

***Case No COMP/M.3136 -
GE / AGFA NDT***

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

Article 6(2) NON-OPPOSITION
Date: 05/12/2003

*Also available in the CELEX database
Document No 303M3136*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/12/2003

SG (2003) D/233261

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3136 - GE / AGFA NDT
Joint request of several Member States pursuant to Article 22 of Council Regulation No 4064/89¹ (Merger Regulation)**

JOINT REQUEST PURSUANT TO ARTICLE 22 (3) OF THE MERGER REGULATION

1. On 19.03.2003 the Commission received a referral request under Article 22 (3) of the Merger Regulation from the German Bundeskartellamt, which was joined by Austria (24.03.2003), Greece (24.03.2003), Ireland (25.03.2003), Spain (07.04.2003), Portugal (08.04.2003) and Italy (23.04.2003), concerning a concentration whereby General Electric Company proposes to acquire control over Agfa-Gevaert's non-destructive testing business (Agfa NDT).
2. The Commission found that the above-mentioned requests meet the requirements laid down in Article 22 (3) of the Merger Regulation and informed all the above Member States that it accepts the referrals made in this case. The involved Member States have dispatched to the Commission documentation at their disposal consisting mainly of the parties' submissions and the results of their preliminary investigations. The Commission received additional information from Ireland and Austria (08.04.2003), Greece (11.04.2003), Portugal (25.04.2003), Spain (28.04.2003) and Italy (13.05.2003). Germany indicated on 25.04.2003 that it had communicated all relevant information already in the referral request. Accordingly, the deadline under Article 10 (1) of the Merger Regulation started on 14th May 2003.
3. Prior to the start of the procedure, the Commission had sent an information request to the notifying party (GE). As this remained unanswered, the Commission adopted on 16 May 2003 a decision under Article 11(5) of the Merger Regulation, thereby suspending

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 periods set by Article 10(1) until the receipt of the requested information. A complete reply was received on 10th June and accordingly, the deadline under Article 10 (1) of the Merger Regulation re-started on 11th June 2003. On 30 June 2003, the Commission sent by fax a request for information to GE pursuant to Article 11 of Regulation No 4064/89 regarding a supply agreement (mutually exclusive) between the parties for the supply of NDT X-ray films². As the notifying party failed to provide the Commission with the requested information within the period foreseen, the Commission adopted on 7th July 2003 a second decision under Article 11(5) of the Merger Regulation, thereby suspending the periods set by Article 10(1) until the receipt of the requested information. A complete reply was received on 17.11.2003 and accordingly, the deadline under Article 10 (1) of the Merger Regulation re-started on 18.11.2003.

4. In the course of the proceedings, the parties submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Council Regulation. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation and, in the light of these modifications, does not raise serious doubts as to its compatibility with the Common Market and with the EEA Agreement.

THE PARTIES

5. The General Electric Company (“GE”, US) is a diversified industrial corporation active in numerous fields including aircraft engines, power systems, transportation systems, industrial systems, plastics, lighting, medical systems, appliances, media, financial services, software and Internet services. GE has NDT activities through its US-based Panametrics subsidiary.
6. Agfa-Gevaert is a Belgian company that develops, produces and distributes a wide range of analogue and digital imaging systems and products. Its NDT business develops, produces and distributes a wide range of analogue testing equipment to test all types of materials without deforming or damaging them in order to guarantee their safety and quality.

THE CONCENTRATION

7. GE, through its wholly-owned subsidiary, GE Aircraft Engines Inc. (GEAE), will acquire sole control of Agfa’s NDT Business by way of a stock and asset purchase agreement. Agfa NDT will become a separate business unit of GEAE. Therefore the proposed operation constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

² This agreement was first qualified by GE as an ancillary restriction in the sense of Section 11 Form CO, and only afterwards, by letter dated 26 June 2003, GE submitted that the MSA ought to be considered as an integral element of GE’s acquisition of control over the entire Agfa NDT business. GE’s considers that the agreement involves the acquisition of decisive influence over the Agfa NDT X-ray film business and forms an integral part of GE’s acquisition of control over the entire Agfa NDT business. GE therefore submits that the agreement should be reviewed under the Merger Regulation (as part of the ongoing investigation on the take-over of Agfa’s NDT equipment business).

8. The parties have further engaged in an exclusive film agreement between GE and Agfa for NDT X-ray films and related chemicals which, in legal terms, forms a condition precedent for the closing of the transaction with respect to the NDT equipment business. According to this agreement ("Manufacturing and Services Agreement" -"MSA") GE shall purchase all of its requirements for NDT X-ray film and related chemicals from Agfa and shall not enter into any other agreement with any other manufacturer or reseller unless it decides to terminate the MSA. In return, Agfa agrees to not sell NDT X-ray film or any other NDT film products and related chemicals to any Person other than GE. The agreement will last for an initial period of [...] and will be constantly automatically renewed for [...] terms if it is not terminated by GE.
9. The Commission considers that the MSA is to be qualified as leading to a concentration in the sense of Article 3 (1) (b) of the Merger Regulation, on the basis of the specific provisions of this agreement. Agfa's X-ray NDT film business is to be considered an undertaking in the meaning of the Merger Regulation. As foreseen in the Commission Notice on the concept of concentration, a market turnover can be clearly attributed to Agfa's X-ray NDT film business, consisting of the revenues obtained for the sale of X-ray films and related chemicals.
10. According to GE, an acquisition of Agfa's manufacturing assets in relation to X-ray NDT film was originally intended, but did not prove possible as Agfa's NDT X-ray film manufacturing operation shares both assets and liabilities with Agfa's non-NDT X-ray film manufacturing facilities that will be retained by Agfa post-transaction. The assets of the NDT X-ray film business were therefore impossible to separate and transfer to GE. In order to allow GE to acquire Agfa's NDT X-ray film business, the transaction was structured by conclusion of the MSA. By virtue of this mutually exclusive supply agreement for NDT X-ray films and related chemicals, it is foreseen that GE takes over Agfa's market presence and Agfa withdraws from the market for the sale of NDT X-ray films completely. GE determines prices, volumes and supply of customers. The MSA, due to the automatic renewal clause if not terminated by GE, may continue without limitation in time; Agfa may only terminate the agreement in case of a material breach of the agreement by GE. GE may request Agfa to discontinue the production of any or all of the products without compensation. Agfa supplies GE strictly at costs, on the basis of historical calculation, and does no longer obtain any profit from this business. GE has far-reaching means to review the cost calculation (sending in their auditors to review Agfa's records, etc.). GE may propose the development of improved or new products and may request Agfa to perform any services related to the X-ray NDT film business, costs are borne by GE. A Steering Committee with representatives appointed by GE and Agfa will be established to oversee every aspect of the day-to-day implementation of the MSA.
11. Furthermore, GE and Agfa allocated € [...] of the total purchase price set out in the asset purchase agreement for the equipment business to the X-ray film business. As a result of this approach, it is foreseen in the MSA that, if Agfa is in a material breach of this agreement, GE is entitled to liquidated damages in the same amount, whereby a "depreciation" of this amount takes place over a period of [...]. This up-front payment of a "purchase" price not only shows the similarity of this construction to a purchase of the underlying assets constituting the business, but also gives Agfa an overwhelming incentive to follow closely the directions of GE. At the same time, this payment gives GE a strong incentive to exercise control on a lasting basis. If GE terminated the MSA after a relatively short period of time (e.g. after the first specified term), it would lose

the up-front invested amount without being able to claim a re-payment of this amount or a depreciated amount from Agfa.

12. It could be argued that the MSA does not foresee the acquisition of any assets of the business (such as production facilities, work-force, R&D, etc.) by GE, and that such disqualifies the MSA as concentration under the Merger Regulation. However, given the above, the MSA should not be considered as only an exclusive supply agreement. Indeed, it confers GE with a very strong and lasting influence on the NDT part of the Agfa X-ray film business in every respect (beside determination of output, development of improved and new products, R&D also regarding all related services) and will allow GE to take over Agfa's market position in relation to this business. By virtue of the MSA, the parties have assimilated GE's position in relation to the NDT film business as far as possible to a purchase of this business (which is also expressed in the payment of a purchase price). Since Article 3 (1) (b), (3) Merger Regulation explicitly foresees the acquisition of control by contracts (or by any other means) and the Commission Notice on the concept of concentration considers that, in exceptional circumstances, even a very important long-term supply agreement may confer control in a situation of economic dependence, it is concluded that the MSA should be considered as leading to a concentration in the sense of Article 3 (1) (b) of the Merger Regulation for the Agfa X-ray NDT film business.

COMMUNITY DIMENSION

13. The concentration under examination has no community dimension, since the thresholds of Article 1 of the Merger Regulation are not met. GE's turnover is EUR 139 billion world-wide and EUR [...] EU-wide (2002 figures). The turnover of Agfa NDT is EUR [...] world-wide and EUR [...] EU-wide (2002). The Commission's jurisdiction for the concentration follows from Article 22 (3) of the Merger Regulation on the basis of the referral request made by Germany, Austria, Greece, Ireland, Spain, Portugal and Italy.

COMPETITIVE ASSESSMENT

14. On the basis of the market investigation, the Commission considers that the proposed concentration will lead to serious doubts in the following markets: portable ultrasonic technology based NDT equipment and transducers for ultrasonic technology based NDT equipment.

1.1. Relevant Market Definition

Product markets

15. Both Agfa NDT and GE (through Panametrics) develop and produce non-destructive testing equipment. NDT equipment is used to discover defects in materials, for checking assemblies, for the development of manufacturing processes and for research. The essential feature of NDT is that the test process itself produces no deleterious effects on the material or structure under test.
16. NDT equipment is used across a broad spectrum of industries, including automotive, steel and metals, medical, aerospace, chemical and plastics and can be based on a number of underlying NDT technologies. The parties have submitted that NDT equipment based upon ultrasonic technology should be considered as a separate market,

distinct from other NDT technology such as X-ray, liquid penetration, infrared, Eddy Current etc. This has been confirmed by the market investigation, as there is only limited scope for demand-side substitution and/or supply-side substitution. Agfa offers NDT solutions based on ultrasonic and X-ray technology, whilst Panametrics NDT devices are almost exclusively ultrasonic technology - based.

17. Agfa NDT and Panametrics only overlap on ultrasonic technology (UtS) based NDT equipment, which can be further sub-divided into stationary and portable devices. Stationary systems are custom made on the basis of the customer's specifications and are fixed in the plant where they will be operated. Portable systems are standard instruments that are generally intended for a wide range of uses. Most UtS NDT equipment manufacturers specialise in either portable or stationary equipment. The price differential between stationary and portable NDT devices further underline the existence of separate product markets.
18. Whilst stationary UtS NDT equipment can be designed for the inspection of one specific property of a product or component during its production process, thereby resulting in customised designs, portable devices generally serve a variety of different applications, ranging from detecting flaws and corrosion in a device to the measuring of thickness and hardness of the material of which it is made. The market investigation has not indicated that separate relevant markets ought to be defined for every specific portable UtS NDT application. In Europe, most customers show a high degree of demand-side substitutability and use the UtS NDT device for a wide range of different applications. In contrast with the Northern American market, where customers tend to buy single task oriented devices, customers in Europe primarily purchase UtS NDT equipment that is calibrated for flaw detection and also use it for other applications such as thickness gauging, without significant validity loss. Supply-side substitutability is also relevant as the major portable UtS NDT equipment producers have a comparable wide product range that covers the mainstream applications. Consequently, a further sub-segmentation of markets, either for stationary or portable UtS NDT equipment, does not seem to be appropriate for the purposes of this transaction. The final view on this can, however, be left open since the competitive assessment would not change materially.
19. The parties also identify a separate market for transducers, which are the consumable parts of an UtS NDT equipment (either stationary or portable) and which convert electrical signals into mechanical signals. Transducers can be general purpose or customised for a specific testing procedure. In this respect, however, the market has not provided indications that specific transducer markets ought to be defined, either on the basis of the applications served or according to the equipment (stationary or portable) in which it is used.
20. In most cases³, the transducer can be purchased from a number of sources, independently from the UtS NDT equipment manufacturer. The parties submit that for these reasons, transducers are to be considered as a market in their own right. The market investigation has confirmed that the market conditions for transducers, as described above, differ substantially from those for the UtS NDT devices. Transducers are less complex than the NDT equipment itself, and some of the transducer manufacturers do not produce UtS NDT devices. Being the consumable part of the UtS

³ The market investigation has confirmed that approximately 80% of the standard transducers used for portable and stationary equipment can be used on devices by several manufacturers.

NDT solution, there is a substantial price difference between the transducer and the equipment to which it is attached. Whilst considering a distinct market for transducers appears to be the most likely conclusion, the final view on this can, however, be left open since the competitive assessment would not change materially.

Geographic market

21. The parties submit that markets for UtS NDT equipment and UtS NDT transducers are at least EEA-wide and probably world-wide in scope. The parties support this conclusion by pointing to the absence of trade barriers and significant transport costs and by referring to the fact that Panametrics produces such devices centrally in the USA⁴. The parties also use single export price lists.
22. The market investigation has not fully supported the view that conditions of competition are similar EEA- or world –wide, for all UtS NDT equipment and –transducers considered. Whilst the outcome of the market investigation is not entirely consistent, the vast majority of the respondents considers that UtS NDT equipment requires significant after-market services, and as the supplier needs to provide these services within a relatively short period of time to avoid production process disruptions, such affects the geographical scope of the markets considered. These services range from training and support to calibration services, and are provided either through direct presence or through a distributor or agent. The market investigation has indicated that the different UtS NDT markets require different service levels. Stationary equipment requires high service levels, ranging from customised conception and development to extensive support and on-site calibration. Therefore, stationary equipment customers prefer local suppliers to guarantee these support levels. Such is also illustrated by the fact that stationary-only equipment manufacturers only make sales in those countries where they are established or have important support and distribution activities.
23. For portable devices, such support levels are not required. The main UtS NDT portable equipment players are present throughout the EEA and test standards are applied European-wide. The ability of a supplier to offer training in the local language or to provide calibration services within a short timeframe is considered by the customer as important. Such should however not lead to defining the market as narrow as being national in scope. Most customers indicate that it is not necessary for a supplier to be locally present in every Member State as a balanced European coverage suffices. However, this also implies that suppliers with a balanced and developed dealer network are preferred by the customer⁵. Whilst some customers consider the possibility of direct imports from outside the EEA (mainly the USA and Canada), such is only the case for the more basic devices that need little or no after-market support. In addition, the market investigation has indicated that European customers implement testing procedures differently than in the USA where portable UtS NDT users tend to use dedicated devices for the various testing applications.
24. Transducers (at least standard transducers, which form the large majority of transducers) do not require sophisticated after sales services and could therefore also be purchased

⁴ Agfa has organised its production activities in Germany, France, the UK and Slovakia.

⁵ GE Panametrics has sales facilities in Austria, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden, and the United Kingdom. Agents further ensure local presence. Agfa has a local presence in all Member States (apart from Luxembourg).

from suppliers with no presence in the EEA. However, as the market shares for transducers follow those for portable UtS NDT devices closely, the transducer market is most likely EEA-wide in scope.

25. As such, the geographic scope of NDT devices is most likely to be national for stationary devices and EEA-wide for portable devices and transducers. The question whether the market for stationary devices could be considered as being EEA-wide rather than national can be left open, since the competitive assessment would not change materially. Equally so, it is not necessary to decide whether the portable UtS NDT equipment and transducers markets are national or EEA-wide in scope.

1.2. Market Positions

1.2.1. On the basis of an EEA-wide market

26. Agfa NDT is the current market leader for UtS NDT equipment and transducers. Panametrics has less important market shares, but is present in all markets in both the US and Europe.
27. For portable NDT devices, the parties would have a combined market share of [35-45]% (Agfa NDT [30-40]% and GE [5-15] %). Only a limited number of players appear to have a balanced and developed dealer network in the EEA. The main players are Sonatest (UK) with [5-15]%, Karl Deutsch (DE) with [0-10]%, RD Tech (US) with [0-10]%, Proseq (F) with [0-10]% and Staveley (UK) with [0-5]%. Others such as Ultrasonic Sciences (UK) with [0-5]%, Gilardoni (IT) with [0-5]% and Socomate (F) with [0-5]% seem to focus on their respective home markets. The combined entity will have market shares considerably larger than those of its direct competitors.
28. For stationary devices, Panametrics does not have an important position ([0-5]% on an EEA basis) whilst Agfa NDT is the market leader with [20-30]%. R/D Tech ([0-10]%), Karl Deutsch ([0-10]%), IntelligeNDT ([5-15]%), Gilardoni ([0-5]%) and Sonatest ([0-5]%) are considered by the market investigation as viable and capable competitors, whilst a large number of smaller competitors are specialist suppliers.
29. For transducers, Agfa NDT has [25-35]%, followed by Panametrics with [5-15]% (Agfa and GE combined: [35-45]%), Sonatest [5-15]%, Karl Deutsch [0-10]%, Imasonic [5-15]%, RD Tech [0-5]%, Gilardoni [0-5]% and Phoenix [0-5]%

Market share information as provided by GE on the basis of 2002 sales data.

	GE/ AGFA	Ultrasoni c sciences	Sonatest	Staveley	K. Deutsch	RD Tech	Proseq	Gillardoni
Port. US NDT	[35-45]%	[0-5]%	[5-15]%	[0-5]%	[0-10]%	[0-10]%	[0-10]%	[0-5]%
Stat. US NDT	[20-30]%		[0-5]%		[0-10]%	[0-10]%		[0-5]%
Trans- ducers	[35-45]%		[5-15]%		[0-10]%	[0-5]%		[0-5]%

30. The above table shows that the combined entity will have market shares considerably larger than those of its direct competitors and that it will have an important presence in all three markets. Only Sonatest, RD tech and Karl Deutsch are present in all three markets, albeit on a much more limited scale than the parties. The parties' strong market position is emphasised by the fragmented market positions of GE/Agfa's competitors.

1.2.2. Market Position of the Parties in the various Member States

31. Whilst defining the relevant markets to be EEA-wide in scope appears the most plausible option, the Article 22 referral requests are based on the assessment of the parties' position in national markets. Doing so indicates the parties' high market shares in most Member States that have referred the transaction and for most of the product markets defined. The following table indicates in which referring Member States the parties would have a combined market share in excess of 25% for the markets defined.

Market share information as provided by GE on the basis of 2002 sales data.

	GE	AGFA	Combined	Closest Competitor	
Austria					
Port. US NDT	[5-15]%	[35-45]%	[45-55]%	Proceq	[15-25]%
Transducers	[15-25]%	[30-40]%	[45-55]%	Sonatest	[0-10]%
Italy					
Port. US NDT	[10-20]%	[10-20]%	[25-35]%	Gilardoni	[15-25]%
Transducers	[5-15]%	[10-20]%	[25-35]%	Gilardoni	[30-40]%
Portugal					
Port. US NDT	[0-10]%	[60-70]%	[70-80]%	Sonatest	[0-10]%
Transducers	[0-5]%	[30-40]%	[30-40]%	Sonatest	[0-5]%
Spain					
Port. US NDT	[0-10]%	[30-40]%	[35-45]%	Tecnatom	[25-35]%
Transducers	[0-10] %	[25-35]%	[35-45]%	Sonatest	[10-20]%
Germany					
Port. US NDT	[0-5]%	[40-50]%	[45-55]%	K. Deutsch	[0-10]%
Stat. US NDT	[0-5]%	[50-60]%	[55-65]%	K. Deutsch	[5-15]%
Transducers	[0-10]%	[40-50]%	[45-55]%	K. Deutsch	[10-20]%
Greece					
Port. US NDT	[0-10]%	[40-50]%	[50-60]%	Sonatest	[5-15]%
Transducers	[0-10]%	[15-25]%	[20-30]%	Sonatest	[5-15]%

Ireland					
Port. US NDT	[20-30%	[0-5]%	[20-30]%	USL	[35-45]%
Transducers	[45-55]%	[0-5]%	[45-55]%	Sonatest	[45-55]%

32. The above market share analysis shows that GE Panametrics makes little sales for stationary US NDT equipment. For stationary devices, the parties have high market shares only in Germany ([55-65]%). In the remaining countries, the parties would hold combined market shares ranging from 0% to 25%. It is to be noted that stationary devices are often tailor made and far more expensive than portable devices, resulting in a lumpy market. Apart from the observation that high market shares are not always a valid proxy for market power in such lumpy markets, the fact remains that the concentration leads to a small accretion of Agfa's market share (+[0-5]% in Germany).
33. A market share analysis on national basis confirms that the transaction will lead the combined entity to hold market shares that are already in itself an indication of dominance for the portable US NDT equipment market and transducers. Agfa is in most Member States that referred the case the undisputed market leader. In Ireland and Italy, the two Member States where Agfa has a relatively weak position, GE Panametrics holds important positions. Whilst GE Panametrics is not Agfa's nearest competitor in most cases, it is present in all Member States concerned. Apart from Sonatest and, to a lesser extent K. Deutsch, such is not the case for Agfa's remaining competitors.
34. The market shares for transducers follow those for portable US NDT equipment closely and consistently over the years. Generally, the combined entity would hold market shares for transducers that are lower than those for portable US NDT equipment, apart from Austria and Ireland. Transducers are the consumable parts of an NDT system and are interchangeable devices that can be used irrespective of the brand of the NDT system. Although customers therefore have a wide range of suppliers, competition in this segment does not appear to be less concentrated than in the portable US NDT equipment market.

1.3. Competition Effects

1.3.1. Horizontal overlaps

35. Both on the basis of their market shares and their perceived market positioning, Agfa NDT and GE Panametrics are to be considered as strong competitors for portable US NDT equipment and transducers. The market investigation has indicated that only 4 or 5 players with comparable product ranges, know-how, European coverage and reputation are active in these markets and that none of these competitors can compete with Agfa on the same level. Adding GE Panametrics' product range, reputation, after sales support services and distribution capabilities would further strengthen Agfa's leadership in these markets and reduce the customer's choice in selecting a portable US NDT equipment and transducers supplier either on an EEA-wide or Member State basis.
36. The market investigation has shown that the supply of portable NDT systems –with some exceptions- is not a bidding market. Customers compare list prices and specifications and will tend to favour the incumbent supplier to avoid switching and the costs associated with switching (training, overhaul of testing procedures ...). In this

market, customers are conservative, show little sensitivity to prices, attach importance to product reliability (often connected to a strong and highly reputed brand such as Agfa Krautkrämer or Nutronic) and existing supplier/service relationships. Agfa NDT is already today the price leader and customers are willing to pay a premium for its products. Customers of Agfa NDT and Panametrics have indicated that they would need to be faced with significant price increases (sometimes between 15 and 20%) before they would consider turning to alternative suppliers. As purchases of portable UtS NDT devices take place infrequently and for low volumes, customers are not likely to exercise buying power, for as far as such buying power would exist.

37. For transducers, the market investigation has confirmed that, from a technical point of view, customers can relatively easily switch transducer suppliers. Indeed, most of the UtS NDT devices, either portable or stationary, do not use proprietary transducers. However, as indicated above, the fact remains that the market shares for transducers follow those of portable UtS NDT devices closely. Such can be explained by the fact that customers generally purchase a batch of transducers at the time of purchasing the UtS NDT device. It can therefore be considered that the producer of the NDT equipment has a “first mover” advantage when it comes to the supply of (original and replacement) transducers, and such is further reinforced by the parties’ coverage of their distribution network.
38. A number of customers have indicated that the concentration would eliminate Agfa’s nearest competitor for portable US NDT equipment and transducers and that a combined Agfa/Panametrics would be in a position to raise prices on a lasting basis. Given that Agfa’s competitors do not have a comparable distribution network and European coverage and seen that customers do not easily switch suppliers, it appears that neither competitors nor customers would be in a position to counteract on a combined Agfa/Panametrics raising prices for UtS NDT devices. On the basis of the above it could be argued that, post transaction, the combined entity would be in a position to act independently of its customers and competitors in the EEA.
39. As there are limited switching costs for the supply with transducers and alternatives exist (also from suppliers that are not active in the NDT solutions markets) the combined entity would find it more difficult to behave independently in this market. In any case, the remedy proposed by the parties (see further) to solve the competition problem for portable NDT devices will also impact the parties’ position for transducers.
40. For stationary devices, it can be argued that the transaction will not materially change the market structure. In addition, there are sufficient credible alternative suppliers.
41. The parties have argued fact that there are numerous smaller companies actively competing for business in the UtS NDT markets and that such indicates that barriers to entry and expansion are low. Firstly, it is unlikely that new competitors will enter the markets considered, seen the small market volume, the entry barriers (relating to track record, expertise and the need to have sales/service networks), the mature nature of the market and the presence of a competitor with commanding market shares. Even if new players come in to these markets, the question remains how and within what timeframe they could build up sufficient reputation and develop a Europe-wide presence to form a constraining factor on the new entity’s dominant position for portable UtS NDT devices. Secondly, whilst it is correct that new entrants in the UtS NDT markets emerge, the market investigation has indeed shown that almost all confine their activities to a local presence in the stationary UtS NDT market, where added value in niche market

applications is much more relevant than the higher volume production and distribution of portable UtS NDT devices. Thirdly, whilst it is correct that existing portable UtS NDT devices competitors could further expand their activities, the market investigation has indicated that their ability to do so depends on access to the distribution channels. Fourthly, the ability of the parties' competitors to expand their market position and presence appears to be contradicted by the market shares of the parties which are relatively stable at the levels described above. Given the customers' low level of supplier switching, it is therefore unlikely that a transaction which further consolidates the market leader's strength would create opportunities for competitors to enhance their market position.

42. On the basis of the above the Commission considers that the concentration raises serious doubts as to the compatibility of the transaction with the common market in relation to the market for portable UtS NDT devices. .

1.3.2. *No vertical foreclosure effects*

43. With regard to the part of the concentration concerning Agfa's X-ray film business, the market investigation has focused on whether vertical competition issues could arise as a result of the transaction given that GE's aircraft engine division is a major customer of Agfa's X-ray (NDT) film and chemicals and that Agfa (but not GE) is a leading supplier of such film and chemicals.
44. The Commission previously⁶ concluded that NDT X-ray film and NDT X-ray chemicals both constitute distinct markets that are EEA-wide in scope, and such has been confirmed by the market investigation. Agfa is the leading manufacturer of NDT X-ray film and related chemicals with market shares of respectively [60-70]% and [65-75]% in the EEA on the basis of 2002 sales figures (as provided by the Parties). The most important competitors are Kodak ([20-30]% market share for NDT X-ray film and [15-25]% market share for NDT X-ray related chemicals) and Fuji ([5-15]% market share for NDT X-ray film and [0-10]% market share for NDT X-ray related chemicals). GE has no overlapping activities for these products. Whilst Agfa is the clear leader on both markets, the market investigation has indicated that both Kodak and Fuji are to be regarded as credible competitors.
45. Whilst GE is an [...] customer of NDT X-ray film and related chemicals, its total needs account for less than [0-5]% of Agfa's output. Given that GE is not capable of absorbing more than a *de minimis* part of Agfa's output, any anti-competitive behaviour of GE would result in substantial damage to its acquired NDT X-ray film and related chemicals business. Indeed, if GE were to attempt to foreclose its rivals from access to these products (i.e., through price increases and/or delays or disruptions of supply), such would lead these companies to turn to seek alternative supplies from Kodak or Fuji, thereby resulting in lost sales for the NDT X-ray film and related chemicals business. Therefore, it is unlikely that a combined GE/Agfa NDT would have the possibility or have the incentive to foreclose its competitors in the downstream NDT X-ray film and related chemicals applications markets.

⁶ See Case COMP/M.1432 Agfa-Sterling

COMMITMENTS SUBMITTED BY THE PARTIES

46. On 2 July 2003, pursuant to Article 6(2) of the Merger Regulation, the Parties offered certain commitments to remove the competition concerns identified by the Commission. These commitments were subsequently refined and improved. The full text of the final commitments dated 17 November 2003 is attached to (Annex) and forms an integral part of this decision.

Summary of commitments

47. GE considers that the following undertaking is effectively able to remove any competition problem raised by the proposed transaction in relation to portable UtS NDT devices. GE commits to divest the ultrasonic NDT business, operated under the name Panametrics (“Panametrics NDT Business”), and including portable and stationary NDT devices as well as transducers. In particular, the Panametrics NDT Business includes, to the extent the items belong to this business, the following items:

- all assets and books and records;
- nearly all of the contracts, including contracts with distributors;
- the IP rights, including an exclusive, worldwide, royalty-free licence to the “Panametrics” trademark for use in the Panametrics NDT Business;
- a transfer of employees, inter alia, in the areas of engineering, operations, sales and marketing; and
- certain transition services, in particular the granting of a licence for the use of certain facilities.

48. GE commits to divest the Panametrics NDT Business to the Canadian undertaking R/D Tech Inc. and has already entered into an agreement with this undertaking, subject to the approval of the Commission and the FTC. To ensure the effectiveness of the transfer of employees, GE will not solicit any employee of the business to be divested for a period of [...] after the closing of the transaction.

Assessment

49. The proposed remedy would remove the overlap in the field of ultrasonic portable NDT devices. The viability and the effectiveness of the divestiture will be strengthened by the fact that also the stationary ultrasonic NDT devices and the transducers will be divested. Indeed, the business to be divested relates to Panametrics’ entire ultrasonic NDT business, including all the assets and personnel required for the operation of the business as well as a royalty-free, world-wide licence for the use of the “Panametrics” brand and further necessary intellectual property rights. The other businesses belonging to Panametrics, apart from the Panametrics NDT Business, will remain with GE. It is to be noted in this respect that the carve out of the Panametrics NDT Business will not endanger its viability since, according to the information obtained by the Commission, the Panametrics NDT Business can be considered a viable unit within the overall Panametrics business if it is sold to an appropriate purchaser. The viability of the Panametrics NDT Business and the effectiveness of the remedy to solve the competition

concerns were confirmed by the respondents in the Commission's market test of the commitments.

50. As GE proposed RD Tech as an up-front buyer for the Panametrics NDT Business, no provisions for the interim, such as hold-separate or ring-fencing measures or the appointment of a monitoring trustee, appear to be necessary. GE commits that the divestiture process will be consummated no later than 31 December 2003.
51. RD Tech appears to be a suitable buyer. According to the information available to the Commission, it is independent and unconnected to GE and is already active in the development, production and distribution of NDT equipment. RD Tech therefore will have the necessary expertise to operate this business and to support the carved out Panametrics NDT Business by integrating it into its own organisation. RD Tech has further pointed out to the Commission that it has a specific interest in the development of the European part of the Panametrics NDT Business by combining it with its own European business. RD Tech has further demonstrated to the Commission that it has the financial resources and the incentive to maintain and develop the business as a viable and active competitive force in competition with GE and other NDT players. The suitability of RD Tech as a buyer was also confirmed in the market test of the commitments.
52. The acquisition of the Panametrics NDT Business by RD Tech does not lead to competition problems. On an EEA-wide basis, the Panametrics NDT Business and RD Tech would have a market share of around [5-15]% for portable NDT equipment (Panametrics [5-15]% and R/D Tech [0-10]%), [5-15]% (Panametrics [0-5]% and RD Tech [0-10]%) for stationary NDT equipment and [10-20]% (Panametrics [5-15]% and RD Tech of [0-5]%) for transducers. In all these markets, Agfa NDT would remain the clear market leader. If the markets were to be defined on a national basis, certain overlaps would occur in some Member States that have referred the concentration, although it is not likely that competition problems could be concluded from that⁷.
53. RD Tech therefore fulfils the purchaser requirements generally applied by the Commission in cases involving the divestiture of a business. The Commission can approve RD Tech as a purchaser for the Panametrics NDT Business on the basis of the agreement entered into by GE and RD Tech.

Conclusion on the commitments

54. In the light of the above, the Commission concludes that the commitments submitted by GE on 17.11.2003 are sufficient to eliminate any serious doubts as to the compatibility of the transaction with the common market in relation to the portable UtS NDT devices in general and any of the affected NDT associated markets as identified above.
55. The above mentioned commitment to divest the Panametrics NDT Business to R/D Tech, as set out in paragraph 1,2of the commitments submitted by GE, constitutes a condition, as only by fulfilling it (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved.

⁷ The only referring Member State where a combined RD Tech / Panametrics would have a market share for US NDT equipment in excess of 15% would be for portable US NDT equipment in Italy: combined market share of [30-40]% (RD Tech [15-25]% and Panametrics [10-20]%).

56. The remaining commitments as contained in the Annex constitute obligations (subject to any change pursuant the review clause of the Annex), as they concern the implementing steps, which are necessary to achieve the structural change that is sought.

VII. CONCLUSION

57. For the above reasons, and subject to full compliance with the commitments by GE, 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(2) of Council Regulation (EEC) No 4064/89.

For the Commission, signed by,
Mario MONTI
Member of the Commission

NON-CONFIDENTIAL VERSION

Commitments to the European Commission

Case No COMP/M.3136 - General Electric Company/Agfa NDT

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89, as amended, (the "Merger Regulation"), General Electric Company ("GE") hereby provides the following commitments (the "Commitments") in order to enable the European Commission (the "Commission") to declare the acquisition of the non-destructive testing business of Agfa-Gevaert N.V. ("Agfa NDT") by GE (the "Transaction") compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation (the "Decision").

The Commitments shall take effect from the Effective Date.

Any term used in this text, unless otherwise defined in the Form CO notifying the Transaction to the Commission or herein, or unless the context indicates otherwise, shall be interpreted in the light of the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 447/98.

SECTION A. DEFINITIONS

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

Accounting Policies: accounting principles and policies set forth in Schedule 1.1(a) of the Divestment Agreement.

Affiliated Undertakings: undertakings under the control of GE, 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.

Agfa-Gevaert N.V.: Agfa-Gevaert N.V. is incorporated under the laws of Belgium with its registered office at Septestraat 27, B-2640, Mortsel.

Agfa NDT: Agfa NDT is the non-destructive testing business of Agfa-Gevaert N.V. as defined in the preamble of the Stock and Asset Purchase Agreement entered into between GE and Agfa-Gevaert N.V., dated 17 January 2003.

Acquired Assets: the assets as listed in paragraph 2 of these Commitments.

Acquired Intellectual Property: (i) the Trade Secrets, the Computer Software, the Copyrights, the Patents and the Trademarks that are listed in Schedules 3.8(a)(i) and 3.8(b), of the Divestment Agreement, (ii) the Acquired Manufacturing Technology, (iii) the Scientific Materials, (iv) the Books and Records Copyrights and (v) the Computer Software Copyrights, in each case, as more properly defined and set out in the Divestment Agreement.

Acquired Manufacturing Technology: the Manufacturing Technology that relates exclusively to the NDT Business.

Closing: the date of the conclusion of the sale of the Divested Business to R/D Tech.

Confidentiality Agreement: the confidentiality agreement dated 4 July 2003, by and between the Company and R/D Tech.

Computer Software: (i) all implementations of algorithms, models, software, computer programmes and methodologies (including any copyrights relating thereto (the "**Computer Software Copyrights**")) whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials relating to the NDT Business except for such materials that are readily purchasable or licensable and which have not been modified in a manner material to the use or function thereof other than through user preference settings; and (ii) all of Sellers' rights in any user and site licenses for commercial off-the-shelf software and computer programs installed on computers (e.g., Windows, MS-Word and Excel thereon) to the extent relating to the NDT Business, but only to the extent such licenses are assignable to R/D Tech at no cost to Sellers.

Copyrights: all copyright registrations and applications therefor of the Sellers relating to the NDT Business.

Divested Business: the NDT Business, as defined in Section B, which GE commits to divest within the period provided for in Section B.

Divestment Agreement: the Asset Purchase Agreement entered into between Panametrics, GE and R/D Tech, dated as of 27 October 2003 as amended by Amendment no.1 to the Asset Purchase Agreement and any further amendments that have no substantial effect on market structure or the structure of the Divested Business.

Effective Date: the first day after the decision by the Commission declaring the Transaction compatible with the common market subject to these Commitments is communicated to the Parties.

Employees: the employees of the NDT Business, as listed in Schedule 3.12(a) of the Divestment Agreement, including, e.g., employees in engineering, operations and sales and marketing, necessary to maintain the viability and competitiveness of the Divested Business.

Excluded Accounts Receivable: the accounts and notes receivable, unapplied cash and other credit balances not related to the NDT Business and those Accounts Receivables (as defined in Section B, subsection 2(j)) of the Divestment Agreement.

Excluded Assets: the assets as described in Section 4 of these Commitments.

GE: GE is incorporated under the laws of New York, USA, with its registered office at 3135 Easton Turnpike, Fairfield, Connecticut 06431, USA.

Governmental Entity: means any federal, state or local government in the USA and governments in countries other than the USA, any political subdivision thereof or any court,

administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency.

Law: means any material statutes, rules, codes, regulations, ordinances or orders, of, or issued by, Governmental Entities.

Licensed Intellectual Property: the Seller Intellectual Property to the extent relating to the NDT Business (other than the Acquired Intellectual Property and the [...] Patent, the [...] Patent meaning the patent as described in Section 5.21 and Schedule 3.8(c) of the Divestment Agreement), including (i) any Manufacturing Technology that is not Acquired Manufacturing Technology, (ii) any Trade Dress and (iii) the patents and trademarks licensed by the Company to R/D Tech pursuant to the Seller License Agreement.

Manufacturing Equipment: all equipment, machines, computers, all parts, information, files, diagrams, schematics, instructions, and hardware related thereto, used in the manufacturing operations of the NDT Business.

Manufacturing Technology: all technology, trade secrets, know-how, diagrams, schematics, software, calibrations, inventions, practices, proprietary algorithms, testing techniques, methods and other confidential or proprietary information owned by the Sellers and relating to the NDT Business, including but not limited to manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

NDT: non-destructive testing.

NDT Business: That portion of the Panametrics business, comprising (i) products for use in ultrasonic NDT and (ii) handheld thickness gages that utilise a magnetic method to make measurements of nonferrous materials, otherwise marketed by Panametrics under the name "Magna-Mike" (in each case as more properly defined in Schedule 1.1(f) of the Divestment Agreement).

Panametrics: Panametrics, Inc., a corporation organised and existing under the laws of Delaware, USA (also referred to herein as the "**Company**") and certain subsidiaries of the Company, being the business owned by GE and comprising the NDT Business and certain elements of the Retained Business.

Patents: all patents, patent applications and statutory invention registrations, in each case possessed or owned by the Sellers prior to Closing, including all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions and all rights to obtain and file for Patents and registrations thereto in the world, in each case relating to the Divested Business and listed in Schedules 3.8(a)(i) and 3.8(b) of the Divestment Agreement.

Person: any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organisation or other entity or any Governmental Entity.

R/D Tech: R/D Tech, Inc., a corporation organised and existing under the laws of the Province of Quebec, Canada, with its registered office at 505, boul. Du Parc-Technologique, Québec (QC) G1P 4S9, Canada (also referred to herein as the "**Purchaser**").

Retained Business: all businesses of GE other than the NDT Business, meaning all businesses of the Sellers and Affiliated Undertakings other than the Divested Business, specifically including GE's and Sellers' ultrasonic flowmeter businesses measuring speed of flow, non-ultrasonic NDT testing devices, precision controlled instrumentation and satellite sensor systems and the "Snake Eye" product lines of Sellers.

Scientific Material: all technological, scientific, chemical, and electrical materials and information owned by Sellers and relating to the NDT Business, and all rights thereto, in any and all jurisdictions.

Seller Intellectual Property: all intellectual property of Sellers and their subsidiaries not included as part of the Acquired Intellectual Property.

Seller License Agreement: the Seller License Agreement, dated as of Closing, by and between the Company and the Purchaser, substantially in the form attached to the Divestment Agreement as Exhibit A.

Sellers: Panametrics and GE

Tax Return: any material report, return, declaration or other information required to be supplied to a Governmental Entity in connection with Taxes, including material estimated returns and reports with respect to Taxes.

Taxes: all material taxes, assessments, charges, duties, fees, levies or other governmental charges (including interest, penalties or additions associated therewith), including material income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other material taxes of any kind for which any Seller has any liability by any Governmental Entity, whether disputed or not.

Trade Dress: all trade dress of equipment distributed, marketed, or sold by or on behalf of the NDT Business before Closing, including, but not limited to, product packaging associated with the sale of such equipment worldwide and the lettering of such equipment trade names or brand names, but excluding therefrom all elements of such trade dress relating to GE and the Retained Business (other than as set forth in the Transition Services Agreement).

Trade Secrets: all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, and all documentation relating to the foregoing, relating to the NDT Business and listed in Schedule 3.8(a)(i) of the Divestment Agreement.

Trade Secret License Agreement: the agreement, dated as of Closing, by and between Panametrics and R/D Tech and substantially in the form set out as Exhibit C to the Divestment Agreement.

Trademarks: all trademarks, service marks, trade names and domain names, including any registrations and applications therefor and all goodwill associated therewith, relating to the NDT Business and listed in Schedules 3.8(a)(i) and 3.8(b) of the Divestment Agreement.

Transaction: The Stock and Asset Purchase Agreement, dated [...], between GE and Agfa-Gevaert N.V., whereby GE will acquire all of the assets and liabilities of Agfa NDT.

Transaction Closing: The date upon which the Transaction may be consummated between the parties thereto.

Transition Services Agreement: a transition services agreement, dated as of Closing, by and between Sellers and R/D Tech, substantially in the form mutually agreeable to such parties and with the terms and conditions substantially consistent with the term sheet attached as Exhibit B to the Divestment Agreement, including Sellers providing R/D Tech with services within information technology, accounting and financial services, sales relationships and engineering as described in further detail in Schedule 1.1 to the Transition Services Agreement.

SECTION B. THE DIVESTED BUSINESS

Commitment to Divest

1. GE commits to divest, or procure the divestiture of, the Divested Business as a going concern to R/D Tech pursuant to the terms and conditions of the Divestment Agreement according to the procedure described in these Commitments. The proposed Transaction shall not be implemented unless and until the Commission has approved the Purchaser and the terms of sale in accordance with these Commitments. The Divested Business transaction shall only be consummated if, and after, the Transaction is consummated, with Closing no later than 31 December 2003. In the event that the proposed Transaction lapses, these Commitments shall also lapse.
2. In order to maintain the structural effect of the Commitments, the Parties 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 Divested Business

3. The Divested Business is defined in more detail in the Divestment Agreement, and includes, inter alia, the items set out below. GE commits that this list of Acquired Assets identifies all the relevant functions of the Divested Business. The Divested Business includes:
 - (a) the Fixtures and Equipment; being (i) the Manufacturing Equipment and (ii) all other machinery, equipment, motor vehicles, furnishings, tools, furniture, fixtures, office equipment, personal computers, workstations, and other tangible personal property (other than Inventory) owned or leased by any Seller, in each case primarily relating to the NDT Business and necessary or used in connection with the conduct of the NDT Business and not primarily used in connection with the Retained Business, in each case as currently conducted (but excluding such assets covered by the Transition Services Agreement).
 - (b) the Inventory; being all finished goods inventory, all work-in-process, and all raw materials used or held for use by any Seller, in each case primarily relating to the NDT Business, as determined in accordance with the Accounting Policies.
 - (c) the Contracts; being the agreements, contracts, leases licenses, purchase orders, arrangements and commitments, oral or written, to the extent relating to the NDT Business, other than (i) the Stock Purchase Agreement, dated [...], as amended, by and among GE, the Company and the former stockholders of the Company, (ii) leases for the leased real property of the Sellers as described in Section 3.7 and listed in Schedule 3.7 of the Divestment Agreement, except for the lease identified on Schedule 3.11(b)(iii) of the Divestment Agreement and (iii) the agreements identified as "Retention Agreements" on Schedule 3.11(b)(i) of the Divestment Agreement.

- (d) the Books and Records; being all books, records, files, papers, manuals, office procedures and practices, credit information, business plans, studies, surveys, reports, correspondence, supplier lists, customer files and records, and sales and advertising literature, webpage content and other selling material owned by Sellers and to the extent relating to the NDT Business as more properly defined and set out in the Divestment Agreement and including all limitations therein.
- (e) to the extent their transfer is permitted by Law and without the consent of any third party, any security deposits for the obligations of Sellers under the leases, subleases, licenses, sublicenses, permits and agreements described in this paragraph 3.
- (f) prepaid expenses primarily relating to, and not having substantial application outside of the NDT Business;
- (g) prepaid state, provincial and local personal property taxes that are imposed directly with respect to an Acquired Asset to the extent such Taxes relate to any period prior to the Closing;
- (h) the Acquired Intellectual Property; being (i) the Trade Secrets, the Computer Software, the Copyrights, the Patents and the Trademarks that are listed in Schedules 3.8(a)(i) and 3.8(b), of the Divestment Agreement, (ii) the Acquired Manufacturing Technology, (iii) the Scientific Materials, (iv) the Books and Records Copyrights and (v) the Computer Software Copyrights, in each case, as more properly defined and set out in the Divestment Agreement.
- (i) the Licenses; being (i) a licence to the Licensed Intellectual Property, including an exclusive, worldwide, royalty-free licence to the "Panametrics" trademark as more properly defined and set out in the Seller License Agreement, (ii) all permits, licenses or similar rights set forth in Schedule 1.1(e) of the Divestment Agreement and (iii) the license that is the subject of the Trade Secret License Agreement.
- (j) the Accounts Receivable; being all trade accounts and notes receivable of the NDT Business arising exclusively out of the sale or other disposition of goods or the provision of services of the NDT Business on or prior to Closing as determined in accordance with the Accounting Policies; provided however that the term Accounts Receivable shall not include (i) any trade accounts or notes receivable to the extent such are paid on or prior to Closing or (ii) any Excluded Accounts Receivable.
- (k) transition services as more properly defined in the Transition Services Agreement and including, in particular, a commitment by GE to grant a limited licence for reasonable use and access to the facilities as defined in the Transition Services Agreement on the terms set out therein;
- (l) the Vendor Receivables; being receivables from vendors of the NDT Business that are attributable to returns, rebates and similar amounts to the extent related to the NDT Business that are owed to any Seller by vendors of the NDT Business, as determined in accordance with the Accounting Principles;
- (m) all the UK Shares, as more properly defined and set out in the Divestment Agreement; and

to the extent their transfer is permitted by Law and without the consent of any third party, and only to the extent related to events or occurrences following Closing, all guarantees, warranties, indemnities and similar rights in favour of the NDT Business.

Notwithstanding anything to the contrary contained in the Divestment Agreement (i) Sellers may retain copies of any Contract, Books and Records or any other document or materials to the extent that Sellers (a) are required to retain them by Law, (b) may need such copies for Tax purposes, (c) may need such copies in connection with claims related to the excluded liabilities (as described in Section 2.4 of the Divestment Agreement) or Excluded Assets (as defined below) or (d) may need such copies to carry out the terms or purposes of the Divestment Agreement and (ii) R/D Tech shall grant Sellers reasonable access to the Employees accepting employment with R/D Tech (including without limitation for interviews and depositions) in connection with claims related to excluded liabilities or Excluded Assets; provided that in each such case such information, documents or materials shall be Confidential Information (as more properly defined in the Divestment Agreement) that Sellers shall not disclose, and shall keep strictly confidential, except to the extent necessary or appropriate to defend against or prosecute claims related to Excluded Liabilities or Excluded Assets.

4. For the avoidance of doubt, the Divested Business shall not include any assets, properties or rights not specifically identified in paragraph 3 above. The Excluded Assets shall include, without limitation, the following:
 - (a) all cash and cash equivalents of Sellers;
 - (b) the seller benefit plans (as described in Section 3.12(b) and Schedule 3.12(b) of the Divestment Agreement);
 - (c) all tax assets (including duty and tax refunds and prepayments) except to the extent specifically mentioned in paragraph 3 (g) above;
 - (d) all Tax Returns and financial statements of Sellers and the NDT Business and all records (including working papers) related thereto;
 - (e) all credits, prepaid expenses, deferred charges, advance payments, security deposits, prepaid items and duties to the extent related to any Excluded Asset and any prepaid freight exclusively relating to the Inventory;
 - (f) all insurance policies held by the Sellers;
 - (g) all insurance proceeds which Sellers have a right to receive and that relate to any Excluded Assets or Excluded Liabilities or events or occurrences prior to Closing (other than insurance proceeds received in respect of an Assumed Liability (as defined in Section 2.3. of the Divestment Agreement) or Acquired Assets which are damaged after [...] and prior to Closing;
 - (h) the Seller Intellectual Property;
 - (i) all ownership interests of Sellers in any Affiliate, joint venture or any other Person;

- (j) all Excluded Accounts Receivable;
- (k) all Contracts imposing confidentiality restrictions on any Seller (other than such Contracts listed on or described in Schedule 3.11(b)(xvi));
- (l) all rights of Sellers under the Stock Purchase Agreement, [...], as amended, by and among GE, the Company and the former stockholders of the Company;
- (m) all rights that accrue to Sellers under the Divestment Agreement; and
- (n) any other items specifically identified under Section 2.2 of the Divestment Agreement.

Transfer of Employees

5. Schedule 3.12(a) of the Divestment Agreement includes an accurate, true and complete listing of the Employees, including sufficient employees in all major functions of the NDT Business to ensure that it can continue as a viable competitive force. As such, it includes, inter alia, engineering, operations and sales and marketing employees. Pursuant to Section 5.8 of the Divestment Agreement, R/D Tech shall make and deliver written offers of employment at-will, as a successor employer, to all Employees subject to the terms and conditions contained in Section 5.8 of the Divestment Agreement.

SECTION C. RELATED COMMITMENTS

Non-Solicitation Clause

6. GE undertakes not to solicit or induce, and to procure that Affiliated Undertakings do not solicit or induce, the Employees that accept employment with the Divested Business (and certain employees of R/D Tech) for a period of two (2) years after Closing.

SECTION G. THE REVIEW CLAUSE

7. The Commission may, where appropriate, in response to a request from GE showing good cause:
 - (i) Grant an extension of the time periods foreseen in these Commitments, and
 - (ii) Waive or modify one or more of the conditions and obligations in the Commitments.
 - (iii) If the Commission, upon request from GE, should waive the commitment to divest the Divested Business to R/D Tech, GE will, if the Commission so requires, submit to the Commission commitments for the divestiture of the Divested Business substantially in the form of the Commission' s Standard Commitments.