

***Case No COMP/M.3091 -
KONICA / MINOLTA***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 11/07/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.07.2003

SG (2003) D/230722

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.3091 – Konica / Minolta
Notification of 27.05.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 27 May 2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the undertaking Konica Corporation (Konica), Japan, acquires, within the meaning of Article 3(1)(b) of the Regulation, control of the whole of the undertaking Minolta Co. Ltd (Minolta), Japan, by way of exchange of shares.

I. THE PARTIES

2. Konica and Minolta are Japanese publicly owned companies whose common stock is listed on several stock exchanges, the Tokyo Stock Exchange being the principal market. Konica is not controlled, directly or indirectly, by any third party.
3. Both Konica and Minolta are active in the imaging technology and the development and manufacture of imaging products and output equipment, e.g. office equipment such as copiers and printers, optical products, cameras and through Sekonic, photometers.

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).

The parties' activities are mainly complementary with only a few overlaps compared to their overall activities.

4. Sekonic Corporation ("Sekonic") is a Japanese publicly traded company on the Tokyo Stock Exchange. It had a turnover for the fiscal year ending March 31, 2003 of approximately €170 million. Sekonic is active in photometers and in a wider range of instruments for optics and electronic information. Sekonic's total turnover relating to instruments for optics and electronic information is approximately [10-20]% of its total turnover, whereas photometers account for less than [0-10]%. In addition, Sekonic is also active in office equipment (copiers and printers, as well as related option units and accessories), electrical equipment and materials, bunch wires, equipment relating to digital colour image systems and magnet chips. It should also be mentioned, that more than [60-80]% of Sekonic's sales in 2002 went to Konica. In 2003 Sekonic's sales to Konica are expected to drop to around [45-55]% thereby increasing the independence of the Sekonic business from Konica. This drop is based on the fact that Konica has transferred its production of copiers to [...] whereby Sekonic will cease to be a subcontractor.

Control of Sekonic

5. Konica is the largest shareholder in Sekonic, holding 37.97% of Sekonic's common stock, which translates into 38.57% of the voting rights in Sekonic. Prior to the notified transaction the second largest shareholder had less than 5% of the shares. Three smaller shareholders and a number of institutional shareholders had around 2-4%. As of March 31, 2002, Sekonic had 2,808 shareholders. 39.75% of its shares were held by individuals, and the rest is held mostly by institutional investors and the shareholders mentioned above. Furthermore, Konica has appointed one member of Sekonic's four person Board of Directors. The adoption of resolutions by the board of Directors requires a majority on the board. However, in practice all recent proposals before Sekonic's Board of Directors have been adopted by a unanimous vote of all the Directors present, in accordance with Japanese company culture. This means that consensus has already been obtained in behind the scene consultations and negotiations prior to any vote on the board. According to the parties there are no written Sekonic record whatsoever -that Konica may have access or is otherwise aware of documenting dissenting votes between Konica's appointed member of the Sekonic board and the other board members.
6. Decisions by Sekonic's shareholders' meetings are in general adopted by a majority of the shareholders present. The minutes of the two latest general assemblies show that all of the proposals that were submitted by Sekonic's management were adopted by the required majority vote of the shareholders of Sekonic. The minutes of Sekonic's general assembly meetings for 2001 and 2002 show that Konica has been controlling approximately 58% of the shares voted in 2001 and approximately 55% of the shares voted in 2002. The parties have informed the Commission that the outcome of Sekonic's general assembly in 2000 and 1999 was similar to 2001 and 2002: there is no record of any dissenting votes by any shareholders. Further, Konica did exercise its full voting rights in those shareholder meetings. In all Konica has been holding a majority of the votes represented and thereby been able to exercise de facto control of Sekonic. Based on the above it is the opinion of the Commission that Konica controls Sekonic.

II. THE OPERATION

7. The transaction takes the form of a management integration between Konica and Minolta by means of a stock swap accompanied by the formation of a new corporate group. Each Minolta share will be exchanged for 0.621 Konica shares. After the stock swap, both parties' stock will be converted into the stock of Konica Minolta Holdings, Inc., which will be a publicly listed and owned company. The new group will consist of the six business companies and two common function companies, the stock of which will be held by Konica Minolta Holdings, Inc.

III. CONCENTRATION

8. In terms of the Merger Regulation, Konica will acquire sole control of the whole of Minolta. The transaction is therefore a concentration within the meaning of article 3(1)b of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Konica €4,189 million, Minolta €3,966 million). Each of the undertakings have a Community-wide turnover in excess of EUR 250 million (Konica €[...] million, Minolta €[...] million), but they do not achieve 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.

V. COMPETITIVE ASSESSMENT

Product market definitions

Copiers

10. A fundamental distinction between copiers can be made between black-and-white copiers and colour copiers. Both parties produce and sell black-and-white copiers whereas only Minolta produces colour copiers. Konica purchases colour copiers from Minolta on an OEM basis and sells them under the Konica brand.

Black-and-white copiers

11. The parties submit that a relevant product market is that of all (both analogue and digital) black-and-white copiers and that further sub-segmentation can be based on output of pages per minute (ppm) and focused on the end use application. The parties suggest, that the market for black-and-white copiers can be sub-divided into (i) personal copiers (speed up to 10 ppm); (ii) office copiers (speed 11 to 90 ppm) intended for own use of business customers and smaller reprography professionals and

² 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.

(iii) commercial copiers (speed over 90 ppm) used exclusively by reprography centres or other industrial/professional users. This delineation is in line with the Commission's previous decisions³. The parties are only present in (ii) office copiers.

12. According to the parties, analogue and digital black-and-white copiers are not two separate product markets because of a substantial degree of substitutability. Speed and quality of both are essentially the same; the only essential difference being that a digital copier can be upgraded and extended with functions such as fax and scanner. Upgraded digital copiers are often referred to as Multi Function Peripherals (MFP). Most black-and-white copiers are bought for the copying function, not for the upgradeability. The prices of the two are comparable. Digital copiers are seen as a natural evolution of analogue copiers and they gradually replace the analogue models. Sales of digital copiers are increasing in similar proportion to the decline in sales of analogue copiers.⁴
13. The Commission's market investigation supports that black and white copiers constitute a single separate product market. Most replies say that both digital and analogue copiers belong to the same product market and that speed is a reasonable measure for sub-segmentation. Additionally, a number of answers indicate that other features could be used for this purpose too.
14. For the purpose of this decision, the precise product market definition can be left open, since under all market definitions considered the transaction will not lead to competition concerns.

Colour copiers

15. Colour copiers are digital copiers and are by the parties submitted to be a market separate from black-and-white copiers. The parties state that all colour copiers, regardless of speed and quality, form a distinct relevant product market. They do not believe that a colour copier market can be further broken down based on speed. In a previous decision⁵ a sub-division according to speed into low-speed and high-speed was suggested, but in the end the definition was left open.
16. The market investigation broadly confirms the parties' submissions albeit a few replies state that the market can be further sub-segmented on the basis of speed or quality. Most of the answers state that it is too early to make sub-segmentations because colour copiers still are an emerging market.
17. For the purpose of this decision, the precise product market definition can be left open, since under all market definitions considered, the transaction will not lead to competition concerns.

³ In a previous decision, M.2265 – Ricoh/Lanier World-wide, the Commission also referred to this segmentation according to speed albeit without exactly specifying whether this actually correspond to distinct relevant product markets.

⁴ According to information from [...] provided by the parties.

⁵ M.2265 – Ricoh / Lanier World-wide. According to this the subdivision could be <12ppm and >12ppm. This was left open.

Cameras

18. The only overlap between the parties' camera businesses is in the field of compact cameras (lens shutters) and digital cameras. The parties are active in other camera products but this will not give rise to any overlaps.⁶
19. The parties believe that compact cameras form a distinct relevant product market even though there is an increased degree of substitutability between high-end compact cameras and low-end single lens reflex cameras. The parties submit that it is not realistic to make more narrowly defined markets based on features (such as zoom v. no zoom, type of film used or other functions). These cameras are purchased almost exclusively by the same end-users, i.e. casual photographers, and these will remain the same regardless of features such as zoom and the type of film.
20. The parties believe that digital cameras form a distinct relevant product market. Digital cameras can be both of the compact-type and the single lens reflex (SLR) type digital cameras. Konica and Minolta only sell the compact-type digital cameras. According to the parties it is still too early on this immature market to make a sub-division between different types of digital cameras. The market for digital cameras is growing rapidly. When the market stabilises and matures it might be possible to make further distinctions based on the product characteristics.
21. The Commission's market investigation showed that Single Lens Reflex cameras, compact cameras and digital cameras to a certain extent are interchangeable and substitutable with each other in terms of taking photos. In terms of street prices, analogue cameras are sold at €50-300, digital cameras at €150-1,400 and analogue SLR cameras at €200-2,000. The market investigation did in general show that the market for cameras should be sub-segmented into compact cameras, SLR cameras and digital cameras, because each constitutes a different product market in terms of product characteristics, price and intended use. The customers of SLR cameras are primarily professional photographers and serious photographing fans who are high-end users, and a price increase of 5-10% would not make them switch to compact cameras or ordinary digital cameras. Likewise a customer of compact camera could switch to a digital camera but would not be likely to switch to a SLR camera.
22. On the supply side, the market investigation indicated that it is relatively easy for a producer of SLR cameras to switch production to compact cameras, since SLR cameras manufacturers already have mechanical technology required for compact cameras. However, it is not relatively easy for manufacturers of SLR cameras to switch to production to digital cameras, since digital technology is necessary for manufacturing of digital cameras additionally. The same is true for a switch from the production of compact cameras to SLR cameras, which would require optical technology. The time necessary to complete a switch in production is estimated to be between 1-4 years.
23. For the purpose of this decision, the precise product market definition can be left open, since the transaction will not lead to competition concerns under any product market definitions envisaged.

⁶ These products are for Konica: photographic colour films with lens (disposable cameras), colour film, colour paper, inkjet paper, photofinishing equipment and chemicals. For Minolta: single lens reflex cameras, film scanners, camera lenses (including zoom lenses, binoculars and planetariums).

Photometers

24. Photometers are photo accessories used for measuring light exposure and are primarily used by professionals and demanding amateur photographers. The parties believe that a distinct product market for photometers is too narrow, primarily based on supply-side substitutability.
25. According to the parties photometers represent a mature product whose underlying technology is, for the most part, in the public domain. Most photometers can be used not only for still pictures but also for motion pictures. Light meters used in the motion picture industry are essentially based on a similar technology as photometers. Photometers are a relatively low cost product and the parties state that manufacturers of light meters would face very low barriers to expanding or switching their production in a short period of time. Different photometers can be used with different brands of cameras.
26. The Commission's market investigation does not support the parties' view. Third parties consider photometers and light meters as two separate product markets. On the demand side, photometers measure light for photographic use (Cine, exposure time). Light meters measure light for other purposes than for photographic use (lux, footcandle, candela per square meter etc.). Light meters are to a large extent for industrial use, for architects and technical use. A third party argues that it is not possible to substitute photometers. In the absence of a separate photometer, a photographer is likely to either use a built-in meter on a camera or will simply estimate an exposure him- or herself. A small but significant price increase would not, based on third party comments, change the purchasing behaviour of the customers.
27. On the supply side, entry could happen but this is considered to be unlikely. First, all the functions of photometers are designed for photographic purposes. Second, the photometer market is a small niche market and Minolta's world-wide sales were in 2002 [$<€ 10$]million accounting roughly for [15-25]% of the European market. The parties estimate that the demand for photometers has decreased 25% between 2000-2002. Third parties have stated that the market is in decline and the rapid development of digital photography will make the photometer market a declining niche market. In addition the competitors state that entry to the photometer market would require specialised research and product development. One competitor estimates the time necessary to enter the market to be five years.
28. Based on the above, it can be concluded, that photometers constitute a separate product market.

Geographic market definitions

Photocopiers and cameras

29. The parties consider that the relevant geographic markets for photocopiers and cameras are at least EEA-wide. The reasons for this are that the products sold throughout the EEA are identical and there are no significant country-specific variations. For copiers, the transport costs account for less than 1% of the sales price to the distributor, for cameras it is less than 2%. Manufacture generally takes place outside of the EEA and

the products are distributed from there throughout the EEA through either subsidiaries or independent distributors. Price levels are similar in the EU Member States and the presence and market shares of important manufacturers are homogeneous throughout the EEA. Manufacturers have established subsidiaries in some or most member states. From there the distribution of the products is either (i) sold to independent distributors in the same or other Member State or (ii) the manufacturers act themselves as distributor and sell on to wholesalers and retailers.

30. The large majority of the replies to the market investigation state that the geographic markets for both black-and-white and colour copiers are at least EEA-wide or even world-wide. A few third parties have stated that the markets are national and base this on the fact of national distribution systems, service organisations and strategies. For the purpose of this decision, the precise scope of the geographic market for copiers can be left open, since the proposed transaction will not create competition concerns.
31. The Commission's market investigation indicated that some manufacturers consider the camera market to be EEA-wide or world-wide. At the same time some third parties indicated that price differential exists on the different national markets. However, for the purpose of this decision, the precise scope of the geographic market for cameras can be left open, since the proposed transaction will not create competition concerns on either a national basis or on an EEA-wide basis.

Photometers

32. The parties submit that the geographic scope of the market for photometers is at least EEA-wide. This is based on the following facts: identical products are sold through the EEA, manufacture takes place outside the EEA, distribution does not give rise to national barriers to entry and price levels are similar in the EU member states.
33. The Commission's market investigation indicated that the relevant geographic market for photometers is world-wide. This is based on low transport costs estimated at around 1% of the product value and on the fact that the same photometers are sold world-wide. All the major suppliers of photometers are competing on a world-wide basis. However, since the competitive assessment would not change significantly either on an EEA-wide basis or on a world-wide basis, the precise geographic market definition can be left open.

Competitive Assessment

Black-and-white copiers

34. The parties are only present in the 11 ppm to 90 ppm (office copiers) segment of the black-and-white copiers market. On a separate market for all black-and-white copiers (11 ppm to 90 ppm), the parties' combined market share in the EEA is [10-20]% (Minolta [0-10]% and Konica [0-10]%). The main competitors are Ricoh ([20-30]%), Canon ([15-25]%) and Xerox ([5-15]%), Toshiba ([5-15]%), Sharp ([5-15]%), Kyocera Mita ([5-15]%) and Hewlett Packard ([0-10]%). On a national level, the combined market share exceeds the 15% threshold for affected markets in Denmark ([15-25]%), Germany ([15-25]%), Norway ([15-25]%) and Portugal ([15-25]%). The closest

competitors are Canon, Ricoh and Xerox and they have between [5-40]% on these national markets.⁷

35. On a separate market for analogue black-and-white copiers (11 ppm to 90 ppm), the parties' combined market share in the EEA is [15-25]% (Minolta [10-20]% and Konica [0-10]%). Canon has a market share of [35-45]%, Ricoh [10-20]%, Toshiba [5-15]% and Olivetti-Lexikon [0-10]%. On a national level, the combined market share exceeds the 15% threshold for affected markets in Germany ([20-30]%), Italy ([20-30]%), Norway ([30-40]%), Portugal ([20-30]%) and Spain ([15-25]%). Canon, Toshiba and Ricoh each have market shares between [0-60]% on these national markets.
36. On a separate market for digital black-and-white copiers (11 ppm to 90 ppm), the parties' combined market share in the EEA will be [10-20]% (Minolta [5-10]% and Konica [0-10]%). On this market Ricoh has a market share of [20-30]%, Canon [10-20]% and Xerox [5-15]%. On a national level, the combined market share exceeds the 15% threshold for affected markets only in Denmark ([15-25]%) and Norway ([15-25]%). Canon, Ricoh and Xerox have market shares between [5-35]% on these national markets.
37. In view of the foregoing, the Commission considers that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area on the market for black-and-white copiers.

Colour copiers

38. Prior to the notified concentration and up to the present date Konica did not manufacture its own colour copiers but bought them from Minolta on an OEM (original equipment manufacturer) basis. Based on this, the transaction will not have an impact on the manufacture of colour copiers, but the transaction could influence the supply of copiers.
39. On a separate market for colour copiers, the parties' combined market share in the EEA as regards the supply of colour copiers will be [15-25]% (Minolta [10-20]% and Konica [0-10]%). The competitors are Canon ([25-35]%), Xerox ([15-25]%), Ricoh ([15-25]%), Oce ([0-10]%), Toshiba ([0-10]%), Sharp ([0-10]%) and Danka/Infotec ([0-10]%).
40. On a national level, the combined market share exceeds the 15% threshold for affected markets in Austria ([30-40]%), Belgium and Luxembourg ([15-25]%), Denmark ([20-30]%), France ([15-25]%), Germany ([30-40]%) and Norway ([20-30]%). The increment in market shares are however small and between [0-10]%. The closest competitors are Xerox, Canon and Ricoh, each having larger or comparable shares to that of Konica/Minolta.
41. In view of the foregoing, the Commission considers that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area on the market for colour copiers.

⁷ Market share information based on data from market research institute [provided by the parties].

Compact cameras

42. On the market for compact cameras, the parties' combined market share in the EEA will be [10-20]% (Minolta [5-15]% and Konica [0-10]%) in 2002.⁸ In the EU⁹ the parties' market share would be [10-20]% and the competitors are Olympus ([10-20]%), Canon ([10-20]%), Fuji ([5-15]%), Kodak ([5-15]%), NRG ([0-10]%), Pentax ([0-10]%), Nikon ([0-10]%) and a number of smaller competitors. The parties are only able to provide [...] market share information from 10 of the 15 member states, but the parties have estimated their market share in the remaining member states as well as in Iceland, Liechtenstein and Norway as mentioned below.
43. On a national level on the market for compact cameras, based on combined market shares, affected markets arise in Austria ([15-25]%), Belgium ([15-25]%), France ([15-25]%), the Netherlands ([15-25]%) and Sweden ([30-40]%). Based on the parties estimate their combined market share would be the following: Denmark ([10-20]%), Finland ([10-20]%), Greece ([25-35]%), Iceland ([5-15]%), Ireland ([5-15]%), Liechtenstein ([0-10]%), Luxembourg ([0-10]%), and Norway ([5-15]%). The closest competitors are Canon, Olympus, Fuji and Kodak. In Sweden the parties will face competition from Olympus ([15-25]%), Fuji ([10-20]%), Canon ([5-15]%) and Kodak ([5-15]%).
44. In France, Sweden and possibly Greece, Konica/Minolta will become the largest player. However, taking into consideration that the competitors hold strong positions in the overall EEA market as well as on other national markets, the proposed transaction will not create significant competition concerns. The Commission's market investigation supported the view that the impact of the transaction on the market would be minimal.

Digital cameras

45. On the market for digital cameras, the parties' combined market share in the EEA¹⁰ and EU will be [0-10]%. In the EU the parties market share would be [0-10]% and the largest competitors are Olympus and Canon with each ([5-15]%), Fuji ([5-15]%), Sony ([5-15]%), Nikon ([0-10]%), Kodak ([0-10]%) and Hewlett-Packard ([0-10]%). On a national basis the parties' market share would only exceed 15% in Sweden where it would amount to [20-30]% ([0-10]% and [10-20]%). The closest competitors are Olympus ([10-20]%), Canon ([10-20]%), Fuji ([10-20]%) and Sony ([0-10]%). Based on the parties' estimate of their market shares in Denmark, Finland, Greece, Iceland, Ireland, Liechtenstein, Luxembourg and Norway, the transaction would not lead to any affected markets.
46. Based on this, it can be concluded that the proposed transaction will not create competition concerns on the market for digital cameras on neither an EU nor national level.

⁸ Based on data from market research institute [provided by the parties].

⁹ Based on [provided by the parties] data from 10 out of the 15 member states. Market shares in other member states are based on the parties' estimates.

¹⁰ Based on data for the 10 of the 15 member states only. The parties do not believe that their market share in the remaining member states differ materially from the 10 country EU average provided.

Photometers

47. Considering photometers as a separate market covering the EEA, the parties' combined market share will be [65-75]% (Minolta [15-25]% and Sekonic [45-55]%). The only other competitor is a German undertaking Gossen, which has an estimated market share of [[25-35]%. There may be smaller competitors but the parties are not aware of their market shares nor their identity. On a world-wide basis the parties believe that their combined market shares for photometers would be in the order of [65-85]%.
48. The parties have not provided market shares on a national basis as the parties do not possess and do not know where one would obtain overall volume figures on a member state basis. However, the parties assume that the EEA market share figures would roughly parallel the EEA-wide figures. The market is of limited size. Minolta's annual world-wide sales are in the order of [<€10] million and Sekonic's is worth about [<€10] million. Taking into consideration the small size of some of the national markets such as Iceland, Liechtenstein and Luxembourg, which individually accounts for [<20] photometers each, market shares calculated on a national basis is considered highly uncertain and would not reflect the market situation. Based on the Commission's market investigation based on figures from Gossen, Pentax, Aspen and the parties, the Commission's market share calculations show an estimated market share in the EEA of approximately 50-60% based on volume. The parties have not been able to specify the value of the sales in the EEA. On a world-wide market, the parties estimate their market shares to be approximately [75-85]% based on value, which has been broadly confirmed by the market investigation. The Commission has not been able to verify market shares on a world-wide market based on volume.
49. Third parties have expressed concerns with regard to the considerable size of the merged Konica/Minolta business in the photometer business. The proposed concentration will bring together the number one Sekonic and number three Minolta. The merged entity will be by far the largest manufacturer as the market share information indicates. Moreover, the parties would be able to act independently of the consumers and the competitors on the market for photometers.
50. Based on this it can be concluded that the proposed transaction raises serious doubts as to its compatibility with the common market on the market for photometers.

VI. COMMITMENTS

51. In order to remove the serious doubts raised by the operation on the market for photometers, Konica has submitted commitments pursuant to Article 6(2), which are intended to remove the competitive concerns identified above. The commitments are attached as an annex to this decision and form an integral part thereof.

Description

52. The parties have committed to divest the whole of Konica's 37.97% shareholding in Sekonic thereby eliminating the overlap between the parties' photometer activities and restoring conditions for effective competition in that market. The divestment will take place in three steps. The following describes the main content of the commitments:

- (1) The first divestiture period will take place on or before [...] and will consist of a divestiture of 28.15% of Konica's shareholding in Sekonic (i.e. 5,000,000 shares).

Subject to an authorisation from the general shareholders meeting on 27 June 2003, Sekonic will buy back approximately 2,250,000 of Konica's shares in Sekonic. Furthermore, the parties have already reached an agreement with six third parties (the first purchasers) that they will purchase the other 2,750,000 of the 5,000,000 shares in Sekonic to be sold in the first divestiture period. Five of these six first purchasers are Japanese corporations with no affiliations to Konica or Minolta. The fifth is a private person.

On 27 June 2003, Konica withdrew its member from Sekonic's board of directors and waived its right to exercise voting rights attached to the remaining 9.82% and otherwise use its influence on Sekonic. This will be made public to the shareholders and the management of Sekonic.

- (2) The second divestiture (the remaining 9.82% shares) will begin on [...] at the latest. The shares will be sold to purchaser(s) approved by the Commission or to the public, through the stock exchange.
- (3) If the remaining shares are not sold to an approved purchaser by the end of the second period i.e. the period of [...], a divestiture trustee will be appointed and granted an exclusive right to sell at no minimum price the remaining shares within [...].

Evaluation of the proposed commitments

53. The complete divestment of Konica's shares in Sekonic will remove the overlap between the merging parties' photometer activities. It is not possible (or it is very difficult) to divest Minolta's photometer business as this is fully integrated division in Minolta. The parties have submitted information showing that the first purchasers are all independent from Sekonic and that Sekonic has an incentive to compete with Konica/Minolta after the divestiture. As mentioned above Sekonic's sales to Konica is expected to drop to about [45-55]% by the end of the fiscal year 2003. This decrease in trade between Sekonic and Konica is, in the opinion of the Commission, likely to strengthen the independence of Sekonic from Konica, thereby securing on-going competition on the market for photometers and the other activities of Sekonic. Furthermore, Sekonic would have an incentive to maintain its strong position on the photometer market whereby it would participate in securing competition on the market.
54. The Commission considers that the undertakings are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market. In particular these commitments will solve competition concerns by eliminating the overlap between the parties in the market for photometers.
55. The commitments mentioned in paragraph 52 (1, 2 and 3) constitute conditions of this decision, as only through full compliance therewith (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved. The remaining commitments constitute obligations (subject to any change pursuant to the review clause of the Annex), as they concern the implementing steps, which are necessary to achieve the sought structural change.

VI. CONCLUSION

56. The Commission has concluded that the commitments submitted by the parties are sufficient to address the competition concerns raised by this concentration. Accordingly, subject to the full compliance with the commitment submitted by the notifying parties, 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 (EEC) No 4064/89 and of Article 57 of the EEA Agreement.

For the Commission

Mario Monti
Member of the Commission

Case M. 3091 – Konica/Minolta**COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “*Merger Regulation*”), Konica (as defined hereinbelow, in Section A) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the acquisition by Konica of control of the whole of Minolta (as defined hereinbelow, in the Definitions) within the meaning of Article 3(1)(b) of the Merger Regulation 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, 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.

Divestment Shares: the First Divestment Shares and the Remaining Shares.

Effective Date: the date of adoption of the Decision.

First Closing: the transfer by Konica and/or any of its Affiliated Undertakings of the legal title to the First Divestment Shares to the First Purchasers.

First Divestiture Period: the period expiring [...].

First Divestment Shares: The Sekonic shares held by Konica, directly or through any of its Affiliated Undertakings, that are defined in Schedule “A”.

First Purchasers: the Purchasers of the First Divestment Shares listed in Schedule “B”.

Konica: Konica Corporation, with its registered office at 1-26-2 Nishi-Shinjuku 1-chome, Shinjuku-ku, Tokyo 163-0512, Japan, and registered with the Commercial/Company Register at the Shinjuku Branch Office of the Tokyo Legal Affairs Bureau under number 0111-01-007050. Unless the context otherwise requires, any references to Konica made in the Commitments shall also include Konica Business Technologies Corporation (or “KBT”), the Konica affiliate to which Konica has transferred all of its Sekonic shares.

Minolta: Minolta Co., Ltd, with its registered office at 3-13 Azuchi-machi 2-chome, Chuo-ku, Osaka 541-8556, Japan, and registered with the Commercial/Company Register at the Osaka Legal Affairs Bureau under number 1299-01-090496.

Parties: Konica and Minolta.

Post-First Divestiture Shareholding: the shareholding structure of Sekonic subsequent to the First Divestiture to the First Purchasers, as further defined in Schedule “C”.

Remaining Shares: Any and all Sekonic shares held by Konica, directly or through any of its Affiliated Undertakings, after the First Closing.

Second Closing: the transfer by Konica and/or any of its Affiliated Undertakings of the legal title to the last Remaining Share(s).

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

Second Purchaser: the entity or entities approved by the Commission as acquirer(s) of the Remaining Shares in accordance with the criteria set out in Section D.

Sekonic: Sekonic Corporation, with its registered office at 7-24-14, Oizumi-Gakuen-cho, Nerima-ku, Tokyo, 178-8686, Japan, and registered with the Commercial/Company Register at the Nerima Branch Office of the Tokyo Legal Affairs Bureau under number 0116-01-003630.

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

Section B. The Divestment Shares

1. In order to ensure continued effective competition, Konica commits to divest, or procure the divestiture of, the First Divestment Shares, by the end of the First Divestiture Period, to the First Purchasers, on terms of sale and purchase that shall be consistent with its commitments herein.
2. Konica shall be deemed to have complied with the commitment described in paragraph 1 if, by the end of the First Divestiture Period, Konica has transferred to the First Purchasers the number of First Divestment Shares specified in Schedule “B”, such as to cause Sekonic’s resulting shareholding structure to meet the percentages defined in the Post-First Divestiture Shareholding, as evidenced by trade receipts or in a document certified by one or more of Sekonic’s directors or duly authorized officers, without prejudice to the First Purchasers’ right thereafter to purchase or sell, from or to any party other than the Parties and their Affiliated Undertakings, any and all of the Divestment Shares that any of the First Purchasers has acquired from Konica.
3. Konica commits to divest, or procure the divestiture of, the Remaining Shares by the end of the Trustee Divestiture Period on terms approved by the Commission in accordance with the procedure described in paragraph 12. To carry out this divestiture, Konica commits to (a) find a Second Purchaser and to enter into a final binding share purchase agreement for the sale of the whole or the remaining part of the Remaining Shares within the Second Divestiture Period and/or (b) sell the whole or the remaining part of the Remaining Shares to the public through the stock exchange within the Second Divestiture Period. If Konica has not sold the entirety of the Remaining Shares as specified above by the end of the Second Divestiture Period, Konica shall appoint and grant the Divestiture Trustee an exclusive mandate to sell those of the Remaining Shares still held by Konica in the Trustee Divestiture Period, in accordance with the procedure described in paragraph 21.
4. Konica shall be deemed to have complied with the commitment described in paragraph 3 if,
 - (a) by the end of the Second Divestiture Period, (i) Konica has entered into a final binding share purchase agreement for the whole or any remaining part of the Remaining Shares, if the Commission approves the Second Purchaser and the terms in accordance with the procedure described in paragraph 11 and if the Second Closing takes place within a period not exceeding [...] after the approval of the Second Purchaser and the terms of sale by the Commission and/or (ii) Konica has sold the whole or any remaining part of the Remaining Shares to the public through the stock exchange as evidenced in writing by irrevocable and unconditional Konica instructions to, or written statement(s) by, a broker, bank, or other accredited person or institution, or

any other reasonably sufficient written evidence consistent with customary business practice provided by Konica to the Commission;

or

- (b) by the end of the Trustee Divestiture Period, Konica has entered into a final binding share purchase agreement for the whole or any remaining part of the Remaining Shares, if the Commission approves the Second Purchaser and the terms in accordance with the procedure described in paragraph 12 and if the Second Closing takes place within a period not exceeding [...] after the approval of the Second Purchaser and the terms of sale by the Commission
5. In order to maintain the structural effect of the Commitments, Konica shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of Sekonic, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over Sekonic is no longer necessary to render the proposed concentration compatible with the common market.

Section C. Related commitments

6. Konica commits to remove by the Effective Date, but in no event earlier than 27 June 2003, its appointed member of Sekonic's board of directors, to take any steps within its control that are reasonably required for the appointment of a new member of Sekonic's board by the other Sekonic shareholders, and to waive any right to propose or appoint any member of Sekonic's board of directors in the future, without prejudice to Konica's right to vote for or against any proposals put to the vote of the Sekonic shareholders' meeting prior to the Effective Date.
7. From the Effective Date, Konica and any of its Affiliated Undertakings shall not exercise any rights as shareholders in Sekonic with regard to the Divestment Shares except for Konica's and/or any of its Affiliated Undertakings' (a) rights for dividends that are due for the period before the sale of the Divestment Shares concerned, (b) any rights whose exercise is necessary for, and strictly related to, the transfer of the First Divestment Shares and (c) the right to request information pursuant to paragraph 9 hereinbelow.
8. From the Effective Date, Konica shall not agree on, seek to determine, or otherwise co-ordinate the exercise of any other Sekonic shareholders' voting rights in any and all Sekonic shareholder meetings.
9. Konica 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 Sekonic's photo meter business. Konica may obtain information relating to Sekonic's photo meter business which is reasonably necessary for the divestiture of the Divestment Shares.

10. Konica undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, Sekonic key personnel for a period of [...] after the First Closing, without prejudice to paragraph 6 hereinabove.

Section D. The Second Purchaser

11. In order to ensure continued effective competition, any Second Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) 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 Remaining Shares (the before-mentioned criteria for the Second Purchaser hereafter the "**Purchaser Requirements**").
12. The final binding share purchase agreement shall be conditional on the Commission's approval. When Konica has reached an agreement with a Second Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), in English or accompanied by their English translation, to the Commission, unless the Commission accepts, at its discretion, that part or the whole of this information is not necessary under the circumstances. Konica must be able to demonstrate to the Commission that the Second Purchaser meets the Purchaser Requirements and that the Remaining Shares are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Second Purchaser fulfils the Purchaser Requirements and that the Remaining Shares are being sold in a manner consistent with the Commitments.
13. If Konica offers for sale to the public, through the stock exchange, any block of Remaining Shares, it shall inform the Commission in writing of the number of the Remaining Shares concerned, within [...] from such offering.

Section E. The Divestiture Trustee

14. If Konica has not fulfilled the conditions specified in paragraph 4(a) hereinabove within [...] before the end of the Second Divestiture Period, Konica 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 Trustee Divestiture Period, unless the Commission

accepts that Konica has fulfilled, during [...] of the Second Divestiture Period, the conditions specified in paragraph 4(a) hereinabove.

15. The Divestiture 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 Divestiture Trustee shall be remunerated by Konica 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 Remaining Shares, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.
16. No later than [...] before the end of the Second Divestiture Period, Konica shall submit a list of one or more persons whom Konica 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 Divestiture Trustee fulfils the requirements set out in paragraph 15 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties under these Commitments; and
 - (b) the outline of a work plan which describes how the Divestiture Trustee intends to carry out its assigned tasks.
17. The Commission shall have the discretion to approve or reject the proposed Divestiture Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its obligations. If only one name is approved, Konica shall appoint or cause to be appointed, the individual or institution concerned as Divestiture Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Konica shall be free to choose the Divestiture Trustee to be appointed from among the names approved. The Divestiture Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.
18. If all the proposed Divestiture Trustees are rejected, Konica 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 17.
19. If all further proposed Divestiture Trustees are rejected by the Commission, the Commission shall nominate a Divestiture Trustee, whom Konica shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

20. The Divestiture 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 Divestiture Trustee or Konica, give any orders or instructions to the Divestiture Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
21. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Remaining Shares to a purchaser, provided that the Commission has approved both the purchaser and the final binding share transfer agreement in accordance with the procedure laid down in paragraph 12. The Divestiture Trustee shall include in the share transfer 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 share purchase agreement such customary representations, warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Konica, subject to Konica's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
22. 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 non-confidential copy to Konica.
23. Konica shall provide and shall cause its advisors to provide the Divestiture Trustee with all such co-operation, assistance and information as the Divestiture Trustee may reasonably require to perform its tasks.
24. Konica 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, Konica shall cause the documents required for effecting the sale and the closing to be duly executed.
25. Konica shall indemnify the Divestiture 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 Konica for any liabilities arising out of the performance of the Divestiture 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 Divestiture Trustee, its employees, agents or advisors.
26. If the Divestiture Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest:

- (a) the Commission may, after hearing the Divestiture Trustee, require Konica to replace the Divestiture Trustee; or
 - (b) Konica, with the prior approval of the Commission, may replace the Divestiture Trustee.
27. If the Divestiture Trustee is removed according to paragraph 26, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full hand over of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-19.
28. Beside the removal according to paragraph 26, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Divestiture Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Divestiture Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

29. The Commission may, where appropriate, in response to a request from Konica showing good cause:
- (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 Konica seeks an extension of a time period, it shall submit a request to the Commission no later than [...] before the expiry of that period, showing good cause. Only in exceptional circumstances shall Konica be entitled to request an extension within the last [...] of any period.

Section G. Transparency

30. Not later than three business days from the Effective Date, Konica shall transmit a non-confidential version of the Commitments to Sekonic, accompanied by Konica's express written permission to Sekonic to make the full text of the attached non-confidential Commitments available to any and all shareholders of Sekonic. Konica shall transmit to the Commission an English translation of this letter within two weeks from its transmission to Sekonic.

.....

Signature

.....

Name and Position

.....

Date

duly authorised for and on behalf of Konica

SCHEDULE "A"

The First Divestment Shares consist of the entire amount of Sekonic common stock held by KBT to be transmitted to the purchasers listed in Schedule "B", pursuant to the distribution indicated therein.

SCHEDULE "B"

Purchasers of the First Divestment Shares

[...]

SCHEDULE "C"Post-First Divestiture Shareholding Structure of Sekonic

- | | | |
|----|--|---------------|
| 1. | Konica Business Technologies Corporation: | 9.9 % or less |
| 2. | Other Konica or Minolta Affiliated Undertakings: | 0 % |
| 3. | [Second Largest Shareholder] | [8 – 10%] |
| 4. | [Third Largest Shareholder] | [5 – 7%] |

[...]

(Note: all of the above shareholding ratios reflect voting rights and their exact figure will depend on the distribution of shares to minor shareholders, *i.e.* those with less than 1,000 shares -- and hence no voting rights -- after the planned divestiture.)