

Case COMP/M.8947 – NIDEC / WHIRLPOOL (EMBRACO BUSINESS)

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Case COMP/M.8947 – NIDEC / WHIRLPOOL (EMBRACO BUSINESS)  
COMMITMENTS TO THE EUROPEAN COMMISSION

28 February 2019

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Nidec Corporation (“**Nidec**” or the “**Notifying Party**”) hereby enters into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition by Nidec of the compressor manufacturing business of Whirlpool Corporation (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

**Section A - Definitions**

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 and described more in detail in the Schedule.

**Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.

**Closing Period:** the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

**Divestment Business:** the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

**Divestment Products:** Nidec's Delta Series, Kappa Series, D-Series, F-Series, G-Series, N-Series, S-Series, T-Series and X-Series Refrigeration Compressors, and all pipeline projects related to these Refrigeration Compressor platforms.

**Divestiture Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Nidec and who has/have received from Nidec the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of [...] from the Effective Date.

**Hold Separate Manager:** the person appointed by Nidec for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Nidec, and who has/have the duty to monitor Nidec's compliance with the conditions and obligations attached to the Decision.

**Nidec:** Nidec Corporation, incorporated under the laws of Japan, with its registered office at 338 Kuzetonoshiro-cho, Minami-ku, Kyoto 601-8205, Japan, central registration system number 1300-01-002387.

**Nidec Austria:** Nidec Global Appliance Austria GmbH, incorporated under the laws of Austria, with its registered office at Jahnstraße 30, 8280 Fürstenfeld, Austria.

**Nidec Austria Plant:** Nidec Austria's Refrigeration Compressor manufacturing plant located at Jahnstraße 30, 8280 Fürstenfeld, Austria.

**Nidec China:** Nidec Compressors (Tianjin) Co., Ltd., incorporated in the People's Republic of China, with its registered office at Wuqing Development Zone, No. 27, Kai Yuan Road, 301700 Tianjin, People's Republic of China.

**Nidec China Plant:** Nidec China's Refrigeration Compressor manufacturing plant located at Wuqing Development Zone, No. 27, Kai Yuan Road, 301700 Tianjin, People's Republic of China.

**Nidec Germany:** Nidec Global Appliance Germany GmbH and Nidec Global Appliance Compressors GmbH, both Mads-Clausen-Str. 7, 24939 Flensburg, Germany.

**Nidec Italy:** Nidec Global Appliance Italy Srl, Piazza Vittorio Emanuele II, n°3 10024 Moncalieri, Italy.

**Nidec Slovakia:** Nidec Global Appliance Slovakia s.r.o., incorporated under the laws of the Slovak Republic, with its registered office at Tovàrenská 49, 953 01 Zlaté Moravce, Slovak Republic, with identity number 35 800 399, and registered with the Commercial Register of the District Court Nitra, section: Sro, under file No. 13235/N.

**Nidec Slovakia Plant:** Nidec Slovakia's Refrigeration Compressor manufacturing plant located at Tovàrenská 49, 953 01 Zlaté Moravce, Slovak Republic.

**Nidec USA:** Nidec Global Appliance USA Inc., 4000 Northfield Way, Suite 600 Roswell, GA 30076.

**Parties:** the Notifying Party and the undertaking that is the target of the concentration.

**Personnel:** all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

**Purchaser Criteria:** the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

**Refrigeration Compressors:** electro-mechanical devices, for household or light commercial applications, used to lower the temperature of an enclosed space (such as a freezer or refrigerator) by compressing vaporised refrigerant to remove heat from that space and transfer it elsewhere.

**Schedule:** the schedule to these Commitments describing more in detail the Divestment Business.

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

**Trustee Divestiture Period:** the period of [...] from the end of the First Divestiture Period.

## **Section B - The commitment to divest and the Divestment Business**

### **2.1 Commitment to divest**

2. In order to maintain effective competition, Nidec commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, Nidec commits to find a purchaser and to enter into a final binding sale

and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Nidec has not entered into such an agreement at the end of the First Divestiture Period, Nidec shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.

3. [...].
4. Nidec shall be deemed to have complied with this commitment if:
  - (a) by the end of the Trustee Divestiture Period, Nidec or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20; and
  - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

## 2.2 Structure and definition of the Divestment Business

6. The Commitments offered consist of the divestiture of Nidec's entire Light Commercial and Household Compressor business units, consisting of Refrigeration Compressors produced in Nidec's Austria, Slovakia and China plants and support functions in additional locations:
  - (a) Nidec Global Appliance Austria GmbH, Jahnstraße 30, 8280 Fürstenfeld, Austria ("**Nidec Austria**"), including Nidec's manufacturing plant located at the same address ("**Nidec Austria Plant**");
  - (b) Nidec Global Appliance Slovakia s.r.o., Tovàrenská 49, 953 01 Zlaté Moravce, Slovak Republic, with identity number 35 800 399, and registered with the Commercial Register of the District Court Nitra, section: Sro, under file No. 13235/N ("**Nidec Slovakia**"), including Nidec Slovakia's manufacturing plant located in Zlaté Moravce ("**Nidec Slovakia Plant**");
  - (c) Nidec Compressors (Tianjin) Co., Ltd., Wuqing Development Zone, No. 27, Kai Yuan Road, 301700 Tianjin, People's Republic of China ("**Nidec China**"), including Nidec China's manufacturing plant located at the same address ("**Nidec China Plant**");

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- (d) Nidec Global Appliance Italy Srl, Piazza Vittorio Emanuele II, n°3 10024 Moncalieri, Italy (“**Nidec Italy**”);
  - (e) Nidec Global Appliance Germany GmbH, Mads-Clausen-Str. 7, 24939 Flensburg, Germany;
  - (f) Nidec Global Appliance Compressors GmbH, Mads-Clausen-Str. 7, 24939 Flensburg, Germany (together with Nidec Global Appliance Germany GmbH, “**Nidec Germany**”);
  - (g) Nidec Global Appliance USA Inc., 4000 Northfield Way, Suite 600 Roswell, GA 30076 (“**Nidec USA**”).
7. The legal entities identified in paragraph 6 (a)-(g), together with associated assets, contracts, customer records, IP & knowhow, personnel and other interests, except the employees and businesses described in paragraph 4 of the Schedule, constitute the “**Divestment Business**”. The Nidec Austria Plant, the Nidec Slovakia Plant and the Nidec China Plant include the Refrigeration Compressor production lines to produce Nidec’s Delta Series, Kappa Series, D-Series, F-Series, G-Series, N-Series, S-Series, T-Series and X-Series Refrigeration Compressors, and all pipeline projects related to these Refrigeration Compressor platforms (“**Divestment Products**”). Nidec Germany, Nidec Italy and Nidec USA do not have manufacturing facilities, but include personnel who perform administrative services, such as sales and R&D for the Divestment Business.
8. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including intellectual property rights);
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
  - (c) all contracts, leases, commitments and customer orders of the Divestment Business, as well as all customer, credit and other records of the Divestment Business; and
  - (d) the Personnel.
9. In addition, the Divestment Business includes the benefit, for a transitional period of [...] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Nidec or its Affiliated Undertakings supply IT services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant operations.

## Section C - Related commitments

### 3.1 Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Nidec undertakes:
- (a) not to carry out any action 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, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Nidec's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Nidec shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Nidec must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission;
  - (d) Nidec commits to make available to the Purchaser CAPEX funding in the amount of [...]. To this effect, Nidec commits [to make available to the purchaser of the divestment business significant funding for future investments for a certain period of time for the production lines in Nidec's plants in Austria and Slovakia. The amount made available is equal to the capital expenditure that Nidec would have committed to the two plants without the transaction]. [...].

### 3.2 Hold-separate obligations

11. The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the business(es) that the Notifying Party will be retaining and, after closing of the notified transaction to keep the Divestment Business Separate from the business that the Notifying Party is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business retained by Nidec have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Nidec and do not report to any individual outside the Divestment Business.

12. Until Closing, Nidec shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which Nidec is retaining. Immediately after the adoption of the Decision, Nidec shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Nidec. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(c) of these Commitments. The Commission may, after having heard Nidec, require Nidec to replace the Hold Separate Manager.
13. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Nidec's rights as shareholder in the legal entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Nidec's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Nidec. Upon request of the Monitoring Trustee, Nidec shall resign as a member of the boards or shall cause such members of the boards to resign.

### **3.3 Ring-fencing**

14. Nidec shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Nidec before the Effective Date will be eliminated and not be used by Nidec. This includes measures vis-à-vis Nidec's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Nidec may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Nidec is required by law.

### **3.4 Non-solicitation clause**

15. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

### 3.5 Due diligence

16. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Nidec shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

### 3.6 Reporting

17. Nidec shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
18. Nidec shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee. Nidec shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

## Section D - The Purchaser

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
  - (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
  - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
  - (c) The Purchaser shall [...].
  - (d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's



approval. When Nidec has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Nidec must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E - Trustee**

### **5.1 Appointment procedure**

21. Nidec shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
22. If Nidec has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Nidec at that time or thereafter, Nidec shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
23. The Trustee shall:
  - (a) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
  - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (c) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

#### **5.1.1 Proposal by Nidec**

25. No later than two weeks after the Effective Date, Nidec shall submit the name or names of one or more natural or legal persons whom Nidec proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the

First Divestiture Period or on request by the Commission, Nidec shall submit a list of one or more persons whom Nidec proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

5.1.2 Approval or rejection by the Commission

- 26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Nidec shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Nidec shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

5.1.3 New proposal by Nidec

- 27. If all the proposed Trustees are rejected, Nidec shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

5.1.4 Trustee nominated by the Commission

- 28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Nidec shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

**5.2 Functions of the Trustee**

- 29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Nidec, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

5.2.1 Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:

- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Nidec with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee 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 paragraphs 10-11 of these Commitments, including [...];
  - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments;
  - (iii) with respect to Confidential Information:
    - determine all necessary measures to ensure that Nidec does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
    - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
    - make sure that any Confidential Information relating to the Divestment Business obtained by Nidec before the Effective Date is eliminated and will not be used by Nidec and
    - decide whether such information may be disclosed to or kept by Nidec as the disclosure is reasonably necessary to allow Nidec to carry out the divestiture or as the disclosure is required by law;
  - (iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Nidec or Affiliated Undertakings;
- (c) propose to Nidec such measures as the Monitoring Trustee considers necessary to ensure Nidec's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

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- (d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
  - (i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
  - (ii) potential purchasers are granted reasonable access to the Personnel;
- (e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (f) provide to the Commission, sending Nidec a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (g) promptly report in writing to the Commission, sending Nidec a non-confidential copy at the same time, if it concludes on reasonable grounds that Nidec is failing to comply with these Commitments;
- (h) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending Nidec a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

31. If the Monitoring and Divestiture Trustee are not the same persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

**5.2.2 Duties and obligations of the Divestiture Trustee**

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 19 and 20 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements)

such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Nidec, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

### 5.3 Duties and obligations of the Parties

34. Nidec shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Nidec'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 Nidec and the Divestment Business shall provide the Trustee upon request with copies of any document. Nidec and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
35. Nidec shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably 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. Nidec shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Nidec shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. Nidec shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Nidec shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. Nidec shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Nidec for, any liabilities arising out of the

performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

38. At the expense of Nidec, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Nidec's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Nidec refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Nidec. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Nidec during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
39. Nidec agrees that the Commission may share Confidential Information proprietary to Nidec with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
40. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

#### **5.4 Replacement, discharge and reappointment of the Trustee**

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Trustee and Nidec, require Nidec to replace the Trustee; or
  - (b) Nidec may, with the prior approval of the Commission, replace the Trustee.
43. If the Trustee is removed according to paragraph 42 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21-27 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring

Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F - The review clause**

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from Nidec or, in appropriate cases, on its own initiative. Where Nidec requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall Nidec be entitled to request an extension within the last month of any period.
46. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section G - Entry into force**

47. The Commitments shall take effect upon the date of adoption of the Decision.

[...]

[...]

duly authorised for and on behalf of Nidec

## SCHEDULE

1. The Divestment Business consists of Nidec’s Refrigeration Compressor business, which consists of the following entities:
  - (a) Nidec Global Appliance Austria GmbH, Jahnstraße 30, 8280 Fürstenfeld, Austria (“**Nidec Austria**”), including Nidec Austria’s manufacturing plant located at the same address (“**Nidec Austria Plant**”);
  - (b) Nidec Global Appliance Slovakia s.r.o., Tovàrenská 49, 953 01 Zlaté Moravce, Slovak Republic, with identity number 35 800 399, and registered with the Commercial Register of the District Court Nitra, section: Sro under file No. 13235/N (“**Nidec Slovakia**”), including Nidec Slovakia’s manufacturing plant located at the same address (“**Nidec Slovakia Plant**”);
  - (c) Nidec Compressors (Tianjin) Co., Ltd., Wuqing Development Zone, No. 27, Kai Yuan Road, 301700 Tianjin, People’s Republic of China (“**Nidec China**”), including Nidec China’s manufacturing plant located at the same address (“**Nidec China Plant**”);
  - (d) Nidec Global Appliance Italy Srl, Piazza Vittorio Emanuele II, n°3 10024 Moncalieri, Italy (“**Nidec Italy**”);
  - (e) Nidec Global Appliance Germany GmbH, Mads-Clausen-Str. 7, 24939 Flensburg, Germany;
  - (f) Nidec Global Appliance Compressors GmbH, Mads-Clausen-Str. 7, 24939 Flensburg, Germany (together with Nidec Global Appliance Germany GmbH, “**Nidec Germany**”);
  - (g) Nidec Global Appliance USA Inc., 4000 Northfield Way, Suite 600 Roswell, GA 30076 (“**Nidec USA**”),

together with all associated assets, contracts, customer records, IP & knowhow, personnel and other interests, except the employees and businesses described in paragraph 4 below. Organisation charts of the Divestment Business are enclosed in **Annex 1**.
2. The Nidec Austria Plant, the Nidec Slovakia Plant and the Nidec China Plant include the Refrigeration Compressor production lines to produce Nidec’s Delta Series, Kappa Series, D-Series, F-Series, G-Series, N-Series, S-Series, T-Series and X-Series Refrigeration Compressors, and all pipeline projects related to these Refrigeration Compressor platforms (“**Divestment Products**”). For the 2018 sales volumes and values by series, please see **Annex 2**. These products constitute all of the refrigeration compressors manufactured by Nidec, excluding battery-driven refrigeration compressors for mobile applications.
3. In accordance with paragraph 8 of these Commitments, the Divestment Business includes, but is not limited to:
  - (a) the following main **tangible assets**:



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- (i) the freehold title and the leasehold title to the site areas on which, respectively, the Nidec Austria Plant is located in Fürstenfeld, the Nidec Slovakia Plant is located in Zlaté Moravce and the Nidec China Plant is located in Tianjin;
  - (ii) the properties on the site areas including the production plants and warehousing;
  - (iii) the production lines to produce the Divestment Products;
  - (iv) the leasehold titles to offices for Nidec Germany, Nidec Italy, and Nidec USA;
  - (v) the production and quality control records in respect of the Divestment Products;
  - (vi) Nidec’s inventory of, and orders for, the Divestment Products at the time of closing of the divestiture sale to the Purchaser;
  - (vii) the existing sales and promotional material designed for and used in connection with the Divestment Products;
- (b) Nidec commits to make available to the Purchaser CAPEX funding in the amount of [...]. To this effect, Nidec commits [to make available to the purchaser of the divestment business significant funding for future investments for a certain period of time for the production lines in Nidec’s plants in Austria and Slovakia. The amount made available is equal to the capital expenditure that Nidec would have committed to the two plants without the transaction]. [...].
- (c) the following main **intangible assets**:
- (i) all patents owned (a non-exhaustive list of which is provided at **Annex 3**) or registered but not yet published by Nidec (a non-exhaustive list of which is provided at **Annex 4**) existing as of the date of the divestment agreement which relate to the Divestment Business to manufacture and sell the Divestment Products, subject to a non-exclusive license back to Nidec in relation to the patents identified in **Annex 5**, which are relevant to the battery-driven refrigeration compressors for use in mobile applications;
  - (ii) subject to Nidec becoming the owner of the German utility model with registration number DE 202012013046 as a result of the Concentration, a non-exclusive, perpetual, royalty-free license under that utility model to operate the Divestment Business as at the date of the sale and purchase agreement to be concluded between Nidec and the Purchaser;
  - (iii) all of the knowhow (including designs, drawings, plans and the like) that is used to develop, manufacture and sell the Divestment Products and all pipeline products and pipeline projects (including but not limited to those pipeline products and pipeline projects described in **Annex 6**), and any intellectual property rights in such knowhow;

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- (iv) to the extent legally possible, all Nidec-held data and relevant product registration/authorisations, and documents related thereto (if any), for all models of the Divestment Products, including those that relate to plant or product upgrades, quality certificates and approvals pertaining to the Divestment Business;
- (v) all Nidec-held data related to the quality management system of the Divestment Products, including historic records on compliance with applicable regulations and corrective/preventive actions;
- (vi) the Secop website;
- (vii) the Secop brand and any associated trademarks and product names;
- (d) the main **licences, permits and authorisations** listed in **Annex 7**;
- (e) all **contracts, agreements, leases, commitments and understandings** relating to the Divestment Business, including, for example:
  - (i) supply contracts and relationships described in **Annex 8** and **Annex 9**;
  - (ii) relationships with all customers supplied by the Divestment Business listed in **Annex 10** and new contracts with the limited number of customers having written contracts for the purchase of the Divestment Products described in **Annex 11**; and
  - (iii) IT agreements and licences that apply to the Divestment Business, for which Nidec will either: (i) cause Nidec Austria, Nidec Slovakia and Nidec China to enter into new agreements and licences in order to reflect the agreements and licences from which they currently benefit; or (ii) facilitate the Purchaser in migrating the Divestment Business to the agreements and licences used by the Purchaser in the rest of its business;
- (f) a list of all **customers** of the Divestment Business with contact details, as well as all other available customer specific information, including (but not limited to) customer records, customer reports, transactional data and customer accreditations relating to the Divestment Products;
- (g) the following **Personnel**: all employees of the Divestment Business, subject to applicable labour laws (including employees listed in **Annex 12**), except as described in paragraph 4 below;
- (h) the following **Key Personnel**:
  - [...]
- (i) transitional services agreements, for a period of up to [...] after Closing, at cost and in such a manner as not to compromise the independence of the Divestment Business, to the extent required by the Purchaser:
  - (i) for the supply of IT services; and

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- (ii) for the supply of support services pertaining to the patents, know-how and other intellectual property rights used to develop, manufacture and sell the Divestment Products.
- 4. The Divestment Business shall **not** include:
  - (a) Nidec’s business, including all relevant employees, as specified in **Annex 13**, relating to battery-driven refrigeration compressors for use in mobile applications currently manufactured in the Nidec China Plant, including the two production lines used exclusively to produce those compressors, which will be moved on a timely basis to another Nidec plant; and
  - (b) Nidec’s business, including all relevant employees, as specified in **Annex 13**, relating to motors for washing machines, dryers and dishwashers currently manufactured in the Nidec Austria Plant and Nidec Slovakia Plant, including the three production lines used to produce those motors, which will be moved on a timely basis to another Nidec plant.
- 5. If there is any asset or personnel which is not covered by paragraph 3 of this Schedule, but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

**LIST OF ANNEXES**

<b>Annex</b>	<b>Description</b>
<b>1</b>	Organization Charts of Divestment Business
<b>2</b>	2018 turnover from sales of the Divestment Products by series
<b>3</b>	List of patents to be transferred to Purchaser
<b>4</b>	List of pending patents
<b>5</b>	List of patents to be licensed back to Nidec
<b>6</b>	Description of key pipeline products and pipeline projects
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<b>8</b>	List of suppliers of parts, components and materials to Divestment Business
<b>9</b>	Table of agreements with suppliers to Divestment Business
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<b>11</b>	Table of agreements with key customers of Divestment Business
<b>12</b>	List of Personnel in Divestment Business
<b>13</b>	List of excluded personnel

**Annexes 1-13**

[...]