

***Case No COMP/M.3235 -
TEIJIN / ZEON / JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 12/08/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.08.2003

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6.2 DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3235 – TEIJIN/ZEON/JV
Notification of 30/06/2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 30/06/2003 the Commission received a notification of a proposed concentration by which the undertakings Teijin Limited, (“Teijin”, Japan), and Zeon Corporation (“Zeon”, Japan), acquire within the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) joint control of the newly created joint venture undertaking RIMTEC Corporation (hereinafter “JV”) by way of transfer of assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Teijin is a Japanese company that is the ultimate parent company of a group of undertakings active in developing and marketing fibres. Its main activities encompass five business segments: (i) Fibres and textiles, (ii) Films and Plastics, (iii) Pharmaceuticals and Home Health Care; (iv) Machinery and Engineering and (v) New Products and Other Businesses which focus on new solutions and state-of-the-art materials in the IT sector;

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. With regard to DCPD RIM (dicyclopentadiene reaction injection moulding) products ², Teijin's operates in this sector through its wholly owned subsidiary, Teijin Metton. Teijin Metton holds 60% of the shares in MTN Chemicals, one of the parents of the joint venture Metton America Incorporated ("MAI"), which is also active in the DCPD RIM business. MTN Chemicals holds 60% of the shares in MAI. Teijin Metton also directly holds 25% of MAI's shares.
5. Zeon is a Japanese company that is active in the design, manufacturing and distribution of synthetic rubbers, synthetic latex, chemicals, medical equipment, environmental and civil engineering materials. Zeon is present in the DCPD RIM business. Its subsidiary Zeon RIM manufactures moulding. A second subsidiary Zeon Chemical Yonezawa manufactures the DCPD RIM formulation.

II. THE OPERATION AND THE CONCENTRATION

6. Teijin will contribute to the JV all of its interests in Teijin Metton except for Teijin Metton's 25 % share in MAI and 60 % share in MTN, which holds itself 60% of the shares of MAI. Zeon will contribute all of its DCPD RIM businesses. In the new company, Teijin will hold 40% of the shares and Zeon 60%. The notified transaction was approved by the Japanese Fair Trade Commission on 29 April 2003.
7. The matters that must be adopted by unanimous agreement of the joint venture partners include:
 - the adoption of proposals for budget;
 - the approval of the account statement;
 - the adoption of the medium and long term business plans;
 - the change of business purpose; and
 - all investments exceeding 100 million Yen (approximately EUR 700.000).

The parties will therefore jointly control the JV

8. The parties will provide the JV an exclusive license for worldwide manufacturing, use and sale of DCPD RIM. The JV will conduct the R&D necessary at its own expense and risk and all the results of the R&D shall belong to the JV. The JV will have direct access to the market as it will manufacture, process and sell DCPD RIM formulations and DCPD RIM moulded products. The JV agreement provides that RIMTEC company will have sufficient resources to operate on the market.
9. The agreement is proposed for an unlimited period and is intended to operate on a lasting basis, subject to the normal termination clauses.
10. It follows that the notified transaction concerns then the establishment of a joint venture performing on a lasting basis all the functions of an autonomous economic entity. The operation therefore constitutes a concentration within the meaning of Article 3(2) of the Merger Regulation.

III. COMMUNITY DIMENSION

² For explanation, see Section IV –Competitive Assessment.

11. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2.500 million³. (Teijin EUR 7.633 million, Zeon EUR 1.742 million). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and in each of these Member States the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million (Germany: Teijin EUR [...] million and Zeon EUR [...] million. UK: Teijin EUR [...] million and Zeon EUR [...] million. France: Teijin EUR [...] million and Zeon EUR [...] million). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million. (Teijin EUR [...] million, Zeon EUR [...] million). None of the undertakings concerned achieves more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

Relevant product market

12. RIMTEC, the joint venture, will produce DCPD RIM formulations some of which will be sold to third parties and some of which will be used by the company to manufacture moulded products. In the DCPD RIM process two streams of DCPD formulations, one containing the catalyst and the other an activator are mixed and injected into the mould. A chemical reaction takes place within the mould to produce a thermosetting polymer polydicyclopentadiene (PDCPD).
13. Products manufactured on the basis of DCPD RIM formulation are characterised by their high impact strength, heat resistance, stiffness and specific corrosion resistance, even at a very low temperature. These characteristics make them especially suitable for use in the construction and agricultural equipment (truck roof racks) as well as combined septic tanks for sewage, housing equipment (in particular drainage systems and medical equipment).
14. A first distinction can be made between the formulations and the moulded products. The formulations are intermediate products that are sold to moulders for further processing and can be clearly distinguished from the moulded products on the basis of their use, prices and customers.
15. The parties submit that the relevant product market concerned by the transaction is constituted by the market of high impact resistance polymers, including DCPD RIM and Sheet Moulding Compounds (“SMC”), a type of fibre reinforced plastic used in the Compression Moulding process, in which the plastic and the fibre are put together in the mould.
16. The parties argue that DCPD RIM and SMC belong to the same product market of high impact resistance polymers given its their characteristics, prices and final applications. It is claimed that DCPD RIM and SMC formulations are similar in terms of impact resistance, stiffness, weight, heat resistance and cycle time. The parties admit that DCPD RIM may be relatively less expensive although this advantage is, according to them, more than compensated by the fact that SMC is better known and established in the industry. The

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

parties add that the final applications, manufactured on the basis of DCPD RIM and SMC are quasi-identical.

17. Respondents in the market investigation point out further differences in the characteristics and confirm that DCPD RIM is more expensive than SMC. DCPD RIM is regarded as having better impact resistance than SMC; it is also indicated that SMC is difficult to dispose because of the existence of the glass fibre, whereas DCPD RIM is relatively easy to dispose because it can be burned without generating poison gases.
18. Additionally, the respondents to the market investigation underline the fact that the equipment required for SMC moulding activity is different from the equipment needed for moulding activity based on DCPD. Moulding equipment for SMC requires a higher investment and offers higher production capacity rendering it more suitable for larger production series. On the other hand, the equipment for the DCPD RIM moulding activity requires a lower initial investment and offers lower prices per unit for smaller production runs. It delivers then its economic advantages when it is used for small sizes orders. Moreover, switching activities is then not possible on the basis of the same equipment.
19. In consequence, it appears that DCPD RIM and SMC formulations are not regarded as substitutes by moulding companies although the moulded end products might be considered as substitutes for some end applications. There are therefore strong indications that DCPD RIM formulations and SMC formulations constitute separate product markets. However, it is not required to definitively define the market as the undertaking offered will remove any competition concern.
20. The JV will also be active in the manufacture and sale of moulded products produced on the basis of DCPD RIM formulations in Japan. However, the parents currently do not currently manufacture or sell moulded products in the EEA and the JV will not sell them either. It is not necessary to decide whether DCPD RIM mouldings constitute a separate relevant product market or whether they are part of a larger market, as the proposed operation will have no effect outside Japan.

Relevant geographic market

21. The parties submit that the relevant geographic market for a combined DCPD RIM and SMC formulations market is at least EEA wide.
22. All the material sold in Europe is imported [...]. DCPD RIM formulations are marketed under the “Telene” and “Metton” trademarks which belong to the intellectual property owners BF Goodrich Corporation and Hercules respectively.
23. B F Goodrich has licensed Zeon the right to manufacture and sell the DCPD formulation under its technology and the right to use the Telene trademark in Asia. Similarly B F Goodrich has licensed Noveon similar rights in Europe. Noveon is a former B F Goodrich division which is active in the production of advanced speciality chemicals. Noveon does not produce DCPD formulations itself but purchases its requirements from Zeon.
24. Hercules has licensed Teijin Metton the right to sell and manufacture under its technology and the right to use the Metton trademark in Asia. MAI was granted a licence for the USA and Europe. In Europe MAI sells its products though Nichimen Europe a direct subsidiary of Nichimen Corporation a Japanese general trading company.

25. The nature of these arrangements and particularly the restrictions placed on the various parties by the trademark limitations means that other parties not having the appropriate rights for Europe cannot sell DCPD formulations into Europe. This implies that the conditions of competition are different in Europe and that suppliers can discriminate between customers in Europe and those in other regions. This is confirmed by the fact that prices are different in the three main consuming areas, Europe, the Far East and the USA. According to the parties prices paid by moulders for DCPD RIM formulations are at least [10-30]% higher in the USA and [20-40]% higher in Europe than they are in Japan. Transport costs do not play a large part in these differences. On an equivalent FOB Japan basis the prices to moulders vary by [0-20]% in the USA and [20-40]% in Europe. The prices for sales to wholesalers in Europe and the USA differ by about [20-40]% on a delivered basis and by slightly more on an FOB basis. It should also be noted that sales in Europe and the USA are made through distributors (wholesalers) while in Japan both Teijin and Zeon sell direct to moulders.
26. It therefore appears that the conditions of competition in Europe are different to those in other regions and where market entry using either of the two existing proven technologies is not possible. The relevant geographic market for DCPD RIM formulations is therefore EEA or Europe wide. There are no significant sales outside the EEA.
27. In relation to the moulded products it should be noted that the parties do not produce or sell these products in Europe. Large moulded products such as septic tanks are extremely bulky and transport costs would exclude the possibility of intercontinental supply and in all likelihood limit the supply of mouldings to a restricted area surrounding the manufacturing site. It is not necessary to consider the precise definition of the relevant geographic market as the operation will have no effect in the EEA or in Europe.

Assessment

28. If we consider the parties' argument that DCPD RIM and SMC formulations form part of the same product market then the parties combined market share would be of the order of [0-10]% on an EEA-wide basis.
29. However, when the DCPD RIM formulation is considered separately, Zeon and Teijin are the only suppliers of the product in the EEA. Zeon (through its sales to Noveon) has a [30-40]% market share whereas Teijin, through its participation in MAI, has a [60-70]% market share. On this basis, the operation would raise serious doubts as to its compatibility with the common market as the parties would be able to raise prices for DCPD RIM formulations. SMC formulations would not be able to replace DCPD formulations in many applications. In any case to change formulation would require considerable capital expenditure and a transition period as different moulding machines are necessary. Finally it should be noted that DCPD formulations are suitable for short production runs as the costs of mould is much lower but the speed of production is also lower.
30. The activities of the JV are marginal compared to the total sales of Teijin and Zeon. The value sales of DCPD RIM formulation of Teijin and Zeon were approximately [0-10]% and [0-10]% of the sales of their total businesses respectively. Additionally, the parties do not have overlapping activities outside the scope of the JV. Any co-ordination effect deriving from the transaction is therefore excluded.

V. COMMITMENT

31. In order to remove the serious doubts resulting from the proposed transaction, Teijin has offered to the Commission a Commitment. The detailed text of the Commitment is

annexed and forms an integral part of this decision. Teijin commits to procure the divestiture of its 25% shareholding in MAI and its 60% shareholding in MTN to a suitable purchaser approved by the Commission. This undertaking will remove the horizontal overlap brought about by the notified transaction.

VI. CONCLUSION

32. The Commission concludes that the commitment is sufficient to address the serious doubts raised by this concentration. Accordingly, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89 subject to the condition of full compliance with the undertaking set out in the Annex to this decision.

For the Commission

Anna Diamantopoulou
Member of the Commission

Case M.3235 – Teijin/Zeon

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “*Merger Regulation*”), Teijin Metton Co., Ltd. (“*Teijin*”) hereby provides the following commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the creation of a full-function joint venture between Teijin Chemicals Limited and Zeon Corporation, notified on 30 June 2003, compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

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

This text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A - Definitions

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

Affiliated Undertakings : undertakings controlled by Teijin or Teijin Limited (the ultimate parent company of Teijin), including the notified joint venture, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of a concentration under the Merger Regulation.

Closing : the legal transfer of the Share Interests to the Purchaser(s).

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

Divestiture Trustee : one or more natural or legal person(s), independent from Teijin, who is approved by the Commission and appointed by Teijin and who has received from Teijin the exclusive trustee mandate to sell the Share Interests to the Purchaser(s) at no minimum price.

Effective Date : the date of adoption of the Decision.

Extended Divestiture Period : the period of [...] from the end of the Divestiture Period.

Hold Separate Manager : the person appointed to manage the day-to-day business of MAI and MTN until Closing under the supervision of the Monitoring Trustee.

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

Purchaser(s) : Nichimen and/or Maruzen, or any of their affiliated undertakings as the case may be, or any other undertaking independent of Teijin, approved by the Commission as acquirer(s) of the Share Interests in accordance with the criteria set out in Section D.

Share Interests : (a) the [...] shareholding of Teijin in Metton America, Inc., ("**MAI**") and (b) the [...] shareholding of Teijin in MTN Chemicals, Inc. ("**MTN**"). MAI is a joint venture, incorporated under the laws of Delaware, between (a) Teijin, (b) Nichimen America, Inc., ("**Nichimen**") which is a wholly owned subsidiary of Nichimen Corporation and (c) MTN Chemicals, Inc. ("**MTN**"). MTN is, in turn, owned by Teijin, Nichimen Corporation and Maruzen Petrochemicals, Co. Ltd. ("**Maruzen**"). More details about MAI and MTN are provided in the Schedule annexed to these Commitments.

Share Transfer Agreement(s) : the final sale and purchase agreement(s) entered into between Teijin and the Purchaser(s) for the transfer of the Share Interests to the Purchaser(s), approved by the Commission in accordance with Section D.

Teijin : Teijin Metton Co., Ltd. incorporated under the laws of Japan, with its registered office at 1-1, Uchisaiwaicho 2-chome, Chiyoda-ku, Tokyo 100-8585, Japan.

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

Section B - The Divestiture of the Share Interests

Commitment to divest

1. Teijin commits to divest, or to procure the divestiture of, the Share Interests to the Purchaser(s) before the end of the Divestiture Period on terms of sale approved by the Commission in accordance with the procedure described in paragraph 11. If Teijin has not entered into the Share Transfer Agreement(s) at the end of the Divestiture Period, Teijin shall grant the Divestiture Trustee an exclusive mandate to sell the Share Interests during the Extended Divestiture Period, on terms of sale and to one or more purchaser(s) approved by the Commission in accordance with the procedure described in Section D.
2. Teijin shall be deemed to have complied with the Commitments (a) if before the end of the Divestiture Period, or the Extended Divestiture Period, as the case may be, it has entered into the Share Transfer Agreement(s) with the Purchaser(s) on terms approved by the Commission in accordance with the procedure described in Section D and, (b) if the Closing takes place within a period not exceeding three months after the approval of the Purchaser(s) and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Teijin or any Affiliated Undertakings shall, for a period of ten years after the Effective Date, not acquire direct or indirect influence over MAI and MTN, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over MAI and MTN is no longer necessary to render the proposed concentration compatible with the Merger Regulation.

Section C - Related Commitments

Hold-separate obligations of Teijin

4. Teijin commits, from the Effective Date until Closing, to keep MAI and MTN separate from the businesses it or any Affiliated Undertakings are retaining and to ensure that MAI personnel – including the Hold Separate Manager – has no involvement in any businesses retained by Teijin or any Affiliated Undertakings and vice versa. Teijin shall also ensure that MAI personnel does not report to Teijin or any Affiliated Undertakings.
5. Until Closing, Teijin shall assist the Monitoring Trustee in ensuring that MAI and MTN are managed as a distinct entity separate from the businesses retained by Teijin. Teijin shall cause MAI to appoint a Hold Separate Manager who shall be responsible for the day-to-day management of MAI and MTN under the supervision of the Monitoring Trustee. Until Closing, the Hold Separate Manager shall manage MAI and MTN independently from Teijin 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 Teijin.

6. To ensure that MAI and MTN are held and managed as separate entities, Teijin's representatives in MAI and MTN shall give an irrevocable mandate to Nichimen and/or Maruzen in order to vote the Teijin shares in accordance with the best interest of MAI and MTN, as the case may be. Such irrevocable mandate will be given until the end of the Divestiture Period (and will be automatically extended until Closing if the Share Transfer Agreement(s) have been entered into at that time with Nichimen and/or Maruzen). If by the end of the Divestiture Period, the Share Transfer Agreement(s) has (have) not yet been entered into, Teijin will give an irrevocable mandate to the Monitoring Trustee to vote the Teijin shares in the best interest of MAI and MTN, as the case may be. The text of these mandates shall have to be approved by the Commission. For the avoidance of doubt, Teijin shall remain entitled to dividends and similar rights for as long as it remains a shareholder of MAI or MTN.
7. Upon request from MAI or the Purchaser(s), and solely in order to ensure that MAI shall continue to be an effective competitor in the marketplace, Teijin commits that it shall provide technical assistance to MAI. Such assistance will consist of [...]. This technical assistance will be provided on arms' length conditions and remuneration. Teijin's employee involved in providing this assistance shall not solicit or accept to receive any commercial information from MAI personnel. He shall only receive such confidential information as is strictly required for the exercise of the technical assistance and shall not disclose such information to any other personnel in Teijin or Affiliated Undertakings. For this purpose, Teijin's employee involved in providing this assistance shall enter into a proper confidentiality agreement.

Ring-fencing

8. Teijin shall implement all necessary measures to ensure that it 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 MAI and MTN. In particular, the participation of MAI and MTN in a central information technology network shall be severed to the extent possible, without compromising the viability of MAI and MTN. Teijin may obtain information relating to MAI and MTN which is reasonably necessary for the divestiture of its shareholding in MAI and MTN or whose disclosure to Teijin is required by law or paragraph 7 hereabove. Teijin will terminate as soon as possible any secondment of Teijin personnel.

Reporting

9. Teijin shall submit written reports in English on developments in the negotiations with regard to the divestiture of the Share Interests no later than ten days after the end of every month following the Effective Date (or otherwise at the Commission's request), until such time as Closing has taken place.

Section D - Approval of Purchaser(s) and the Share Transfer Agreement(s)

10. For the Purchaser(s) to be approved by the Commission, it (they) must:
- (a) be independent of, and unconnected to, Teijin, or any Affiliated Undertakings;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop MAI and MTN as a viable and active competitive force in competition with the joint venture between Teijin Chemicals Limited and Zeon Corporation and other competitors;
 - (c) reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Share Interests (the criteria for the purchaser set out in (a) - (c) hereafter the “*Purchaser Requirements*”).
11. The Share Transfer Agreement(s) shall be conditional on the Commission’s approval. When Teijin has reached an agreement with the proposed Purchaser(s), it shall submit a fully documented and reasoned proposal, including a copy of the Share Transfer Agreement(s), to the Commission and the Monitoring Trustee. Teijin must be able to demonstrate to the Commission that the proposed Purchaser(s) meet(s) the Purchaser Requirements and that the Share Interests are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the proposed Purchaser(s) fulfil(s) the Purchaser Requirements and that the Share Interests are being sold in a manner consistent with the Commitments.

Section E. Trustee(s)

Appointment Procedure

12. Teijin shall appoint a Monitoring Trustee to carry out the functions specified below. If no Share Transfer Agreement(s) is (are) entered into [...] before the end of the Divestiture Period or if the Commission has rejected the Purchaser(s) proposed by Teijin at that time or thereafter, Teijin shall appoint a Divestiture Trustee to carry out the functions specified below. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestiture Period.
13. The Trustee(s) shall be (a) independent of Teijin or any Affiliated Undertakings, (b) possess the necessary qualifications to carry out its (their) mandate, and (c) neither be nor become exposed to a conflict of interest. The Trustee(s) shall be remunerated by Teijin in a way that does not impede the independent and effective fulfilment of its (their) mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final

sale value of Share Interests, the fee should also be linked to a divestiture within the Extended Divestiture Period.

Proposal by Teijin

14. No later than one week after the Effective Date, Teijin shall submit to the Commission for approval a list of one or more persons whom Teijin proposes to appoint as the Monitoring Trustee. No later than [...] before the end of the Divestiture Period, Teijin shall submit to the Commission for approval a list of one or more persons whom Teijin proposes to appoint as Divestiture Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee(s) fulfil(s) the requirements set out in paragraph 13 and shall include:

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

Approval or rejection by the Commission

15. 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(s) to fulfil its (their) obligations. If only one name is approved, Teijin shall appoint, or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Teijin shall be free to choose the Trustee to be appointed from among the names approved. The Trustee(s) shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Teijin

16. If all the proposed Trustees are rejected, Teijin shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 13 and 14.

Trustee(s) nominated by the Commission

17. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate the Trustee(s), whom Teijin shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee(s)

18. The Trustee(s) shall assume its (their) duties specified below in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee(s) or Teijin, give any orders or instructions to the Trustee(s) in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

19. 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 the on-going management of MAI and MTN, taking into account that MTN is a holding company and not active in the market, with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Teijin 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 MAI and MTN, and the keeping separate of MAI and MTN from the businesses retained by Teijin or any Affiliated Undertakings, in accordance with paragraphs 4 and 5 of the Commitments;
 - ii. supervise the management of MAI and MTN as a distinct and saleable entity, in accordance with paragraph 5 of the Commitments;
 - iii. in consultation with the Hold Separate Manager, determine all necessary measures to ensure that Teijin 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 MAI and MTN, in particular decide on the severing of MAI's and MTN's participation in a central information technology network to the extent possible, without compromising the viability of MAI and MTN, and decide whether such information may be

disclosed to Teijin as the disclosure is reasonably necessary to allow Teijin to carry out the divestiture or as the disclosure is required by law;

- (c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (d) propose to Teijin such measures as the Monitoring Trustee considers necessary to ensure Teijin's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of MAI and MTN, the holding separate of MAI and MTN and the non-disclosure of competitively sensitive information (without prejudice to paragraph 7 above);
- (e) provide to the Commission, sending Teijin a non-confidential copy at the same time, a written report within 15 days after the end of every month; the report shall cover the operation and management of MAI and MTN so that the Commission can assess whether it is held in a manner consistent with the Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Teijin a non-confidential copy at the same time, if it concludes on reasonable grounds that Teijin is failing to comply with these Commitments;
- (f) during the Extended Divestiture Period, review and assess potential Purchaser(s) as well as the progress of the divestiture process and verify that potential Purchaser(s) receive sufficient information relating to MAI personnel, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and that potential Purchaser(s) are granted reasonable access to MAI personnel;
- (g) once Teijin has proposed to the Commission, during the Extended Divestiture Period, potential Purchaser(s), within one week after receipt of the proposal referred to in paragraph 11, assess the independence and suitability of the proposed Purchaser(s) and the viability of MAI and MTN after the sale to the proposed Purchaser(s) and give its opinion to the Commission as to whether the Share Interests are sold in a manner consistent with the Commitments.

Duties and obligations of the Divestiture Trustee

20. Within the Extended Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Share Interests to one or more Purchaser(s), provided that the Commission has approved both the proposed Purchaser(s) and the Share Transfer Agreement(s), in accordance with the procedure laid down in paragraphs 10 and 11. The Divestiture Trustee shall include in the Share Transfer Agreement(s) such terms and conditions as it considers appropriate for an expedient

sale in the Extended Divestiture Period. In particular, the Divestiture Trustee may include in the Share Transfer Agreement(s) 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 Teijin, subject to Teijin's unconditional obligation to divest at no minimum price in the Extended Divestiture Period.

21. In the Extended 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 fifteen days after the end of every month with a simultaneous non-confidential copy to Teijin.

Duties and obligations of Teijin

22. Teijin shall provide, and shall cause its Affiliated Undertakings or advisors to provide, the Trustee(s) with all such co-operation, assistance and information as the Trustee(s) may reasonably require to perform its (their) tasks. The Trustee(s) shall have full and complete access to information required to exercise its (their) functions (e.g., books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments) and Teijin shall provide the Trustee(s) upon request with copies of any document. Teijin, and MAI shall make available to the Trustee(s) one or more offices on their premises and shall be available for meetings in order to provide the Trustee(s) with all information necessary for the performance of its (their) tasks.
23. Teijin shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of MAI and MTN. This shall include all administrative support functions relating to MAI and MTN which are currently carried out at headquarters level.
24. Teijin shall grant, or procure Affiliated Undertakings to grant, comprehensive powers of attorney, duly executed, to the Divestiture Trustee (a) to effect the sale, 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, and (b) to represent Teijin's interests in MAI and MTN, as the case may be. Upon request of the Divestiture Trustee, Teijin shall cause the documents required for this purpose to be duly executed.
25. Teijin shall indemnify the Trustee(s) and its (their) employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless and hereby agrees that an Indemnified Party shall have no liability to Teijin 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(s), its (their) employees, agents or advisors.

26. At the expense of Teijin, the Divestiture Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Teijin'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 Teijin refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Teijin. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 25 shall apply mutatis mutandis. In the Extended Divestiture Period, the Divestiture Trustee(s) may use advisors who served Teijin during the Divestiture Period if the Divestiture Trustee(s) consider(s) this in the best interest of an expedient sale.

Replacement, discharge and reappointment of the Trustee(s)

27. If the Trustee(s) ceases to perform its (their) functions under the Commitments or for any other good cause, including the exposure of the Trustee(s) to a conflict of interest:

- (a) the Commission may, after hearing the Trustee(s), require Teijin to replace the Trustee(s); or
- (b) Teijin, with the prior approval of the Commission, may replace the Trustee(s).

28. If the a Trustee is removed according to paragraph 27, the Trustee may be required to continue in its function until a new Trustee is in place, and to whom the Trustee will effect a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 12-17.

29. Besides the removal according to paragraph 27, the Trustee(s) shall cease to act as Trustee only after the Commission has discharged it (them) from its (their) duties, after all the Commitments with which the Trustee(s) has (have) been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee(s) if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F - The Review Clause

30. The Commission may, where appropriate, in response to a request from Teijin showing good cause:

- (i) GRANT AN EXTENSION OF THE TIME PERIODS FORESEEN IN THE COMMITMENTS, OR

1.
 - (ii) WAIVE, MODIFY OR SUBSTITUTE, IN EXCEPTIONAL CIRCUMSTANCES, ONE OR MORE OF THE CONDITIONS AND OBLIGATIONS IN THESE COMMITMENTS.

2. WHERE TEIJIN SEEKS AN EXTENSION OF A TIME PERIOD, IT SHALL SUBMIT A REQUEST TO THE COMMISSION NO LATER THAN ONE MONTH BEFORE THE EXPIRY OF THAT PERIOD, SHOWING GOOD CAUSE. ONLY IN EXCEPTIONAL CIRCUMSTANCES SHALL TEIJIN BE ENTITLED TO REQUEST AN EXTENSION WITHIN THE LAST MONTH OF ANY PERIOD.

- 3.

4. BRUSSELS, 4 AUGUST 2003
duly authorised for and on behalf of Teijin:

.....
Thomas Franchoo

Schedule

1. MAI

Metton America, Inc. (“*MAI*”) is a Delaware corporation having an office and plant at 2727 Miller Cut-Off Road, La Porte, Texas 77571.

MAI has the following shareholders:

- Teijin Metton Co., Ltd.: [...] of the shares;
- MTN Chemical, Inc.: [...] of the shares;
- Nichimen America, Inc.: [...] of the shares;
- Retirement of stock: [...].

MAI is active only in the manufacture and sale of DCPD RIM formulation under the Metton brand name. MAI also provides direct moulder support for moulding and secondary operations, tool design, liquids process control, adhesives, paint, etc.

To this effect MAI holds a license to manufacture and sell DCPD RIM formulation under the Metton brand from Hercules, Inc.

Currently, MAI has 14 employees. MAI distributes its products in North America. In Europe, MAI’s products are distributed by Nichimen Europe (Metton Europe), based in Düsseldorf, Germany.

2. MTN

MTN Chemicals, Inc. (“*MTN*”), is a Delaware corporation having an office at Three Riverway, Suite 1620, Houston, Texas 77056.

Currently, MTN has the following shareholders:

- Teijin Metton Co., Ltd.: [...] of the shares;
- Maruzen Petrochemicals Co., Ltd.: [...] of the shares;
- Nichimen Corporation: [...] of the shares.

MTN is a holding company for MAI. It has no employees and is not active in the market.