possible. In this respect, if a divestiture remedy is being proposed and if the business proposed to be divested is at the same time the basis of the concentration transaction, such a remedy proposal will not be of acceptable quality.
- The main expectation from a remedy is to serve the protection of the level of competition that applied prior to the transaction. Therefore, the remedy is not expected to make the market more competitive.
- The remedy must protect competition not the competitors.
- The conditions of the remedy must be clear and feasible.

(13) The Board shall accept only those proposed remedies that have been revealed to be sufficient in eliminating the problem of significant lessening of competition. Thus, proposed remedies must eliminate the competitive concerns related to the transaction without any room for uncertainty and in a sustainable manner and must be intelligible in every aspect. Furthermore, because market conditions may not stay the same until the implementation of the proposed remedy, proposed remedies must be capable of being implemented effectively as soon as possible.

(14) In determining the sufficiency of the proposed remedy in eliminating competitive concerns, the Board takes into consideration - within the framework of the market conditions - all factors such as the type of remedy, its scope, market position of the parties and competitors, whether the remedy proposal is capable of being implemented by the parties fully and timely in an effective manner. The Board shall evaluate whether the

proposed remedies are proportionate to the competition problems related to the transaction and whether they fulfill the main necessary conditions for an acceptable remedy and shall thus make a decision.

(15) The feasibility of the proposed remedies may be affected by risks such as the method of divestiture envisaged by the parties, third party rights on the asset to be divested, difficulty of finding a suitable purchaser or devaluation of the assets during the period up to the fulfillment of the remedy. In this framework, it is the responsibility of the parties to rule out such type of uncertainties while submitting the proposed remedy.

(16) In order for proposed remedies to be in compliance with the aforementioned basic requirements, they need to be implemented effectively and this implementation needs to be supervisable. Once the divestiture remedy is implemented, it does not require supervision in order for it to be effective. However, long-term and effective supervision mechanisms are required for other types of remedies in order to prevent the parties from reducing or ruling out the efficiency thereof in eliminating the competitive concerns. Because the binding nature of the proposed remedy would be lost *de facto* in the absence of effective supervision mechanisms, the proposed remedy will go no further than expressing the intent of the parties. In this case, because it will not be possible to detect that the parties do not comply with their commitments, the concentration transaction - having been rendered illegal - will become unsanctionable.

(17) Transactions shall not be authorized to the extent that they depend on proposed remedies for which feasibility and sufficiency in eliminating competitive concerns can not be decisively determined by the Board due to their scope and complicated nature. The Board may reject such proposed remedies particularly on grounds that they may not be effectively supervised and that lack of supervision would reduce the effectiveness of the proposed remedy in eliminating the competitive concerns.

III. TYPES OF ACCEPTABLE PROPOSED REMEDIES

(18) Proposed remedies aimed at eliminating competition problems created by a concentration transaction may be structural or behavioral. Proposed structural remedies generally involve the divestiture of a certain business, while proposed behavioral remedies

involve the arrangement of the future market behaviors of the parties. The main purpose of proposed remedies is to protect the competitive structure that existed in the market prior to the transaction. Therefore, due to their characteristics of bringing about a sustainable result in the short term in terms of eliminating competition problems and not requiring supervision after being implemented, structural remedies - particularly those causing structural changes in the market such as the divestiture of a business - more properly fit within the purpose expected from proposed remedies. However, it is not disregarded that proposed behavioral remedies such as ensuring access to important infrastructure and raw material in a non-discriminatory manner are also likely to solve competition problems caused by a transaction. Therefore, whether or not a proposed remedy eliminates competition problems is evaluated on a case-by-case basis in accordance with the requirements of the case.

(19) Proposed remedies in the form of divestiture of a business are the most effective way in eliminating competition problems. If proposed behavioral remedies are capable of attaining a level of efficiency similar to that of structural remedies in eliminating competition problems and in cases where an equally effective structural remedy cannot be found, they may be accepted. However, proposed behavioral remedies shall be accepted only in exceptional cases due to certain negative characteristics they have such as the difficulty of monitoring the behaviors of undertakings, the likelihood of acting contrary to the gist of the remedy in a way not infringing on the written commitments, and possible prevention of behaviors that may in fact be pro-competitive. However, in any case, making fully sure that the proposed remedy is functional by way of establishing an effective implementation and supervision system is a preliminary condition for the acceptability of behavioral proposed remedies.

1. Divestiture

(20) If a concentration transaction is likely to result in significant lessening of competition in the market through creating or strengthening a dominant position, the most effective way of protecting competition in the market without resorting to the prohibition of the transaction concerned, is to create the conditions to give rise to a new competitor or to strengthen the existing competitors through the divestiture of a business.

1.1. Divestiture of a Business

(21) In order to make sure that the divestment business is able in the long term to compete effectively with the undertaking that is party to the transaction, it has to be viable. In this respect, the divestment business must be independent from the parties such that it shall not require cooperation in the supply of inputs or similar matters, except for during the transition period.

1.1.1. Determination of the Scope of the Divestiture

(22) Divestiture of a viable and competitive business can be realized in two different ways. First one is the divestiture of a whole business for which there is no doubt as to the viability and competitiveness in the market by itself. The other method is the formation of a new business that is viable and competitive by itself, through the combination of certain assets and/or divestiture of some of the existing ones. In order for a business to be viable and thus for an effective competitor to be created in the market, it may be necessary to include in the scope of the divestment business certain operations in markets where no competitive concerns exist.

(23) For an effective divestiture, firstly, the scope of the divestment business must be defined in a precise and detailed manner. This definition must include all tangible (such as production, distribution, sales and marketing components) and intangible (such as patent, trademark and license) assets; staff; supply, sales, leasing, financing agreements; customer lists; service agreements concluded with third parties; permits from public authorities and all similar components.

(24) In the formation of a new business, assets and staff that are also used in the other operations of the undertaking yet that overlap with the area of the divestment business and are necessary for this business to be viable in a competitive way, must also be included in the scope of the divestiture where appropriate. Otherwise, the ability of the divestment business to be viable and competitive will become contestable. Therefore, the divestment business must include the staff to ensure the continuity of its activities in the market through meeting the existing indispensable needs of this business, together with the staff to carry out important functions for the continuity of the competitive power such as IT staff. Assets and staff that the parties do not want to divest must be expressly stated in the

remedy text. Remedies that do not envisage a staff structure capable of ensuring that the divestment business maintains its competitive activities, shall not be accepted.

(25) Existing supply agreements for goods and services must also be included in the definition of the divestment business. Furthermore, such a relationship between the parties to the concentration and the divestment business may be necessary for the business to protect its viability and competitiveness in the short run. Yet, these agreements are accepted only if they do not pose any threat to the economic independence of the divestment business.

(26) Because the divestment business needs to be viable by itself, financial resources of a possible purchaser are not taken into account in the determination of a remedy. However, if a sales agreement was concluded with the purchaser during the examination, the financial resources of the said purchaser shall be taken into account.

(27) If there is uncertainty as to whether the scope of the remedy proposal will create an effective competitor that is capable of eliminating the competitive concerns, the Board may not accept the remedy proposal since it would generally seek a more comprehensive remedy.

1.1.2. A Competitive and Independent Business

(28) The divestment business can be in the form of one or more companies owned by the undertaking or an economic unit that is capable of operating in the market by itself yet that does not have a legal personality. A business that has been carved out of the undertaking must be able to compete effectively with the parties in the long run when operated by a suitable purchaser. In case the parties divest a business that is not independent, the divestment business must include the minimum assets that will ensure that functions such as production and distribution are effectively carried out, so that such dependency does not negatively affect the competitive ability of a possible purchaser. Therefore, the divestiture of a business that is already active in the market by itself is the preferred acceptable remedy.

(29) Although normally the most suitable remedy is the divestiture of a business that is viable by itself, a remedy proposal whereby a business that is partially integrated with the business withheld by the parties or that have strong ties with it at present time may also be

accepted keeping in mind the principle of proportionality. In the event that the parties propose to form a new business through *carve-out*, namely separation from the existing entity, instead of divesting a business that is capable of competing independently in the market, whether the new business will be viable in a competitive way will be examined. If an acceptable divestiture package can be formed from the existing assets in cases where an economic unit smaller than the parties does not exist or where the necessary components for the competitiveness of the divestment business are already possessed by the purchaser or are readily obtainable from a competitive market, a carve-out divestiture may be considered as a suitable remedy. Accordingly, if the possible purchaser already has an effective distribution network, it may not be necessary to add a distribution network to the divestiture package or where the software and/or hardware products that are mandatory for operating in the market are readily obtainable from competitive markets it may not be meaningful to add these in the divestiture package. On the other hand, during the examination stage of the proposed remedies, the decision is made not by considering the assets of the possible purchasers but by examining the viability of the business proposed to be divested. Therefore, except where the purchaser is determined and submitted to the approval of the Board together with the proposed remedy, no examination will be made based on the assets of the possible purchasers.

(30) Under certain circumstances new components may need to be added in the scope of the divestiture package in order to ensure the competitiveness of an independent business. For instance, if it is not possible for the business to compete without the whole product portfolio being offered to the market, it may be expected for the whole product portfolio to be included in the divestiture package. The divestment business must attain competitiveness in the market concerned as soon possible. It may also be necessary for the divestiture package to include certain intangible assets in order to ensure that the purchaser competes fast and effectively.

(31) In certain cases, assets belonging to each of the parties may be included in the scope of the divestiture. However, since such a divestiture model may pose additional risks to the sustainability and efficiency of the business to be formed as a result of the divestiture, sufficient and convincing explanation must be provided as to the effectiveness and workability of the said model.

1.1.3. Aspects Concerning Intangible Assets

(32) In cases where intangible assets are added to the divestiture package, the question arises as to whether or not the parties will be able to continue using the rights over the assets concerned. The disability of the purchaser to deprive its competitors, especially the parties from using these rights may prevent the purchaser from becoming as strong a competitor in the market as desired. Furthermore, when the purchaser is forced to share the said intangible assets, it may not be able to perform the same competitive behaviors as it would if it were to use them exclusively. Therefore, the parties shall be asked to waive from all of the rights relating to the intangible assets included in the divestiture package. For instance, granting a limited-time license concerning intellectual property rights falls short of eliminating the anticompetitive effects of the transaction because sometimes the licensee is not able to compete effectively with the parties following the expiry of the license period. Furthermore, due to the fact that a license - because it requires an ongoing relationship between the two parties - allows the licensor to affect the behaviors of the licensee in the market and conflict arises between the licensee and the licensor with regard to the scope and conditions of the license, proposed remedies involving the granting of license concerning the rights pertaining to intangible assets instead of divesting those assets are not considered as a suitable remedy save for exceptional cases.

(33) On the other hand, in rare cases, the parties may be required to protect their rights relating to the intangible assets concerned in order to have the provable efficiencies. Patents relating to the production process rather than the final good can be given as example for such cases. While the sharing of a patent relating to the production process does not place the purchaser in a disadvantageous position from a competitive perspective, a patent relating to a final product may directly affect the competitive power of the purchaser.

(34) In exceptional cases where the competitive problems arise from a market position based on the superiority of owning a certain technology or intellectual property right, the divestiture of the said technology or intellectual property right may be considered as a suitable remedy.

(35) A divestiture package that includes only trademarks and relevant production and/or distribution assets may only be accepted as a suitable remedy if sufficient proof is

adduced showing that at the hands of a suitable purchaser the said package would turn into a competitive and viable asset immediately.

1.2. Divestiture to a Suitable Purchaser

(36) The targeted effect of the divestiture will take place only and only if the divestment business is assigned to a suitable purchaser which is capable of creating an effective competitive power in the market. To make sure that the business will be divested to a suitable purchaser, the proposed remedy must include the elements that define the suitability of the purchaser in a way to cover the following requirements as well.

(37) The authorization decision to be made by the Board within the framework of the commitments is also based on the presumption that a business that is viable in the market will be transferred to a suitable purchaser in a defined period of time. As concerns remedies that involve the divestiture of a business, it is the responsibility of the parties to find the suitable purchaser for the said business and to submit the said purchaser, together with an agreement to be signed with it, to the approval of the Board. Therefore, unless the parties commit that they will not carry out the transaction that is covered in the remedy with a purchaser that has not been approved by the Board, the Board shall not authorize the acquisition.

1.2.1. Suitability of the Purchaser

(38) Approval of a possible purchaser by the Board is basically dependent on the following requirements:

- The purchaser must be independent of and unconnected to the parties.
- The purchaser must have the financial resources, business experience, and the ability to become an effective competitor in the market through the divestment business.
- The transfer transaction to be carried out with the purchaser must not cause a new competition problem. In case such a problem exists, a new remedy proposal shall not be accepted.
- The transfer to the purchaser must not cause a risk of delay in the implementation of the commitments. Therefore, the purchaser must stand capable of obtaining all the

necessary authorizations from the relevant regulatory authorities as concerns the transfer of the divestment business.

(39) The above-mentioned conditions may be revised on a case-by-case basis depending on the particularities of the situation. For instance, in some cases an obligation may be imposed such that the purchaser is not one that seeks financial investment but that is active in the sector.

1.2.2. Identification of the Purchaser

(40) In finding a suitable purchaser for the divestment business, there are two methods that are accepted by the Board. The first method is for a purchaser fulfilling the above-mentioned conditions to acquire the divestment business, within a limited period of time following the authorization decision, upon the approval of the Board. The second method is the signing of a sales contract with a suitable purchaser before the authorization decision (fix-it-first).

(41) Determination of the method depends on uncertainties relating to the implementation of the remedy proposal and the divestiture of the business, i.e. the nature and scope of the divestment business, the risk of the business to lose its value during the transition period up to the divestiture, the risk that a suitable purchaser may not be found.

Sale of the divestment business following the authorization decision

(42) In this method, the parties sell the divestment business to a purchaser that fulfills the purchaser requirements following the authorization decision, within the period defined in the decision. This method may be chosen if it is foreseen that enough number of purchasers will be found for the business concerned and if no problem complicates or prevents the divestiture. If this route is followed, the Board will add a condition to the authorization decision that the purchaser must be approved.

Sale of the divestment business before the authorization decision

(43) This method requires the parties to determine the suitable purchaser during the examination stage and to make a sales agreement with the purchaser. The Board shall consider in its final decision collectively the transfer of the divestment business to the

purchaser specified in the sales contract, together with the concentration transaction that is the subject of the examination, and thus shall decide whether or not the remedy proposal eliminates the competitive problems in the concentration transaction. If the Board approves the concentration transaction, the sales agreement relating to the divestiture shall be put into implementation together with the concentration transaction that is the subject of the examination, without there being a need for an additional Board decision.

(44) If there is a small number of suitable purchasers for the divestment business due to the characteristics of the case, and especially, if the effectiveness of the proposed remedy is strictly dependent on the identity of the purchaser, this method shall be chosen. For instance, if the viability of a business that is not viable by itself can only be ensured through resources/assets owned by the purchaser or if the purchaser is required to have certain characteristics in this respect, this method will be suitable.

1.3. Requirements Concerning Implementation in a Divestiture

(45) For the divestiture to be implemented in a timely and effective manner, there has to be certain provisions in the commitment text concerning implementation. These provisions concerning implementation make up an integral part of the remedy proposal of the parties.

(46) Divestiture transaction is made up of two main parts. The first part involves the finding of a suitable purchaser and concluding a binding sales agreement with this purchaser. The second part refers to the implementation of the sales agreement and thus the consummation of the divestiture, in other words the closure. The part concerning the conclusion of the sales agreement is also made up of two different periods. The first period is the one during which the parties seek out a suitable purchaser (the first divestiture period). The second period is the one during which - if the parties cannot find a suitable purchaser during the first divestiture period and fail in the divestiture of the business - the divestiture expert gains the mandate to divest the business without having regard to a minimum price (expert divestiture period).

(47) In order not to cause uncertainty for a long period of time as concerns the operation of the divestment business, the periods applying to the divestiture transaction must be kept as short as possible. As a matter of principle, it is suitable to devote six months to the first

divestiture period, three months to the expert divestiture period, and an additional period of three months to the closure of the transaction. In this framework, the process of divesting the business must be completed within a total of twelve months at most. It is possible to determine the above-mentioned periods on a case-by-case basis.

(48) The time when the periods commence shall be specified in the reasoned Board decision concerning the authorization. However, if the divestment business is part of the undertaking that is to be acquired, the Board may accept for the periods to commence on the date when the notified concentration transaction is closed. In case an application is filed with the Authority for the approval of the purchaser and the sales agreement, the periods stop running. A similar situation may also exist in cases where the power to carry out the closure is not under the control of the parties, for instance when the authorization of a public agency is being awaited. However, in cases where the commencement of the periods is being delayed based on the above-mentioned exceptions, it may be necessary to shorten the divestiture periods from the perspective of protecting the competitive power of the divestment business.

(49) However, it is different if a sales contract is concluded with a suitable purchaser before the authorization decision. Generally, since a binding agreement will already have been signed with a suitable purchaser while the examination is continued, a period of time needs to be allocated only for closure during the post-decision period.

1.3.1. Approval of the Purchaser and the Sales Agreement

(50) When a sales agreement is signed with the purchaser, the parties or the divestiture expert must file an application that is supported by appropriate grounds and documents, for the approval of the Board. The application must include sufficient explanation to the effect that the proposed purchaser fulfills the purchaser requirements and the business is being divested in accordance with the commitments. If the proposed remedies accepted by the Board provides for the selling of the separate parts of the divestiture package to different purchasers, the Board shall evaluate separately the suitability of each purchaser after which it shall examine whether the divestiture package as a whole eliminates the competition problems or not.

(51) The Board's evaluation of a suitable purchaser shall be based on the reasoned

proposal of the parties and the divestiture expert and the business plan of the proposed purchaser. In this framework, the Board shall also examine whether or not the purchaser's anticipations regarding the activities of the divestment business and the market dynamics are reasonable within the framework of market conditions.

(52) Having sufficient financial resources is essential for being deemed as a suitable purchaser. Therefore, the purchase of the divestment business must be financed by the proposed purchaser. The Board shall not accept financing of the divestiture by the parties at the seller position in any means.

(53) In order to find whether the proposed purchaser will create competition problems, the Board shall make its initial assessment by taking into account the information submitted at the stage of approving the purchaser. In case the transfer of the divestment business to the proposed purchaser is a concentration under the scope of the Communiqué No. 2010/4 and the sale is approved by the Board, it is deemed that the transaction is authorized without a need to notify. On the other hand, the proposed purchaser must demonstrate that it has obtained or is able to obtain the necessary approvals from other relevant agencies and institutions. In case, in the light of the information available to the Board, it is seen that realization of the divestment and obtaining the necessary approvals by the purposed purchaser might delay the divestiture, it is considered that the purchaser does not meet the purchaser requirements.

(54) The requirement for an approval by the Board not only covers the identity of the purchaser but also the sales agreement and any other agreements entered into between the parties and the purchaser (including transitory agreements). Within this framework, the Board examines whether the said agreements are in line with the commitments; in case it concludes that the proposed purchaser does not meet the suitable purchaser requirements as a result of the examination, it shall adopt an interim decision that the purchaser is not appropriate. Then, it is possible for the parties to suggest new purchasers within the maximum terms provided for in the commitments. Sale by the divestiture expert is subject to the Board's approval like sale by the parties.

1.3.2. The Obligations of the Parties in the Interim Period

(55) The parties have to fulfill certain obligations in the "interim period" between the

conditional authorization decision and the transfer of the divestment business to the purchaser. In this context, the remedy to be proposed by the parties must include the following:

i) Steps for carve-out if required by the proposed remedy;

ii) Provisions protecting the viability of the divestment business during the interim period;

iii) Necessary steps for preparing for the divestiture of the business.

Steps for a carve-out

(56) As it is summarized above in paragraph 1.1.2., the objective of carve-out is to create a business that is individually viable in the market, competitive, separate from the parties and is able to be transferred to a suitable purchaser at the end of the interim period. The parties have to bear the costs and risks of such a carve-out.

(57) Generally, the major steps of a carve-out, assets and functions under the scope of carve-out should be determined on a case-by-case basis and carve-out should be clearly described in the commitments. In this regard, assets and personnel, which are shared by the divestment business and remaining businesses of the parties, shall be transferred to the divestment business as appropriate or some assets or functions shall be replicated in the carve-out process in order to ensure the viability and competitiveness of the divestment business. For instance, if the divestment business benefits from the general data processing services of the undertaking concerned before carve-out, it might be necessary to establish a separate unit to carry out those services under the body of the business in question after the transaction.

(58) The divestiture expert shall inform the Board in writing that the carve-out process has been realized in accordance with the commitments.

ii) Protecting the divestment business during the interim period

(59) It is the parties' responsibility to protect the competitive potential of the divestment business in the interim period from the uncertainties inherent in the transfer of a business. Therefore, in order to protect the independency, economic viability, marketability and competitiveness of the divestment business in the interim period, the parties have to offer

relevant commitments. The said commitments must maintain economic viability, marketability and competitiveness of the divestment business separately from all of the other assets held by the parties and in this way, guarantee that the divestment business is managed in its best interest as a distinct and marketable economic value. Within this framework, the parties shall be liable for protecting all of the values of the divestment business pursuant to good business practices and avoid from any acts that may have significant adverse impact on the divestment business in the interim period. The parties must maintain the divestment business in the same market conditions as before the concentration by performing all the functions such as providing the necessary financial sources like capital or line of credit, complying with the existing business plan, and carrying out the necessary administrative and technical activities. Liability of protection shall cover especially the protection of fixed assets, know-how or other confidential information subject to intellectual property, customer base and commercial and technical competence of the employees.

(60) In addition, proposed remedies have to foresee that the parties shall take reasonable incentives and steps to encourage the key personnel to remain with the divestment business and they shall not solicit or move the key personnel to their remaining businesses. Moreover, the parties should ensure that their key personnel shall end their engagement with the activities of the divestment business and *vice versa*. In case the divestment business is in corporate form, it is essential that the parties shall not use their shareholder rights related to management. In some cases, the parties may be requested to replace the top executive of the divestment business during the interim period and submit this replacement for the approval of the Board. The said executive is responsible for the management of the divestment business independently from the parties during the interim period.

Specific obligations of the parties concerning the divestiture process

(61) Proposed remedies for the divestiture process should allow potential purchasers to carry out due diligence exercise over the divestment business, obtain sufficient information about its value, scope and commercial potential and to access directly to the personnel concerned.

(62) The parties and/or divestiture expert shall submit periodic reports to the Board about potential purchasers and the developments at the negotiation stage. At the end of the divestiture period, in other words at closing, parties and/or the divestiture expert shall submit a final notification to the Authority confirming that the business for which a commitment for divestiture has been made has been transferred to the purchaser approved by the Board.

1.4. Divestiture Expert

1.4.1. Duties

(63) Since it is not possible for the Board to monitor whether the parties comply with the commitments constantly at all stages of divestiture, a divestiture expert shall be assigned to carry out monitoring practices on behalf of the Board. This assignment by the parties shall be subject to the approval of the Board. The divestiture expert shall carry out its tasks under the inspection and supervision of the Board. The parties are liable for bearing all of the costs of the divestiture expert related to the divestiture period.

(64) The expert oversees the protection of the divestment business independently and its transfer to a suitable purchaser according to the requirements provided for in the commitments. In this scope, the expert may suggest all of the necessary measures. However, the parties cannot give any orders or instructions to the expert without approval of the Board. The duties of the expert shall be valid from the appointment by the Board until the closing of the divestiture.

(65) The commitments should cover clear and comprehensive provisions identifying the duties and powers of the divestiture expert. The main duties of the divestiture expert to carry out under the supervision of the Board and powers it should have are the following:

- To protect the divestment business and to oversee its management in the interim period,
- In case carve-out is necessary, to monitor the splitting of assets and the allocation of the personnel between the divestment business and retained businesses by the parties as well as the replication of entities that the divestment business needs,

- To monitor the efforts of the parties to find a suitable purchaser and to divest the business by reviewing the divestiture process, the potential purchasers in the process and the due diligence exercise on the divestment business made by those purchasers,
- In case the parties propose a purchaser, to submit a reasoned opinion to the Board about whether this purchaser meets the purchaser requirements,
- To prepare a written report about each stage regarding whether the divestiture period is managed in accordance with the commitments and to present it to the Board (The Board might request the divestiture expert to prepare a report on a special subject or an additional report.),
- To supervise de facto and de jure transfer of the divestment business at the end of the divestiture period and to submit a written notification to the Board approving the closing,
- To protect any proprietary or commercial secrets belonging to the parties and third parties,

The divestiture expert must especially be invested with the following powers:

- To sell the divestment business to a suitable purchaser at no minimum price within the time limits set in the commitments during the divestiture expert period, which begins in case the parties cannot find a suitable purchaser within the term granted to them,
- To include in the sales agreement all provisions and conditions that it deems necessary to effect the sale such as warranties and indemnities,
- Provided that it is relevant for the fulfillment of the commitments, to access to information and documents belonging to the parties and the divestment business, to request administrative and managerial support from the parties, and to obtain all kinds of information about the divestiture period and potential purchasers.

1.4.2 Approval of the Divestiture Expert

(66) The assignment of the divestiture expert shall be subject to the approval of the Board. The parties shall determine and submit the names of the divestiture expert candidate(s) as soon as possible following the decision of the Board for conditional authorization. This period must not exceed 30 days as of the notification of the short decision unless there is a

justifiable reason for delay.

(67) The Board determines whether the expert has the necessary qualifications on a case-by-case basis, considering the features of the relevant market and sector. It is the parties' duty to submit comprehensive information showing that the divestiture expert has the necessary qualifications. Auditing or consulting firms as well as persons who have sufficient work experience in the relevant sector, qualifications and sources to fulfill the requirements of the duty can be suggested as a divestiture expert. The divestiture expert to be suggested for assignment must be capable of performing its duty independently of the parties and must not be involved in conflict of interest. Within this framework, the Board shall not approve the requests for assigning the parties' own auditors or investment advisors or legal representatives/lawyers as a divestiture expert. The divestiture expert who is assigned by the suggestion of the parties and the approval of the Board cannot be discharged without the request or approval of the Board.

(68) The divestiture expert shall be remunerated in a way that does not impede the independent and effective fulfillment of its duties. If the Board finds necessary, it may publish and announce the identity and the summary of the duties of the divestiture expert to the public.

(69) The duty of the divestiture expert ends as soon as an approval stating that the remedy has been implemented completely and properly is submitted to the Board as an attachment to a letter.

2. Removal of Links with Competitors

(70) In case the links between the parties and competitors contribute to competition problems raised by the concentration, it may be necessary to remove those links. For instance, in order to sever a link with an important competitor, divestiture of existing shares in a joint venture or a minority shareholding in a competitor, or a minority shareholding in a competitor, which does not give any managerial rights but may create competition problems due to the financial gains derived, may be necessary. In some cases, it may be appropriate to remove cross management structures or withdraw veto rights.

(71) Where agreements between competitors create competition problems together with

the concentration, termination of the respective agreements may be a suitable remedy. On the other hand, termination of a distribution agreement may be accepted as a suitable remedy for competition problems only if it is ensured that the said competitor will be able to distribute the relevant product in the future and exercise efficient competitive pressures on the parties.

(72) In cases where this remedy is adapted, the enforcement provisions related to divestiture shall be applied within the bounds of possibility.

3. Non-Divestiture Remedies

(73) Non-divestiture remedies are also called behavioral remedies. While divestiture and/or removal of links with competitors are preferred remedies, it is possible to find other remedies to eliminate competition problems. Nevertheless, non-divestiture remedies are accepted only in circumstances where they are at least equivalent in its effects as a divestiture. This is because behavioral remedies oblige the Authority to monitor the behavior of undertakings in the market continuously, creating an important alternative cost.

(74) Non-divestiture remedies are used alone in exceptional cases and frequently they support the divestiture. In this sense, non-divestiture remedies may be beneficial for reinforcing the divestiture and in some cases eliminating anticompetitive effects of a merger. In fact, remedies covering long-term commitments to realize or support divestiture may be necessary. "Hold-separate obligation", which is related to the management of divestment business independently, is an example of a behavioral remedy applicable in the transitional period. In this way, the aim is to prevent significant lessening of competition in the transitional period by imposing the parties the obligation to keep the divestment business independent and competitive.

(75) While determining the capacity of behavioral remedies to eliminate competition problems, enforcement and monitoring costs and risks shall be taken into account. In this framework, in case it is not possible to apply structural remedies in a concentration, behavioral remedies may be approved alone. For instance, in a market that is highly regulated and constantly being monitored, it may be easier to supervise and apply those kinds of remedies.

(76) The Board may approve the application of such remedies for a limited period. Acceptability of the time limit and determination of the period shall be decided depending on the facts of the concrete case.

3.1. Types of Non-Divestiture Remedies

3.1.1 Access Remedies

(77) Remedies foreseeing the granting of access to key infrastructure, network, technologies such as patent, know-how or other intellectual property rights and essential inputs may be accepted as an appropriate remedy in some cases in order to facilitate market entry by competitors. Nevertheless, in order for those remedies to be accepted alone they must produce results that are as efficient as divestiture. In other words, it must be sufficiently clear that lowering of entry barriers by the access rights given through the proposed remedy will lead to the entry of new competitors in the market and significant lessening of competition will be eliminated.

(78) In case the competition problems raised by the concentration are based on foreclosure effects, remedies granting a non-discriminatory access to a network or infrastructure of the parties may be deemed appropriate. Those kinds of remedies will only be accepted if it can be concluded that foreclosure concerns will be effectively eliminated by granting competitors access to network, infrastructure or other essential facilities.

(79) In addition, use of certain intellectual property rights may lead to foreclosure of competitors who depend on those technologies as an essential input in downstream markets. For instance, this may be the case where competition problems about the transaction arise as the parties withhold information necessary for the interoperability of different equipment. Similarly, in certain sectors where undertakings must cooperate by licensing patents to each other, the possibility of the parties to introduce licensing behavior with different terms than those in the past may lead to competition problems. This type of competition problems may be eliminated by a commitment to grant licenses on the same basis and on reasonable conditions also after the transaction. In those cases, the proposed remedies should give nonexclusive access to the license or confidential information for the intellectual property right in question to the third parties concerned. Moreover, the remedy

must clearly determine the conditions under which the license is given and license charge/fee in order not to impede effective implementation of such remedy. An alternative may be granting royalty-free licenses.

(80) As access remedies are often complex in nature, in order to be implemented effectively, they should include general terms for determining the conditions under which access is granted. On the other hand, in order to render them effective, they have to contain procedural requirements and suitable monitoring devices. They have to include terms facilitating monitoring such as the requirement of separate accounts for the infrastructure for which access is granted in order to allow a review of the costs. As a rule, such monitoring is expected to be done by market players wishing to benefit from the proposed remedies. Within this framework, market players prefer remedies covering mechanisms, which can be enforced effectively in a timely manner. However, it should be noted that the Board will only accept such remedies where the complexity of the commitment does not risk efficient application of the proposed remedy in question and the proposed monitoring devices must ensure that those remedies will be efficiently implemented.

3.1.2. Remedies involving change of long term exclusive agreements

(81) The change in the market resulting from the concentration can cause existing long-term exclusive agreements to be harmful to the competitive structure in the market. In such circumstances, termination or change of existing agreements may be an appropriate remedy to eliminate competition problems. In addition, exclusivity causing foreclosure effects should be eliminated *de facto* and *de jur*e. Furthermore, explanations and evidence available in the proposed remedy should be convincing that no *de facto* exclusivity will be created.

3.2. Requirements Related to Non-Divestiture Remedies

(82) The application procedure stated above related to divestiture shall be taken into account with respect to other types of remedies as appropriate. For instance, if the proposed remedy is about a transfer of a license and the licensee is subject to Board approval, "suitable purchaser requirements" identified by the Board might be applicable.

Taking the diversity of behavioral remedies into account, assessment should be made on a case-by-case basis instead of establishing general principles related to those remedies. The Board may request the assignment of a expert to monitor the application of behavioral commitments, besides, by intervening quickly at the stage of application for the solution of the conflicts between the parties and third parties, it may require that an arbitration mechanism be established to ensure that the proposed remedies are applied by market players.

IV. PROCEDURE FOR THE SUBMISSION OF REMEDIES

(83) The proposed remedy may be submitted together with the notification or after it at the stages of preliminary examination and final examination. The Board shall take the proposed remedy into account while evaluating the transaction. However, in case the Board concludes that the transaction does not violate Article 7 of the Act without the need of a remedy; in other words, if it finds that concerns of significant lessening of competition raised by the transaction are irrelevant, it shall authorize the transaction unconditionally without considering the remedies.

1. Preliminary Examination

(84) A proposed remedy can only be accepted at the stage of preliminary examination where the competitive concern related to the transaction is clearly and simply identifiable and the proposed remedy for the elimination of that clear concern must be equally straightforward and clear-cut. In case it is found as a result of the examination that the proposed remedies are not sufficient to remove competitive concerns, the Board shall initiate final examination about the transaction.

(85) In order to form the basis of the Board's authorization decision, the remedies proposed by the parties at the preliminary examination stage must fulfill the following requirements:

(a) They shall specify precisely and comprehensively the substantive and implementing commitments entered into by the parties.

(b) They shall be signed by a duly authorized person.

(c) They shall include sufficient information to make an examination.

(d) They shall be accompanied by a copy, which does not include business secrets. This copy must allow third parties to fully analyze the workability and the effectiveness of the proposed remedy to remove the competitive concerns.

(86) Remedy proposals submitted according to those requirements shall be assessed by the Board. The Board may take opinion from third parties when considered necessary.

(87) Due to the time constraints at the preliminary examination stage, it is important that the necessary information be submitted in a timely manner with respect to the analysis of the content and workability of the proposed remedies as well as of their ability to remove competitive concerns on a permanent basis. Otherwise, the Board may decide that the proposed remedy does not eliminate competition concerns related to the transaction.

2. Final Examination

(88) According to Article 10 of the Act, the concentrations under final examination are suspended until the final decision of the Board. As the suspension period is subject to Articles 40 to 59 of the Act regulating the investigation procedure, it may be a long process with various stages where written and oral pleas are requested from the parties in response to the report to be completed in six months at the latest unless it is extended by one fold by a Board decision. On the other hand, what is important with respect to remedy process, which aims to eliminate competition problems created by concentrations, is carrying out sufficient examination and inquiry and concluding that the remedy is appropriate. Accordingly, it is vital for a sound process that the professional staff in charge of examination informs the Board after making an accurate and sufficient technical evaluation about the proposed remedy.

(89) Where the parties propose remedies until the report is completed at the stage of final examination, in case the professional staff in charge of examination hold that the proposed remedies are sufficient to eliminate competition problems, the proposed remedy will be submitted to the agenda of the Board urgently together with the report to be prepared without waiting until the end of the legal time period. If the proposed remedy is not found sufficient, the said proposal shall be submitted to the agenda of the Board together with the

report completed in the legal time period. In that case

- The Board shall conditionally authorize the transaction depending on the commitments if it approves the remedy,
- The report shall be notified to the parties and their written pleas shall be requested if the Board deems the remedy insufficient.

(90) In case the report is notified, the parties may submit a remedy or develop their existing remedy together with their second written plea. At the final examination stage, remedies or related amendments may be submitted together with the written plea for the final examination report (second written plea) at the latest. In this case, they shall be included in the agenda of the Board together with the written additional opinion prepared by the professional staff in charge of examination. Remedies submitted after the period for the second written plea is expired shall be ignored because, as stated above, for ensuring proper functioning of the remedy mechanism, technical opinion of the professional staff in charge of examination about the case must be submitted to the Board together with the remedy.

(91) In case the Board decides that the concentration under examination will not violate Article 7 of the Act after it is amended within the framework of the remedy and the related commitments submitted by the parties, it shall authorize the said transaction subject to the commitments.

(92) The remedies are submitted by the parties and the Board conditions its authorization decision on the application of the remedies. As the provisions for and legal consequences of non-compliance with requirements and obligations are different according to the Act, the difference between requirement and obligation must be noted. For instance, divestiture of a business is a requirement whereas the practical stages related to divestiture such as appointment of a divestiture expert and submitting necessary reports to the Board are obligations. In case of non-compliance with a requirement, the authorization will automatically be invalid and the authorization decision will be void as the violation of Article 7 of the Act is not resolved. Under those circumstances, the right of the Board to apply the provisions of Article 16 is reserved. On the other hand, in case of non-compliance with obligations, the parties may be subject to administrative fines provided for in Article 17 of

the Act.

ATTACHMENT 1: COMMITMENTS FORM

Form for the commitments to be made under the scope of Article 14 of the Communiqué No. 2010/4

This form indicates the information and documents to be submitted to the Board simultaneously with the commitments regarding mergers and acquisitions (concentration). The scope of the information and documents requested may change depending on the structure and type of the remedy.

1. Definition of the Commitment

Give information about the aim and conditions of application regarding the proposed commitment.

2. Suitability of the Commitment

Give information showing why and how the proposed commitment is appropriate for eliminating the competition problem.

Information related to the divestment business

3.1. Identify the divestment business generally. In this context, indicate the owner of the assets subject to commitment, the headquarters and head office of the company and other locations regarding the production or supply of goods or services, if any, organizational structure and other information describing the administrative structure of the divestment business.

3.2. Indicate whether there are legal obstacles related to the divestiture of the business or assets such as third party rights or necessary administrative approvals and if there is such obstacle, provide information about the nature of it.

3.3. Indicate the definition and list of products and services under the scope of the business, especially their technical and other properties, brands, the turnover gathered by related goods and/or services and new products and services planned if any.

3.4. If essential operational functions such as R&D, production, marketing, sales, logistics, customer and supplier relations are not under the body of the divestment business, define how these functions will be carried out. The aforementioned definition shall specify how these functions will be conducted as well as their relationship with the divestment business and the assets used in the exercise of the function.

3.5. Within the framework of the following details, define the relationship of the divestment business with the other companies controlled by the parties.

- Supply, production, distribution, service or other agreements,
- Shared tangible and intangible assets,
- Shared or seconded staff,
- Shared IT systems or other systems
- Shared customers

3.6. Indicate all relevant tangible and intangible assets, including intellectual property rights and brands, which are owned or used by the divestment business.

3.7. Present an organizational chart, including the number of staff working in each function of the divestment business as well as the essential staff for the function and their tasks.

3.8. Specify the customer list, information on customer records and the turnover (indicating their shares in the absolute turnover and the turnover of the divestment business) that may be attributed to each customer.

3.9. Present financial data, including the figures for the two previous years on the turnover and pre-tax profits of the divestment business, as well as estimates for the next two years.

3.10. Indicate all changes in the organization of the divestment unit or in its links to the

other subsidiaries controlled by the parties, implemented in the previous two years and expected in the next two years.

3.11. Explain the points where the scope of operations of the divestment business as defined within the commitments diverges with its current scope of operations.

3.12. Explain why a suitable purchaser would like to acquire the relevant asset to be divested within the divestiture period specified by the commitments.

In addition to the information/documents above, a summary of the commitments proposed which does not include any business secrets shall be attached to the application.

ATTACHMENT 2: MODEL TEXT FOR COMMITMENTS [3]

[[*indicate the name of the undertakings offering the commitments*] provide the following commitments, in order to enable a Decision (**Decision**) stating that the Commitments (**Commitments**) herein do not lead to an infringement of Article 7, to be taken into consideration in the assessment to be conducted by the Competition Board (Board) in accordance with article 7 of the Act No. 4054 on the Protection of Competition concerning the [definition of the transaction (e.g. the acquisition of...; formation of a full-function joint-venture between ... and ...)]

The commitments shall take effect on ... [date]

1. Definitions

For the purposes of the commitments

Divestment Business: refers to those businesses defined in Section 2 and in the attachment to this text (Attachment) which the parties commit to divest,

Divestiture Expert: refers to one or more natural or legal persons independent from the parties to the notified transaction, which are approved by the Board, are appointed by [X], are charged with monitoring X's compliance with the conditions and commitments attached to the Decision, and are authorized by [X] to sell the Divestment Business to the Purchaser at no minimum cost,

Effective Date: ...

First Divestiture Period refers to the period of [·] months from the Effective Date,

Hold Separate Manager: refers to the person appointed by [X] for managing the day-to-day business of the Divestment Business under the supervision of the Divestiture Expert,

[3] The text herein is intended to be a guideline for the parties.

Key Personnel: refers to all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Attachment,

Personnel refers to all personnel employed by the Divestment Business, including Key Personnel, support personnel, shared personnel and additional personnel listed in the Attachment,

Purchaser: refers to the natural or legal person approved by the Board as the acquirer of the Divestment Business,

Expert Divestiture Period refers to the period of [·] months from the end of the First Divestiture Period

Closing: refers to the moment of transfer of the ownership of the Divestment Business to the Purchaser,

[X]: refers to the [indicate the full commercial title of the Undertaking(s) Concerned that will divest its (their) business], incorporated under the laws of [·], with its headquarters at [·] and registered with the Commercial Register of [·] under the number [·].

2. Divestment Business

2.1. Commitment to divest

In order to prevent the infringement of Article 7 of the Act no 4054, [X] commits to divest, or ensure the divestiture of the Divestment Business by the end of the Expert Divestiture Period as a profitable and viable concern to a Purchaser, on terms of sale approved by the Board. For the divestiture, [X] commits to find a suitable Purchaser and to enter into a binding sales agreement for the sale of the Divestment Business within the First Divestiture Period. If [X] has not entered into such an agreement by the end of the First Divestiture Period, it shall grant the Divestiture Expert an exclusive mandate to sell the Divestment Business within the Expert Divestiture Period.

[X] shall be deemed to have complied with this commitment if [X] has entered into a binding sales agreement by the end of the Expert Divestiture Period, if the Board approves the Purchaser and the terms of sale, and if the Closing of the sale of the Divestment Business takes place within at most 3 months following the approval of the Purchaser and the terms of sale by the Board.

2.2. Definition of the Divestment Business

The Divestment Business consists of [Provide a summary description of the Divestment Business]. The legal and functional structure of the Divestment Business as currently operated is described in the Attachment. The Divestment Business, as described in more detail in the Attachment, includes the following:

a. all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business (including intellectual property rights),

b. all licenses, permits and authorizations issued by any governmental organization to the Divestment Business,

c. all contracts, leases, commitments and customer orders and customer, credit and other records of the Divestment Business (items listed in a to c shall be hereinafter collectively referred to as **Assets**),

d. Personnel.

3. Commitments

3.1. Preservation of Viability, Marketability and Competitiveness

From the Effective Date until Closing, [X] shall preserve the viability, marketability and competitiveness of the Divestment Business, in accordance with good business practices. In particular [X] shall undertake the following:

a. not to take any action on its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business,

b. to make available sufficient resources for the development of the Divestment Business, on the basis and for the continuation of the existing business plans,

c. to take all appropriate steps to ensure that Key Personnel remain with the Divestment Business.

3.2. Hold-separate obligations of [X] Concerning the Divestment Business

[X] commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business, including the Hold Separate Manager, have no involvement in any business retained.

[X] shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Divestiture Expert. The Hold Separate Manager shall manage the Divestment Business in line with good business practices, with a view to ensure its economic viability, marketability and competitiveness as well as its independence from the businesses retained by the parties.

[X] shall take all necessary precautions to ensure that, after the Effective Date, it does not obtain any business secrets, know-how or other confidential or proprietary information relating to the Divestment Business. [X] may obtain any information which is necessary for the divestiture of the Divestment Business or whose disclosure to [X] is required by law .

The parties of the notified transaction undertake not to employ any Key Personnel transferred to the Divestment Business for a period of [·] after Closing.

3.3. Due Diligence

In order to enable potential Purchasers to carry out a reasonable due diligence of the Divestment Business and to gather sufficient information, [X] shall

a. provide sufficient information to potential Purchasers regarding the Divestment Business

b. provide sufficient information to potential Purchasers regarding the Personnel and allow them access to the Personnel.

3.4. Reporting

Following the Effective Date, [X] shall submit written reports on potential Purchasers of the Divestment Business and developments in the negotiations with such potential Purchasers to the Divestiture Expert for each month, until the 10th day of the following month (or on a different date at the Board’s request).

4. Purchaser

The criteria specified below for Purchasers are "Purchaser Requirements";

a. The Purchaser must be independent of and unconnected to the parties of the transaction.

b. The Purchaser shall have financial resources, business experience and the capability to become an effective competitor within the market via the Divestment Business.

c. The acquisition transaction with the Purchaser shall not create new competition problem. In case of such problems no new remedies shall be proposed.

d. The acquisition by the Purchaser shall not create a risk of delaying the implementation of the commitments. Therefore, the Purchaser shall be capable of receiving all necessary authorizations from all regulatory authorities concerning the acquisition of the Divestment Business.

Entry into force of the final and binding sales agreement is subject to the approval of the Board. When [X] has reached an agreement with the Purchaser, it shall present the final version of the agreement and its grounds for the fulfillment of the Purchaser Requirements to the Board and the Divestiture Expert.

5. Divestiture Expert

5.1. Appointment Procedure

Within at most one week following the Effective Date, [X] shall submit to the Board for approval a list of one or more persons proposed for appointment as the Divestiture Expert to execute the duties specified in the Commitments. The Board has the authority to approve or reject Divestiture Experts and the authority to approve the proposed appointment agreement subject to the amendments it requires for the execution of the obligations of the Divestiture Expert. Divestiture Expert shall be appointed in accordance with the appointment agreement approved by the Board, within a week following the Board's approval. In case the proposed Divestiture Expert or Experts are rejected, [X] shall submit a new name within a week following the rejection decision.

Divestiture Expert shall be independent from the parties of the notified transaction, shall

possess the required qualifications and shall not have a conflict of interest with the parties. Divestiture Expert shall be remunerated by the Parties in a way that does not impede the independent and effective fulfillment of its mandate.

The proposal shall contain sufficient information for the Board to verify that the proposed Divestiture Expert fulfills the requirements set out in the previous paragraph and the powers required by the Divestiture Expert to carry out its duties in accordance with these Commitments.

5.2. Duties of the Divestiture Expert

Divestiture Expert shall undertake those duties identified in order to ensure compliance with the Commitments. The Board may, on its own initiative or at the request of the Divestiture Expert or [X], give orders or instructions to the Divestiture Expert in order to ensure compliance with the conditions and obligations attached to the decision.

The Divestiture Expert shall have the power to access information and documents belonging to the parties to the notified transaction and the Divestment Business, request managerial and administrative support from the parties to the notified transaction, and acquire any information concerning the divestment process and the potential Purchasers, provided this is related to the implementation of the commitments.

Duties and Obligations of the Divestiture Expert

a. propose in its first report to the Board a detailed work plan describing how it shall monitor compliance with the obligations and conditions attached to the Decision,

b. oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by [X] with the conditions and obligations attached to the Decision. To this end, Divestiture Expert shall:

   i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with sections 3.1 and 3.2 of the Commitments,

   ii) in consultation with [X], determine the necessary measures to ensure that [X]

does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, and in particular it shall strive for the severing of the Divestment Business' connection to a central technology network to the extent possible, without compromising its viability, and decide whether such information may be disclosed to [X] as the disclosure is necessary for the divestiture of the Divestment Business or as it is required by law.

iii) in case carving out is necessary, monitor the splitting of assets between the Divestment Business and [X] or Affiliated Undertakings, the allocation of Personnel between the carve-out business and those businesses retained by the parties to the notified transaction and the procurement of those elements the Divestment Business needs to reacquire,

c. assume the other functions assigned to the Divestiture Expert under the conditions and obligations attached to the Decision,

d. propose to [X] such measures as it considers necessary to ensure [X]'s compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information,

e. review the divestiture process, the potential Purchasers included in the process as well as the due diligence process to be conducted by these Purchasers on the Divestment Business in order to monitor [X]'s efforts to find an suitable Purchaser and to divest,

f. submit to the Board a written report within 15 days after the end of every month and provide a non-confidential copy of the this report to [X] at the same time. The report shall cover the operation and management of the Divestment Business so that the Board can assess whether the business is managed in a manner consistent with the Commitments as well as the divestiture process together with potential Purchasers. The Divestiture Expert shall promptly report in writing to the Board, sending [X] a non-confidential copy at the same time, if it concludes on reasonable grounds that

[X] is failing to comply with these Commitments,

g. in case [X] proposes a Purchaser, submit to the Authority its opinion on whether the proposed Purchaser fulfills the "Purchaser Requirements." It shall also monitor the legal and actual acquisition of the Divestment Business at the end of the divestment process and submit to the Board a notification letter confirming the Closing,

h. In the Expert Divestiture Period, Divestiture Expert shall sell the Divestment Business to a Purchaser, without a minimum price, provided that the Board approves the Purchaser and the binding sales agreement. Divestiture Expert shall include in the sales agreement all provisions and conditions it deems appropriate for a swift sale during the Expert Divestiture Period as well as all provisions and conditions such as warranties and indemnities it deems necessary for the sale.

5.3. [X]'s Duties and Obligations to the Divestiture Expert

[X] shall provide and shall ensure that its advisors provide the Divestiture Expert with all cooperation, assistance and information as the Divestiture Expert may require to perform its tasks. [X] shall ensure that the Divestiture Expert has full access to any of [X's] or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and shall provide the Expert upon request with copies of any document.

[X] shall provide the Divestiture Expert with all administrative support that it may request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. [X] shall provide the Divestiture Expert, on request, with the information submitted to potential Purchasers, in particular give the Divestiture Expert access to all information granted to potential Purchasers in the due diligence procedure and shall ensure that its advisors provide this information. [X] shall submit a list of potential Purchasers to the Divestiture Expert and ensure that the Divestiture Expert is informed of all developments in the divestiture process.

[X] shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Expert to effect all actions and transactions to achieve the sale and the Closing.

[X] shall declare that the Divestiture Expert shall have no liability to [X] arising out of the performance of its duties under the Commitments, except to the extent that such liabilities result from gross negligence or bad faith.

5.4. Replacement, discharge and reappointment of the Divestiture Expert

The Divestiture Expert may not be discharged or replaced without the approval of the Board,

In case the Divestiture Expert lays down its office with the approval of the Board, it shall be required to continue in its function until a new Expert takes office.

the Divestiture Expert shall cease to act as Expert after the Board has discharged it from its duties after all the Commitments with which the Expert has been entrusted have been implemented. However, the Board may at any time require the reappointment of the Divestiture Expert if it subsequently appears that the relevant remedies have not been fully and properly implemented.

…….

duly authorized for and on behalf of

[Indicate the name of each of the Parties]

ATTACHMENT

1. The Divestment Business as operated to date has the following legal and functional structure: [*Describe the legal and functional structure of the Divestment Business, including the organizational chart*].
2. Under section 2.2. of these Commitments, the Divestment Business includes, but is not limited to the following:
    a. Main tangible assets: [*indicate the essential tangible assets, e.g. xyz factory/warehouse/pipelines located at abc/and the real estate/property on which the factory/warehouse is located; the R&D facilities*]
    b. Main intangible assets: [*indicate the main intangible assets. This should in particular include (i) the brand names and (ii) other Intellectual Property Rights used in conducting the operations of the Divestment Business*.]

c. Main licenses, permits and other authorizations: [*indicate the main licenses, permits and other authorizations*.]
d. Main contracts, agreements, leases, commitments and understandings: [*indicate the main contracts, etc.*]
e. Customer, credit and other records [*indicate the main customer, credit and other records, according to more detailed sector-specific indications, where appropriate*]
f. Personnel [*indicate the personnel to be transferred in general, including personnel providing essential functions for the Divestment Business, such as central R&D staff*]
g. Key Personnel [*indicate the names and functions of the Key Personnel, including the Hold Separate Manager, where appropriate*]
h. the arrangements for the provision of the following products or services by [X] or Affiliated Undertakings for a transitional period until [·] after Closing [*indicate the goods or services to be provided for a transitional period in order to maintain the economic viability and competitiveness of the Divestment Business*]

3. The Divestment Business shall not include the following:

i. ….

ii. [*It is the responsibility of [X] to indicate clearly what the Divestment Business will not encompass*].