EN

Case No COMP/M.4750 - LUVATA / ECO

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 03/08/2007

In electronic form on the EUR-Lex website under document number 32007M4750

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03-VIII-2007

SG-Greffe(2007) D/204927

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.4750 - LUVATA/ ECO
Notification of 18/06/2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 18.06.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("The Merger Regulation") by which the undertaking Luvata. S.a.r.l. ("Luvata", Luxemburg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of Eco S.p.A ("Eco", Italy) by way of purchase of shares.

I. THE PARTIES

2. *Luvata* is a company active in metal fabrication, component manufacturing and related engineering and design services with a focus on copper and copper alloy products used for heat transfer, electrical and electronics conductivity, signal transmission and corrosion resistance. Luvata is owned by the Jersey-based investment fund Nordic Capital.

3. *Eco* is an Italian manufacturer of heat exchange products such as coils. It is currently the property of the private equity fund Compass.

II. THE OPERATION AND THE CONCENTRATION

4. On May 25 2007, Luvata signed a purchase agreement to acquire sole control of Eco[2]. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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1 OJ L 24, 29.1.2004 p. 1.

2 The value of the notified transaction is approximately EUR [...] million.

III. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 2 500 million (Luvata: EUR [...] million; Eco: EUR [...] million). The Community-wide turnover of each undertaking concerned is more than EUR 100 million (Luvata: EUR [...] million; Eco: [...] million). The combined turnover of the two undertakings concerned is more than €100 million in at least three Member States (e.g. [...], [...] and [...]), where each undertaking achieves a turnover of more than EUR 25 million. Neither Luvata nor Eco achieves more than two thirds of its turnover in one and the same Member State. Therefore the notified operation has a Community dimension within the meaning of Article 1(3) of the EC Merger Regulation.

IV. RELEVANT MARKETS.

A. Products

Product Description

6. The parties' activities overlap in the manufacturing and marketing of so-called coils used in thermodynamic systems. This type of products has never been examined by the Commission[3].

7. Coils are heat exchangers, that is, systems that transfer heat from one fluid (or gas) to another fluid (or gas) without mixing the two. Both parties manufacture and market coils with copper tubes and aluminium plates. However, other types of coils exist on the markets such as steel coils but the use of these coils is limited in the markets where the parties are active.

8. The coils manufactured by the parties are basically bended copper tubes put together with parallel plates (or fins) of aluminium and linked with brazed ends. An inlet and outlet system is added to let the desired fluid flow through the copper circuit. The second fluid flows along the aluminium fins. According to the notifying party, the name "coil" would come from the copper-made serpentine tubing of the products.

9. The geometry of coils and therefore their thermodynamic properties vary with the application. The geometry features include the diameter of copper tubes, the tube layout[4], the profile of aluminium fins[5], as well as other features such as those indicated in the below drawing: number of rows, fin spacing, etc. Depending on the complexity of the geometry and the size of production lots, the price can be as low as EUR 10/piece but can also reach EUR 20000/piece.

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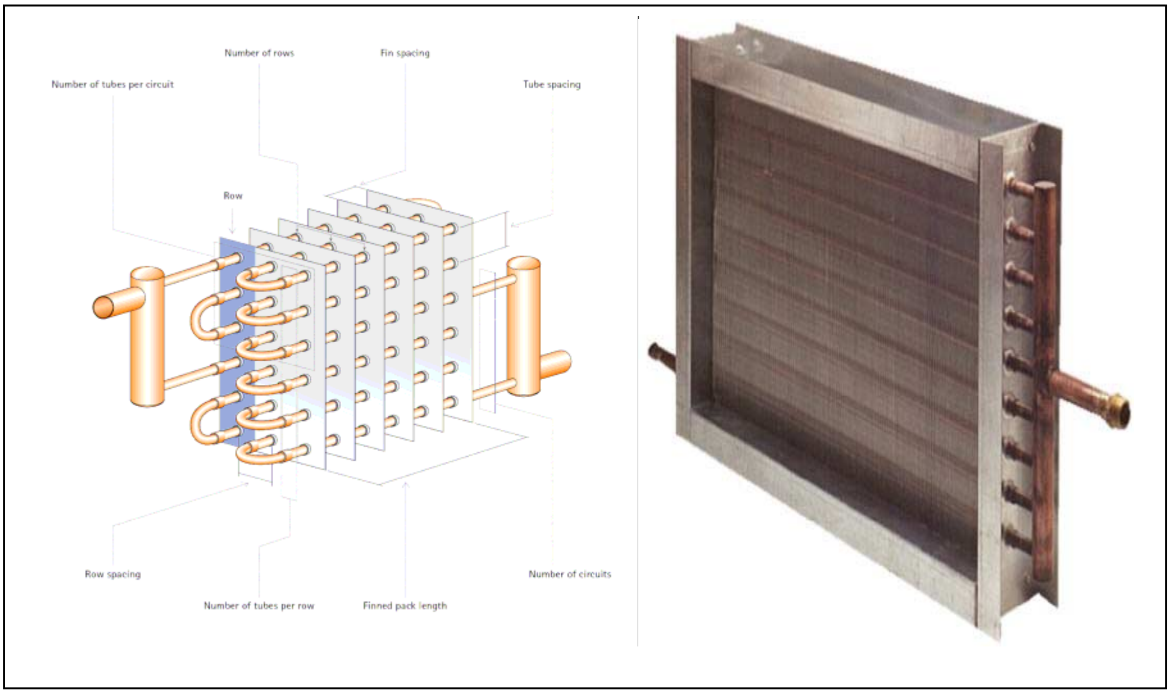
[3] The proposed transaction includes vertical links (copper tubes for coils and coils for coolers) but does not give rise to affected markets.

[4] Two rows can be staggered, in-line, etc.

[5] The fin can be louvered, waved, etc.



10. All copper-aluminum coils are broadly manufactured according to the same production process[6]. First, as mentioned above, copper tubes are cut and bended into copper "hairpins". Aluminum fins with the desired surface and hole geometry are produced from aluminum rolls that are unwound, cut and punched (with fin presses and dies). Fins are then mounted in frames and copper tubes are inserted in these frames, which go through an expansion machine that expands the diameter of copper tubes. Tube diameter expansion is necessary to create a strong and permanent link between copper and aluminum, and ensures a good quality of heat transfer. After this production step, return bends are attached and brazed to the open part of the copper "hairpins". Finally, the final product quality, and in particular the absence of leaks, is tested with helium and water.

11. It should however be noted that the degree of automation of coil production can vary and depends on batch and coil sizes as well as the complexity of the coil geometry. In particular, coils can be more or less commoditized and orders of only a dozen coils or less is not uncommon. On top of this varying commoditization/sophistication degree, coils distinguish themselves by their overall size as very large coils require special handling and production lay-out. As a result, large batches of small coils would be typically produced with vertical expanders (used to expand tube diameters) and be subject to automated brazing. Small batches of large coils are produced with horizontal expanders and are manually brazed.

12. The coils marketed by the parties are used in the following main applications: commercial refrigeration systems; commercial heating, ventilation, air-conditioning (commercial ”HVAC”) systems; residential HVAC systems (small air-conditioning

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[6] For a detailed account of the coil production process with pictures, see for example http://www.xchanger.com/manufacturing.htm

and heating units); mobile systems (air-conditioning in vehicles); and industrial systems (e.g. industrial chillers).

13. The main overlap of sales occur on coils for commercial refrigeration systems (vending machines, beverage dispensers, tranport refrigeration units) and for commercial HVAC systems.

14. Commmercial refrigeration systems remove heat from the air and allows to create environments with low or freezing temperature for food/beverage storage. They are made up of a cold part (evaporator side) and a warm part (condenser side). In the cold part of the system—placed where perishable goods are stored—cold water runs in coil copper tubing and cools the air that flows through aluminum fins. In the warm part—that can be placed outside—hot water/vapor is cooled by the ambient air and heat is therefore expelled from the system. Both parts of refrigeration systems require coils.

15. Commercial refrigeration systems can be distinguished according to their end-application: reach-in/walk-in/bootle cooler; showcase; vending machines; ice machine; transport; and condesing units/air cooled condensers[7] (the latter application representing the warm part of refrigeration systems).

16. HVAC systems are used to provide reasonable air quality and temperature. The systems where coils are used can be broadly sorted in four categories: chillers and rooftops; air-handling units; fan coils/terminal units; and heating.

17. Other applications—where Luvata is marginally active—are mobile air-conditioning systems (evaporators and condensers for the automotive industry, heavy vehicles, buses, off-highway; generally for the purpose of providing AC to passengers) and industrial applications (very specific coils used for example for telecommunications or energy applications such as industiral chillers, close control coils, cleanable coils, etc.).

Product market definition

18. The notifying party submits that the relevant product market is the *market for coils* comprising all applications and that it is not relevant to make a distinction with respect to the features or the end-application of coils.

19. According to the notifying party, coil manufacturers are able to manufacture any kind of coil upon the specifications provided by their customers and there is no specific technical know-how attached to a given type of coils. The cost and selling prices of products do not depend on the application but rather on their size and characteristics. As regards a possible distinction according to the end-applications, the notifying party has also provided examples of occurences where the same production line was used to produce coils for different end applications.

20. However, the results of the market investigation do not enable the Commission to endorse this view.

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7 In this decision, condensing units refer to the broader category of condensers encompassing not only condensing units, but also air-cooled condensers and power packs.

21. First, as regards the difference between HVAC and refrigeration, it was recognized by the respondents to the market investigation that neither of these two applications require a specific know-how. However, in practice, with the exception of Eco, which is the largest manufacturer on the European market with 6 plants and is able to produce virtually all types of coils, other competitors specialize in specific applications and adapt their production machinery (in particular, the dies used to manufacture aluminum fins) and organization accordingly. As one customer active in the supply of refrigeration systems reported, coil manufacturers are specialized by application and they "*do not manufacture the same range of products. Capacities and equipements are different. For example, (...) uses 7mm tubes coils and only a few manufacturers have invested in this kind of equipment"*[8].

22. The specialization of coil manufacturers and their different focuses may be illustrated by the case of Luve-Contardo. While Luve-Contardo is a major market player as a supplier of coils for refrigeration systems (with an overall market share of [20-30]%), it only marginally supplies coils for HVAC systems. Conversely, Sierra, a coil manufacturer which belongs to the same group as Aermec, a producer of HVAC systems, devotes most of its coil production to HVAC systems and makes few sales of coils for refrigeration applications.

23. Furthermore, competition conditions on the supply of coils for refrigeration systems and HVAC systems are not homogeneous also due the fact that the magnitude of in-house production differs across the two applications. Indeed, while captive sales amount to [30-40]% of the total market (merchant and captive markets) in HVAC, it only accounts for [10-20]% of the total production of coils for refrigeration systems. According to the notifying party, this would stem from the facts that the "*commercial refrigeration segment consists of a large variety of equipment operating in two temperature ranges (food preservation & freezing) and is highly fragmented. These two factors make coil standardization across a broad range of products difficult and financially unattracitve. Customers are better served buying from a coil manufacturer that offers a wide variety of coil tube sizes and tube patterns optimizing the coil design for each specific application.*"[9]

24. Hence, the lack of homogeneity in the competitive environment between the supply of coils for refrigeration systems and the supply of coils for HVAC systems warrants to make the distinction between the two applications in the definition of markets.

25. In addition, a further segmentation has to be implemented within the refrigeration segment. As mentioned above, there are several different applications: condensing units/air cooled condensers (warm part of refrigeration systems), vending machines, bottle coolers, showcases, and transport.

26. Customers active in refrigeration explained that coils for condensing units are different from coils for other applications. They are more commoditized products, ordered in larger series (40-50 coils on average), whereas coils for other refrigeration applications, such as showcases are more customised subject to average batches of 8-9

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8 Questionnaire to customers, response to question 7

9 1st questionnaire to the Parties, response to question 19

coils[10]. Thus, as explained above in the description of production processes, coils for condensing units and air cooled condensers require specific machinery and automation to efficiently manufacture these coils in large quantities. As explained below in the competitive assessment, both Luvata and Eco have the required equipment to meet this demand.

27. The parties have provided explanations on the differences in the manufacturing between coils for condensing units/air-cooled condensers and evaporators used e.g. in display cases: "*The difference in refrigerant circuitry and fin density makes evaporators generally more complex (more complex headers, multi-inlet tubes, distributors with capillary tubes, larger and modular fin distance; fins are often louvered and sometimes coated (...). Condensers could also be complex, but on average they are simpler as per their manufacturing*."[11]

28. While [...] Luvata's sales in the refrigeration segment are coils for condensing units as its plant in the Czech Republic is adapted to the production of this kind of coils, some other coil manufacturers (e.g. Luve-Contardo) have adopted the opposite strategy consisting in the production of evaporators for example for large systems such as display cases.

29. As regards HVAC (air-conditioning), the other application with a non-negligible overlap, a narrower segmentation appears less obvious. Most customers buy coils for most HVAC applications (that is, air-handling units, chillers/rooftops, heating, and fan coils), even though, according to the notifying party, coils for air-handling units can be seen as specific enough to justify the existence of "*niche producers*" specialized in this production[12]. In any case, the possible distinction among the different applications of the HVAC segment does not alter significantly the competitive assessment.

30. In conclusion, the competitive assessment of the proposed transaction is made on the markets for condensing units/air-cooled condensers on one hand and, on the other hand, on the market for HVAC (taking into account the possible existence of markets for specific HVAC applications). Markets for coils for refrigeration systems other than condensing units, for mobile air-conditioning, and for industrial applications are also examined.[13]

B. Geographical Scope

31. As regards the geographic market definition, the market investigation confirmed the submission of the parties, that is, that the markets are European-wide in scope.

10 See for example questionnaire to the Parties, response to question 3 from Luvata

11 2nd questionnaire to the Parties, response to question 4.

12 1st questionnaire to the Parties, response to question 17 from Eco: *"(...) more complex coils may face competition of niche producers (such as [Luve] in static coils and Hombach in relation to Air-handling units)*"

13 Residential HVAC systems are now produced in Asia. Consequently, coils for this application are also produced in Asia.

32. First, the scope of the market appears clearly broader than national. As explained by the notifying party and confirmed by the market investigation, while coils have to be handled with great care due to the fragility of aluminium fins, transportation costs among Member States remain reasonable. There exist no specific distribution networks and sales-forces have a very limited scope. Finally, there are no national preferences.

33. On the other hand, the market cannot be defined wider than EEA-wide. First, customers explained that, as aluminium fins get deformed very easily, the longer the transportation, the higher the risk to receive a damaged product. Second, transportation costs (to which customs duties have to be added) become prohibitive and the European demand for coils is met in its vast majority by European production. Coils that would be imported by container from the Far-East such as China require extra handling and therefore specific wrapping compared to coils merely transported by trucks from their production sites to customers. Third, coils produced in less developed countries are more likely to be damaged by transportation due to the bad shape of roads in these countries.

34. Moreover, most customers of coils require very short lead times from their suppliers as they have very little visibility with respect to their prospective sales despite the short-delivery requirements they have to abide by. Consequently and in a similar way, coil suppliers have to produce and distribute their coils in a very short period of time. According to the parties, "*typical lead-times would vary from 2 to 6 weeks (extremes being a few days to a few months) depending on the customer's operational practises (...)*". The parties add that "*clearly, the shorter the delivery time, the more positive the clients' response will be*" [14]. As a result, and also for this reason, coil manufacturers located in Asia cannot be a satisfactory alternative for coil customers. Furthermore, the quality of coils found outside of Europe does not necessarily match European customer requirements. It has for example been reported that producers in Asia may use copper and aluminium of lower quality and produce coarsely finished coils not necessarily geared to the more stringent requirements in Europe.

35. Thus, in accordance with the submission of the notifying party, markets for coils can be considered as EEA-wide in scope.

V. COMPETITIVE ASSESSMENT

36. The price of coils can represent up to 30-35% of the total cost of a condensing unit or of an air-conditioning system. As a result, customers are generally sensitive to coil prices and, in the course of the market investigation, many manufacturers of condensing units and to a lesser extent of HVAC systems have expressed fears about the effect of the proposed transaction on prices.

A. Market for coils for condensing units

37. In the absence of any independent study, the notifying party was able to provide market shares only for Luvata and Eco: the market size would be roughly EUR [40-

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14 1st questionnaire to the Parties, response to question 5

60] million and the combined market share of the new entity would be [45-55]% (Luvata: [15-25]%, Eco: [25-35]%). The Commission estimates that the next competitor would be Luve with around [20-30%] of the market[15]. The rest of the market would be made up of smaller producers.

38. Customers—especially large ones—have explained to the Commission that they would be significantly impacted by the proposed transaction and some of them report that they already have provisioned price increases in their accounts following the announcement of the deal. These customers currently make Luvata and Eco play against each other and do not see any alternative in Europe.

39. In fact, these large customers have purchasing criteria (low prices, reliable quality testing, delivery time, capacity, ability to produce coils with different tube diameters) that can only be fulfilled by Luvata and Eco.

40. As mentioned above, and as regards the ability to produce and deliver economically, quickly, and reliably large batches of coils, Luvata and Eco have made the necessary investments to be able to meet this demand, which requires a very efficient, low-cost oriented production process.

41. Other market players have a different positioning. While the parties' coils are made out of copper tubes and aluminium fins, ¾ of Luve's production is accounted for by coils in steel. Steel coils are technically different from aluminium-copper coils and have therefore other thermodynamic properties. Customers explained that these coils are very peculiar and that they choose aluminium-copper coils unless they have specific requirements from their clients. These differences make Luve's steel coils remote substitutes to the parties' copper-aluminium coils[16]. As for Luve's copper-aluminium coils, their sales represent only 5% of the total market and Luve reported that it currently focuses its business on more profitable segments of the refrigeration application (such as 10-meter condensers placed on rooftops of supermarkets).

42. It should also be noted that Luve-Contardo is also active in the downstream market for the supply of condensing units and air cooled condensers, and customers of Luvata and Eco are therefore reluctant to depend to a too large extent on Luve, which is also their competitor.

43. As regards smaller players, their production processes are usually not fitted to long series production. While a customer can resort to them to make up for small ancillary orders, they are not capable of producing large quantities of coils for condensing units at a price comparable to that of Eco or Luvata: customers, who are generally sophisticated and actively looking for alternatives, reported that they receive quotes from alternative suppliers with prices that can be 20-30% higher than prices of Eco and Luvata.

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15 See minutes of the conference call with Luve, carried out in accordance to Article 11(7) of the Merger Regulation.

16 Furthermore, from an economic point of view, steel coils are still more expensive than comparable copper-aluminium coils despite the recent increase in copper prices.

44. Consequently, Eco and Luvata are clearly not only the closest competitors on the market for coils for condensing units but they are also considered by large customers as the only ones to compete effectively. As explained by one customer, "*the market has suffered from major price increases of raw material (copper and aluminium) for the last two years (...). The only lever available to limit this price increase is to make Luvata and Eco play against each other, which is something we have done for years*".[17]

45. Furthermore, the market investigation revealed that customers could not easily manufacture themselves the coils that they currently source from Eco and Luvata. Many customers (who manufacture motors (or compressors) that are then linked to condensers to form condensing units) do not have any expertise in this realm. Those customers who have an internal production explained that they would rather continue to source outside even at a higher price than step up internal production due to significant space, inventory management and return on equity constraints. Indeed, outside sourcing enable these customers to limit their quantity of stocks (and thus their working capital requirements) and to avoid having idle assets in times of low demand.

46. As a result, the takeover of Eco by Luvata would remove the only serious constraint that the parties have for not applying higher prices.

47. The notifying party has argued that despite this finding, competition concerns were not justified for a number of reasons[18]. First, there would be a large supply-side substitutability as a specific production line (and in particular a specific die) is usually used for the production of coils in different applications and a given coil can be used in several applications. Second, the parties argue that customers switch suppliers with relative ease. Third, barriers to entry would be low. Fourth, smaller players appear to be able to grow into larger players. Finally, Asia could become a real alternative for customers in the future as the example of residential HVAC would show.

48. As regards supply-side substitutability, it is true that there is in theory no major technical hurdle that would prevent competitors from switching their present production to the production of coils for condensing units. However, as explained above, while the production of coils remains broadly the same irrespective of the coil end-application, the production of coils for condensing units and air-cooled condensers—done in large batches—is more automated than the production of more complex coils and requires therefore a specific production organization. In other terms, being a competitive producer of coils for condensers crucially depends on good cost engineering and economies of scale, which is not the case of other coils. As emphasized by Eco in one of its responses, the economics of the commoditized coil production is different: "*It is not true that commodity-like products have always lower margins, as they may take advantage of economies of scale (...) in relation to longer production runs while more complex coils may face competition of niche producers*".[19] The difference in the production organization is also illustrated by the

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17 Powerpoint presentation submitted by this customer on June 29, 2007, slide 15

18 McKinsey report, July 9, 2007

19 1st questionnaire to the Parties, response to question 5

comments given by Luvata on the different organization of its two European plants (one plant is located in Prague, Czech Republic, the other in Torreglia, Italy): "*Torreglia is not currently well equipped to handle mass production (*[…]*). With the current organization, Torreglia can produce condensing units coils (as virtually all coil suppliers on the market as condensing units coils require very standard fin patterns) but it is not competitive against suppliers with a more adequate production organization to supply condensing units coils (such as the Prague factory). A remodelling of the lay out and investment in new equipment would be necessary for Torreglia to be able to handle orders similar to the ones handled from Prague today in a competitive manner.*[20]"

49. As regards the relative ease in supplier switching, the Commission notes that Luvata submitted quantitative evidence in support of this argument but for customer of any type of coil and not specifically of coils for condensing units. To the contrary, as explained above, producers of condensing units have indicated to the Commission that they would face a lack of alternative suppliers should the proposed transaction be implemented.

50. As regards the arguments that barriers to entry and expansion are low, they do not seem to be sufficient and strong enough to remove competition concerns at this stage. First, as the notifying party rightly points out, an entry would not be sufficient in itself. It is true that there are no major technical hurdles to start producing coils and there are indeed numerous manufacturers of coils on the market. However, many manufacturers typically produce limited quantities of coils in small batches devoted to niche players in the refrigeration market, which is itself very fragmented. The more relevant question whether a player could expand and play in the near future a role similar to Luvata's is however difficult to answer and the information gathered in the course of the first phase investigation suggests that no current player would have the incentive to do so. Indeed, as explained above, the manufacturing of coils for condensing units is very specific and suppliers other than Luvata and Eco have indicated to the Commission their current focus on value-added engineering rather than cost engineering. Furthermore, in view of the production cost figures provided by the notifying party[21], it is not clear to what extent such an entry would be profitable.

51. Finally, it appears that it would be highly speculative to ascertain that the productions of condensing units and therefore of coils for condensing units would follow the footsteps of residential HVAC and move to Asia in the near future. As explained above, while it cannot be excluded that a very small share of the production could be moved to Asia, the lack of standardization and lead time requirements in the markets make the move to Asia of this part of the coil industry very difficult and rather unlikely.

52. Thus, in view of the above, at this stage, it appears that the new entity would be able to significantly increase prices as their competitors are currently more expensive and there appears to be no strong enough constraints to rein in such price increases. It

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20 4th questionnaire to the Parties, response to question 15

21 Slide 8 of the McKinsey report.

appears therefore that the proposed transaction would significantly impede effective competition in the Common market.

B. Markets for HVAC systems

53. According to the parties' estimates, the market shares on the possible market for HVAC applications (the merchant market would amount to EUR [205-225] million of sales) are the following: Eco ([20-30]%); Luvata ([5-10]%); Sierra ([5 -15]%), RTV Roen ([5-10]%). As explained above, there is an important in-house production (EUR 127 million)[22].

54. If markets for each HVAC application were to be considered, the market shares would be the following (the parties are not able to give the market shares of their competitors):

	Luvata	Eco	**Combined**	Market size (MEUR)
Air-handling units	[0-5]%	[10-20]%	**[15-25]%**	[60-80]
Chillers/rooftops	[5-10]%	[10-20]%	**[20-30]%**	[70-90]
Fan coils	[30-40]%	[5-10]%	**[35-45]%**	[25-45]
Heating	[0-5]%	[35-45]%	**[35-45]%**	[20-40]

55. While the market positions of the new entity (and the overlap brought about by the proposed transaction) as well as the magnitude of the in-house production do not point to the existence of competition concerns, some customers complained about the merger with similar concerns than those of customers of coils for condensing units and expressed the view that Luvata and Eco were the only credible suppliers on the market. Customers also indicated that they do not get good prices from Sierra as they are in direct competition with this company in downstream markets for air conditioning. Furthermore, these customers would not be in a position to increase/start internal production for coils as it would not be economically feasible. However, complainants recognize that Eco is much stronger than Luvata, and that the latter was becoming only a nascent (yet credible) alternative on the market (which would explain the reaction of these customers despite the relatively limited combined market share of the new entity). In addition, ¾ of the respondents to the market investigation did not complain.

56. However, it is difficult to completely exclude the existence of competition concerns, not least because the parties' estimates are broad estimates and it can be not excluded that the parties' market position could be more important. Furthermore, it cannot be excluded that there exists a more commoditized part in the HVAC segment on which the parties have strong market positions and which would encompass coils for small chillers, fan coils, and heatings. Indeed, very larger chillers, rooftop chiller or air-handling units appear to be specific applications. However, the notifying party has no data to submit that would enable to make the distinction between the commoditized part of the market and the more sophisticated one.

22 Estimates of the parties

57. In any case, the Commission notes that almost all customers who expressed concerns about the proposed transaction purchase their coils from Luvata's plant in the Czech Republic. Thus, the remedy proposed by the notifying party (see below) would remove any potential competition concern in the market for HVAC applications and the question whether the proposed transaction would significantly impede effective competition can therefore remain open.

C. Other markets

58. Other markets do not give rise to competition concerns. As for the refrigeration systems other than condensing units, either Luvata's position is marginal (reach-in/ walk-in/bottle cooler[23]; vending and ice machines[24]; transport[25]) or both manufacturers have marginal positions (e.g. in display cases: Luvata: [5-10]%; Eco: [5-10]%).

59. As for applications other than refrigeration and HVAC, the market shares of the parties are the following (parties' estimates):

	Luvata	Eco	**Combined**	Competitor 1	Competitor 2	Competitor 3	Market Size (MEUR)
Mobile	[0-5]%	[30-40]%	**[30-40]%**	[0-5]% (Sierra)	[0-5]% (Modine)	[0-5]% (Luve)	[55-75]
Industrial	[0-5]%	[25-35]%	**[25-35]%**	[0-5]% (Luve)	[0-5]% (Sierra)	[0-5]% (RTV Roen)	[85-105]

60. As can be seen from these figures, Luvata makes very limited sales of coils produced for mobile and industrial application and the delta HHI for these two markets would remain below 150. Accordingly, the Commission has received no complaints from customers active in the industrial applications. As for mobile applications, few customers expressed concerns but did not explain to the Commission why the proposed transaction would remove an important alternative and other respondents did not share these concerns[26].

61. Thus, the Commission is of the view that the proposed transaction is unlikely to significantly impede effective competition on the markets for coils for refrigeration systems other than condensing units, for coils for mobile applications, and for coils for industrial applications.

[23] Luvata: [0-5]%; Eco: [35-45]%

[24] Luvata: makes no sales

[25] Luvata makes no sales

[26] In any case, the Commission notes that these two customers buy coils from Luvata's Czech plant and the proposed remedy should therefore remove their concerns.

C. Other issues raised by market respondents

62. In their response to the market investigation, competitors have not expressed concerns on the effects of the merger on competition on the markets for coils. However, some of them have expressed the fear that the new entity would have access to raw material (in particular copper) at a better price due to the alleged links of Luvata with the copper manufacturer Outokumpu.

63. This concern should be discarded. While it is true that Luvata sells copper tubes, it does not sell any tube in Europe, not even to its own plants. Indeed, according to the notifying party, copper tubes used in its European plants are purchased from third parties. Furthermore, while Luvata was acquired by its current owner, Nordic Capital, from Outokumpu, the copper tube business of Outokumpu remained the property of the latter and thus, Outokumpu's copper tube business and Luvata are independent of each other.

64. Another customer explained that coils based on a specific technology currently used in the automotive industry, the micro-channel technology, would likely be in the future marketed on a large scale in the refrigeration and HVAC applications. Luvata and Eco would have been the only ones to have the capability to offer such technology. This customer therefore expressed the concern that the proposed transaction was removing any competition with respect to this technology.

65. However, this concern does not appear to be well grounded. First, there is no guarantee that this technology will prevail on the markets for coils for refrigeration and HVAC, as only a few companies have started investigating and developing the micro-channel technology for the refrigeration and HVAC markets. Second, while Luvata is making some research on this technology, Eco previously evaluated the micro-channel technology and decided it was not yet technically applicable for the HVAC and refrigeration markets. Third, it appears that market players of the automotive industry (Modine[27], Delphi[28]) are able to provide coils based on the micro-channel technology.

D. Conclusion

66. In view of the above, and in particular of the competitive assessment of the market for coils for condensing units, the proposed transaction raises serious doubts as to its compatibility with the common market.

IV. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

(a) Procedure

[27] Modine has publicly announced the launch of its micro-channel coil targeted at refrigeration and HVAC applications.

[28] Delphi has formed a development agreement with Carrier (supplier of HVAC and refrigeration systems) and is currently producing a product for the HVACR market in the Poland facility.

67. In order to render the concentration compatible with the common market, the notifying party has offered some commitments pursuant to Article 6(2) of the EC Merger Regulation, which are annexed to this Decision. The commitment package was proposed by Luvata on July 13 2007. After examination and market testing of this commitment package, the Commitments were deemed suitable to remedy the competition concerns identified. These commitments are attached to this decision and form an integral part thereof.

(b) Description of the commitments

68. Luvata has committed to divest its coil plant located in Prague, Czech Republic ("the Divestment Business"). The Divestment Business includes all tangible and intangible assets (premises, production equipment, all software used for manufacturing, logistics/organisation, costing, designing, except one for which free license will be provided and existing IP rights) the entire customer base, supply agreements and key personnel.

(c) Suitability for removing the serious doubts

69. Under the proposed commitments, Luvata would divest all its current activities in the production and sale of coils for condensing units/air-cooled condensers and the vast majority of its activity in the field of coils for HVAC application. Whereas Luvata's other production site located in Italy, Torreglia is mainly producing large and complex single piece coils, the plant in the Czech Republic is manufacturing small and medium sized big-series coils. Around [40-50]% of the Czech plant's activity is devoted to the production of coils for condensing units whereas the remainder concerns mostly small coils for HVAC.

70. The proposed remedy would remove the entire overlap between the merging parties in the production and sale of coils for condensing units thereby eliminating any potential competition concern in the market for coils for condensing units. In the market for coils for HVAC application the overlap would be almost completely removed from [5-10]% to [0-5]%. As concerns expressed by market respondents were made by customers of Luvata's plant in the Czech Republic (with regard to small and medium sized big-series coils), the commitment maintains a supply alternative for them.

71. The Commission has analyzed and market tested the remedies in view of ensuring that, regardless of the acquirer, the divested business is a viable stand-alone business capable to exert, post-merger, a competitive pressure on the new entity comparable to that of Luvata on Eco pre-merger. Limited concerns were raised in the course of the market test, and the commitments were in general supported by third parties. The divestment would include all the functions necessary to ensure that the plant continues to perform its activity on a stand-alone basis, that is, besides the tangible assets of the coil plant, a sales-force, purchasing managers, engineers, etc. The market test did not point to any specific element (besides those mentioned below) which would question the viability of the Divestment Business.

72. Although the design of the commitment package ensures that the acquirer can be a company already manufacturing coils, or a financial investor, such as a private equity fund, many respondents expressed doubts that a financial investor could take over such a small business and that the technical know-how required to run such a business

makes it highly desirable that a company already active in the manufacturing of coils acquire the divested business. It should also be noted that respondents to the market test explained that competition would not necessarily be restored if the acquirer was a company active in downstream markets (such as the supply of refrigeration systems or/and HVAC systems) with no incentives to sell coils to competitors.

73. Regarding the attractiveness of the divested business, figures provided by the notifying party shows that it is profitable (with a operation margin around [5-15]% expected to increase in the upcoming years) and certain competitors explicitly expressed their interest in potentially acquiring it in their reply to the market test of the commitments

(d) Conclusion on the commitments

74. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

V. CONDITIONS AND OBLIGATIONS

75. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

76. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

77. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B to E of the Commitments submitted by the notifying party on 13/07/2007.

78. The remaining requirements set out in the other Sections of the Commitments submitted by the parties on 13/07/2007 are considered to constitute obligations.

VI. CONCLUSION

79. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement pursuant to Article 2(2) of Council Regulation (EC) No 139/2004, subject to full compliance with the commitments as described in paragraph 68 and the related text in the Commitments annexed to this Decision that forms an integral part to this decision.

80. Consequently, 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 Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

(Signed)

Neelie KROES
Member of the Commission

Case M. 4750 – Luvata / Eco

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EEC) No. 4064/89 as amended (the ***"Merger Regulation"),*** *Luvata* hereby provides the following Commitments (the ***"Commitments")*** in order to enable the European Commission (the ***"Commission")*** to declare acquisition of Eco's coils business by Luvata (together with Eco the ***"Parties"***) 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 Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to 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 the Parties and/or by the ultimate parents of the Parties whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

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

Divestment Business: the business as defined in Section B and the Schedule that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Luvata and who has received from Luvata the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser **[CONFIDENTIAL]**.

Effective Date: the date of adoption of the Decision.

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

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

Key Personnel: the Management team of a total headcount of **[CONFIDENTIAL]** listed in Schedule 1.

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

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in Schedule 1.

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

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

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

Eco: Eco S.p.a. incorporated under the laws of Italy, with its registered office at Pocenia (UD), Via Giulio Locatelli 22, 33050 – Italy, and registered with the Commercial/Company Register at Pocenia under number UD/254956.

Luvata : Luvata S.a.r.l., incorporated under the laws of Luxembourg, with its registered office at 5, rue Guillaume Kroll – BP 2501, L-1025 Luxembourg, and registered with the Commercial/Company Register in Luxembourg under number B106672.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Luvata 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 14. To carry out the divestiture, Luvata 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 Luvata has not entered into such an agreement at the end of the First Divestiture Period, Luvata shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.

2. Luvata shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Luvata has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, Luvata shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found 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 common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of Luvata's manufacturing facility in Radotin, Czech Republic. The Divestment Business operates in all material respects as a stand-alone entity, and will be divested through a sale of 100% of the share capital in Luvata Czech S.R.O, which owns the Assets (as defined below). The present legal and functional structure of the Divestment Business as operated to date is described in Schedule 1. The Divestment Business, described in more detail in Schedule 1, includes:

   (a) all tangible and intangible assets (including intellectual property rights[29]), which contribute to a material extent to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

   (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; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "***Assets***"); and

(d) the Personnel.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Luvata shall preserve 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 Luvata undertakes:

[29] Excluding any rights (whether in the form of a registered or unregistered trade name, trademark or brand name) to the names Heatcraft or Luvata.

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

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

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Luvata

6. Luvata commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Luvata shall also ensure that the Personnel does not report to any individual outside the Divestment Business.

7. Until Closing, Luvata shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Luvata shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager 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 the Parties.

Ring-fencing

8. Luvata 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 the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Luvata may obtain information relating to the Divestment Business which is

reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Luvata is required by law.

Non-solicitation clause

9. 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 2 year after Closing.

Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Luvata 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.

Reporting

11. Luvata 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).

12. Luvata 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 an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

(a) be independent of and unconnected to the Parties;

(b) 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) neither be likely to create, in the 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, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "Purchaser Requirements").

14. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Luvata has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Luvata must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the 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

I. <u>Appointment Procedure</u>

15. Luvata shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Luvata has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Luvata at that time or thereafter, Luvata shall appoint a Divestiture Trustee to carry out the functions specified in the

Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.

16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties 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, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Luvata

17. No later than one week after the Effective Date, Luvata shall submit a list of one or more persons whom Luvata 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, Luvata shall submit a list of one or more persons whom Luvata proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 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.

Approval or rejection by the Commission

18. 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, Luvata 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, Luvata 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.

New proposal by the Parties

19. If all the proposed Trustees are rejected, Luvata 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 15 and 18.

Trustee nominated by the Commission

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

II. <u>Functions of the Trustee</u>

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

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:

(i) 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.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Luvata with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) 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 5 and 6 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;

(c) (i) in consultation with Luvata, determine all necessary measures to ensure that Luvata does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, 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, and (ii) decide whether such information may be disclosed to Luvata as the disclosure is reasonably necessary to allow Luvata to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Luvata or Affiliated Undertakings;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Luvata such measures as the Monitoring Trustee considers necessary to ensure Luvata'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;

(v) 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, (a) potential purchasers receive sufficient 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 (b) potential purchasers are granted reasonable access to the Personnel;

(vi) provide to the Commission, sending Luvata 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 the Divestment Business 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. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Luvata a non-confidential copy at the same time, if it concludes on reasonable grounds that Luvata is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission 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.

Duties and obligations of the Divestiture Trustee

23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell **[CONFIDENTIAL]** the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement 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 Luvata, subject to the Parties' unconditional obligation to divest **[CONFIDENTIAL]** in the Trustee Divestiture Period.

24. 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 Parties.

III. Duties and obligations of the Parties

25. Luvata shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Luvata'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 Luvata and the Divestment Business shall provide the Trustee upon request with copies of any document. Luvata 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.

26. Luvata 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. Luvata 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. Luvata shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

27. Luvata shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee 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. Upon request of the Divestiture Trustee, Luvata shall cause the documents required for effecting the sale and the Closing to be duly executed.

28. Luvata 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 Luvata 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.

29. At the expense of Luvata, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Luvata'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 Luvata refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Luvata. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Luvata during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

30. 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, require Luvata to replace the Trustee; or

(b) Luvata, with the prior approval of the Commission, may replace the Trustee.

31. If the Trustee is removed according to paragraph 31, 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 15-20.

32. Beside the removal according to paragraph 30, 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

33. The Commission may, where appropriate, in response to a request from Luvata showing good cause and accompanied by a report from the Monitoring Trustee:

(i) Grant an extension of the time periods foreseen in the Commitments, or

(ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Luvata 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 Luvata be entitled to request an extension within the last month of any period.

duly authorised for and on behalf of Luvata

SCHEDULE 1

Description of the Divestment Business

The Divestment Business comprises Luvata's manufacturing facility situated at Vrazska 143, 15300 Prague 5 Radotin, Czech Republic, and the related tangible and intangible assets as defined in this Schedule.

The Divestment Business is part of the European operations of Luvata Heat Transfer Coils division. It is structured as a **[CONFIDENTIAL]** company, Luvata Czech S.R.O, registered under the law of the Czech Republic, and is currently owned by **[CONFIDENTIAL]** shareholders: **[CONFIDENTIAL]**. The Divestment Business holds **[CONFIDENTIAL]** of the share capital in **[CONFIDENTIAL]**. The basic share capital of the company is **[CONFIDENTIAL]**.

The Divestment Business has **[CONFIDENTIAL]**statutory representatives that can act on behalf of the company: **[CONFIDENTIAL]**.

Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

1. The following main tangible assets:

1.1. Premises of **[CONFIDENTIAL]** square meters whereof real estate of approximately **[CONFIDENTIAL]** square meters[30] with production facilities, technical and administrative buildings and parking lot;

1.2. Production equipment comprising capacity of approximately **[CONFIDENTIAL]** per year, consisting of ;

1.2.1. all **[CONFIDENTIAL]** production lines

1.2.2. **[CONFIDENTIAL]** hairpin lines;

1.2.3. Sheet metal finishing line (for bending);

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[30] **[CONFIDENTIAL]**

1.2.4. Header/manifold fabrication and assembly area;

1.2.5. Finishing equipment consisting of:

- **[CONFIDENTIAL]**

1.3. Leak testing facilities, consisting of [**CONFIDENTIAL**];

1.4. Onsite material storage facilities;

1.5. Maintenance area for tools, dies and machines.

2. The following main intangible assets:

2.1. Software for manufacturing:

2.1.1. **[CONFIDENTIAL]** – Licensed software used for drawings;

2.1.2. **[CONFIDENTIAL]** – Internally owned software used as primary ERP system (inventory management, purchasing, customer management, material booking);

2.1.3. **[CONFIDENTIAL]** – the Financial Accounting System;

2.1.4. **[CONFIDENTIAL]** - Internally owned software used for design of OEM products;

2.1.5. **[CONFIDENTIAL]** – Internally owned software used for costing of OEM products.

2.2. Drawings and engineering documents concerning customer coils.

2.3. Existing Intellectual Property Rights owned by the Divestment Business; for the avoidance of doubt, the Heatcraft and Luvata trade names are excluded from the scope of the present commitments.

2.4. For the avoidance of doubt, the software **[CONFIDENTIAL]**, used for costing and coil design, which is proprietary to Luvata will not be transferred; instead, Luvata commits to either license the software **[CONFIDENTIAL]** to the Divestment Business or assist the Divestment Business to develop its own software platform, upon option of the Purchaser.

3. The following main licenses, permits and authorizations:

3.1. Necessary regulatory permits and certificates to operate the production site, including:

- The manufacturing of cooling equipment;
- Service and assembly work for air conditioning;
- Smithing work;
- Locksmithing work.

4. The following main contracts, agreements, leases, commitments and understandings:

4.1. Existing material supply agreements including agreements for the supply of key materials:

4.1.1. Existing supply agreement with **[CONFIDENTIAL]** for copper tubes (expiry date in **[CONFIDENTIAL]**);

4.1.2. **[CONFIDENTIAL]**[31];

4.1.3. **[CONFIDENTIAL]**;

[31] **[CONFIDENTIAL]**).

4.1.4. Existing supply agreement with **[CONFIDENTIAL]** for aluminum fin stock (**[CONFIDENTIAL]**);

4.2. **[CONFIDENTIAL]**

5. The following customer, credit and other records:

5.1. A complete list of customers and related commercial information;

5.2. Existing customer contracts;

5.2.1. **[CONFIDENTIAL]**

6. The following Personnel:

6.1. Headcount of approximately **[CONFIDENTIAL]** personnel currently located at Radotin and additional personnel to be transferred to the Divestment Business, subject to approval, including:

6.1.1. Management team of a total headcount of **[CONFIDENTIAL]** including the following functions (the "Key Personnel"):

6.1.1.1. Managing Director **[CONFIDENTIAL]**;

6.1.1.2. Sales and Marketing Director **[CONFIDENTIAL]**;

6.1.1.3. Finance Manager **[CONFIDENTIAL]**;

6.1.1.4. Purchasing and Planning Manager **[CONFIDENTIAL]**;

6.1.1.5. Engineering Manager **[CONFIDENTIAL]**;

6.1.1.6. Production Manager **[CONFIDENTIAL]**);

6.1.1.7. Quality Manager **[CONFIDENTIAL]**;

6.1.1.8. HR Manager **[CONFIDENTIAL]**.

6.1.2. Sales, marketing and distribution team of a total headcount of **[CONFIDENTIAL]**:

6.1.2.1. **[CONFIDENTIAL]** Sales and Marketing Director currently located at Luvata's Radotin office and active in the sale of products manufactured at Radotin in **[CONFIDENTIAL]**;

6.1.2.2. **[CONFIDENTIAL]** sales personnel currently located at Luvata's Radotin office and active in the sale of products manufactured at Radotin in **[CONFIDENTIAL]**;

6.1.2.3. **[CONFIDENTIAL]** sales personnel currently located at Luvata's Radotin office and active in the sale of products manufactured at Radotin in **[CONFIDENTIAL]**;

6.1.2.4. **[CONFIDENTIAL]** sales assistants currently located in Prague responsible for daily contacts with customers and order intake;

6.1.2.5. **[CONFIDENTIAL]** sales engineers working for the Divestment Business, but employed by different entities (**[CONFIDENTIAL]**).

6.1.3. **[CONFIDENTIAL]** accounting and finance personnel currently located at Luvata's Radotin office;

6.1.3.1. **[CONFIDENTIAL]** Finance Manager **[CONFIDENTIAL]**;

6.1.3.2. **[CONFIDENTIAL]** junior controller;

6.1.3.3. **[CONFIDENTIAL]** accountants;

6.1.3.4. **[CONFIDENTIAL]** payroll clerk.

6.1.4. **[CONFIDENTIAL]** IT personnel currently located at Luvata's Radotin office, whereof **[CONFIDENTIAL]** assigned to the Finance department and **[CONFIDENTIAL]** assigned to the Engineering department.

7. The arrangements for the supply with the following products or services by Luvata or Affiliated Undertakings until Closing, and if necessary for an additional transitional period of up to [**CONFIDENTIAL**] months after Closing:

7.1. IT services including E-mail system and internet access currently operated by the Luvata group;

7.2. The Luvata corporate **[CONFIDENTIAL]** programs.