

***Case No COMP/M.3946 -
RENOLIT/SOLVAY***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 22/02/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22/02/2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3946-Renolit/Solvay
Notification of 04.01.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 04.01.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Renolit AG (“Renolit”, Germany) controlled by JM Gesellschaft für industrielle Beteiligungen mbH & Co. KGaA (“JM”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the entire industrial foils business of Solvay S.A. (“IF Solvay”, Belgium) by way of purchase of shares and assets.
2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In the light of these modifications, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. Renolit is active at the worldwide level in the development, production and sale of a wide range of thermoplastic foils for industrial processing. Renolit is a wholly-owned subsidiary of JM, parent of a group of companies active in the development, production and sale of industrial foils and machinery for processing plastic materials. RKW AG Rheinische Kunststoffwerke (“RKW”) and Kiefel AG (“Kiefel”), which are both sister companies of Renolit, are respectively active in the production and sale of foils, non-wovens and nets made of PO and in the production of machines for processing plastic materials. In addition, Kiefel manufactures blow extruders used for the manufacture of industrial foils.
4. Solvay is the parent of a group of companies, which are internationally active in the pharmaceutical, chemical and plastic industries. The industrial foil business of Solvay (“IF Solvay”) encompasses the development, production and sale of thermoplastic foils for industrial use made primarily of polyvinyl chloride (“PVC”) and of polyolefin (“PO”).

II. THE OPERATION

5. The transaction comprises the acquisition by Renolit of IF Solvay by the purchase of the majority of the shares of several legal entities located in different countries. Renolit also intends to acquire certain other assets belonging to Solvay’s industrial foil business and which are related to some intellectual property rights and contracts, some hard-ware and software and approximately 20 employees.

III. CONCENTRATION

6. Renolit will acquire sole control over IF Solvay and the transaction constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The concentration does not meet the thresholds set out in Articles 1(2) and 1(3) of the Merger Regulation. As stated above, the case has been referred to the Commission upon the request of the parties under Article 4(5) of the Merger Regulation and is therefore deemed to have a Community dimension.

V. COMPETITIVE ASSESSMENT

RELEVANT PRODUCT MARKET

8. The transaction concerns the design, manufacture and sale of industrial foils made of PVC and PO. Industrial foils are intermediate products sold to industrial customers and the foils get their final characteristics at downstream level depending on their specific end use as these are used in a broad variety of applications. Industrial foils cover a wide array of packaging and non-packaging applications, with the majority of end-uses (approximately 75-85%) in packaging applications. IF Solvay is active only in the production of industrial foils for non-packaging applications.

Industrial foils for packaging and non-packaging applications belong to separate markets

9. The parties state that there exists a high supply-side substitutability among different kinds of (packaging and non-packaging) industrial foils, which are produced on the same kind of machinery (calendars or extruders) using readily available know-how and technologies. Industrial foil suppliers produce a wide range of different qualities and grades of foils that differ nearly exclusively in the ingredients used for the formulation of the raw material compound. Therefore they argue that, notwithstanding the fact that these products are very different from the point of view of demand, there is one integrated product market encompassing all kinds of synthetic industrial foils for packaging and non-packaging purposes.
10. However, the market investigation has not confirmed the views of the parties. Numerous respondents have indicated that, while production of all industrial foils shares the same basic technological methods, processes are differentiated depending on the specific products to be obtained. Switching between products would require extensive and costly modifications to the tooling of the machines, adaptation of the production processes and acquisition of specific know how and capabilities. (Is it possible to give the extent of modifications required i.e. extensive and also if you're investigation revealed a time scale in which parties could change production).
11. Additionally, clients of industrial foils for packaging and non-packaging applications are very seldom the same. A company's decision to expand into a new area would have to be accompanied by additional efforts to understand the new markets, develop the specific products needed, establish its own name and brand and forge relationships with potential clients.
12. In fact, the majority of the companies contacted by the Commission that are active in the production of industrial foils for non-packaging do not produce industrial foils for packaging applications. Many regard packaging applications as outside their business area and would simply not consider expanding into this production in response to small and permanent changes in relative prices. Those companies who produce both for packaging and non-packaging applications do so because they decided to be present in different markets and not due to ease of switching from one production to the other.
13. In this respect, it is interesting to note that both parties clearly separate their packaging and non-packaging productions. Solvay decided to sell the two businesses independently and separately². Production of industrial foils for packaging application within the JM Group is carried out by Renolit's sister company RKW, not by Renolit's itself.
14. To conclude, the market investigation made clear that the supply-side substitutability between industrial foils for packaging and non-packaging applications is by no means sufficient to conclude that a single relevant product market encompassing all kinds of synthetic industrial foils should be defined.

Industrial foils for non-packaging applications should be segmented on the basis of groups of end applications

² Solvay's packaging business was recently sold to INEOS.

15. Although parties do not regard segmentation according to end-applications appropriate, they have provided a description of the industrial foils activities with regard to end use applications based on the internal segmentation used by IF Solvay, which distinguishes between the following types of foils:
- **Decorative laminates:** machine-laminated multi-layer foils made of PVC or PO produced on a tailor made basis and used to embellish surfaces. The applications cover a wide and diverse range including furniture surfaces (f.e. kitchens), ceilings, walls, windows, doors, consumer electronic furniture, car interiors, etc.
 - **Flexible Technical Films (FTF):** mainly single-layer foils made of PVC or PO for non-packaging industrial purposes. The most important applications include pressure sensitive applications such as foils for stickers, labels, tapes and stationary products.
 - **Waterproofing foils:** primarily single layer foils but have a greater thickness than FTF and are used in tunnels, roofing, swimming pools, garden ponds, etc.
 - **Sheets:** industrial foils with a high thickness and limited flexibility which are used primarily in the automotive (door panels, rear shelf panels) and construction industries (panels for pouring concrete, greenhouses, basins water treatment, etc.).
 - **Foils for medical supply:** foils and associated tubing for a range of end applications in medical devices (bags for blood, bags to package medical products). These foils are produced under clean room conditions.
16. The Commission has tested whether this segmentation of foils for non-packaging applications can be used for the purposes of defining the relevant markets. The response of the market investigation has been positive, with respondents in large majority agreeing that industrial foils for non-packaging applications should at least be segmented along these lines.
17. For waterproofing foils, sheets and foils for medical supplies, the exact definition of the relevant product market can be left open because, as it will be shown below, no competition problems arise on these markets under any alternative definition.
18. For decorative laminates and FTFs, the market investigation has indicated that further segmentation may be necessary.

Decorative laminates

19. The parties state that there are hundreds of end-applications for decorative laminates and that for every application, industrial foils are substitutable with various other more traditional materials. For example, in the furniture industry laminated paper, solid wood or wood laminated with veneer can substitute for decorative laminates. In the automotive industry the closest substitutes are considered to be other synthetic materials as PVC skin, polyurethane skin, PVC foam sheet, leather and injection moulding. In the consumer electronic industry, the parties maintain that decorative laminates can be substituted for by wood veneer, injection moulding or painting.
20. Additionally, the parties maintain that there is a very high degree of supply side substitutability between different decorative laminates (in line with their line of reasoning regarding all industrial foils).

21. The market investigation did not clearly establish whether all decorative laminates belong to the same relevant product market, or whether it is necessary to further segment the markets on the basis of specific end applications. However, as on such subdivided segments no competition problems would be identified, the market definition can be left open.
22. As regards possible substitute materials for specific applications, the market investigation confirmed the view of the parties that decorative laminates can be substituted for by laminated paper in many applications in the furniture industry, while no clear picture emerged as regards other sub segments. However, as on such subdivided segments no competition problems would be identified, the market definition can be left open.
23. Furthermore, part of the customers stated that PVC and PO decorative laminate foils are being used for the same applications, but another part does not agree with this as for certain applications they only use decorative laminates based on PVC. A significant number of competitors indicated that there is no supply side substitutability between PVC and PO foils. Again, as on such subdivided segments no competition problems would be identified, the market definition can be left open.

Flexible technical films (FTF)

24. As for decorative laminates, the parties state that there are hundreds of end-applications for FTF and that for every application, industrial foils are substitutable with various other materials. For example, the parties claim paper is a good substitute for FTF for the production of labels, stickers and stationary products, as it is witnessed by the fact that many companies active in this areas use both paper and foils in their production..
25. Additionally, the parties maintain that there is a very high degree of supply side substitutability between different FTF (in line with their line of reasoning regarding all industrial foils).
26. The market investigation has not confirmed the parties' view regarding the relevant market for FTF. Firstly, the large majority of the respondents indicated that, while it is relatively easy to switch between types of FTF made of PVC and between types of FTF made of PO, there is no or very little supply side substitutability between FTF-PVC and FTF-PO.
27. Indeed, only very few market players (among which the parties) produce both FTF-PVC foils and FTF-PO foils, whilst the majority specialise in the production of one or the other. Even when both product lines are produced by the same company, the two productions are clearly separated and allocated to different plants, as is the case for both parties.
28. The large majority of producers confirmed that there is no or very little supply side substitutability between PVC and PO for the production of FTF. While some respondents recognised that similar machinery is used and that it is technically possible to produce both on this machinery, it emerged clearly that there is little economic

incentive to do so³. Frequently, the switch is simply not possible due to the specific design of the production equipment and machinery. While PVC foils are usually produced on calendaring lines, PO foils are predominantly produced on extrusion lines.

29. Secondly, the market investigation has held that there is only partial demand side substitutability between FTF-PVC foils and FTF-PO foils. Although customers consider PVC and PO foils substitutable for some applications (e.g. basic labels, some stationary products), there are numerous others where substitution is in their view not possible or very limited (these include self-adhesive graphical products, some stationary products, car signage and advertisement boards, insulation and electrical tapes).
30. Similarly, while some customers have indicated that FTFs and paper are good substitutes for some applications, there are numerous others where substitution is not possible or very limited. These include in particular car wrappings, exterior applications, particular types of tapes and stationary products. More importantly, the large majority of FTF customers (including many who considered substitution as possible) have reported that they would not switch their purchases from FTF to paper based products in the event of a small permanent increase in the price of FTF.
31. Based on these elements, the Commission concludes that two separate markets should be defined, one for FTF-PVC products and one for FTF-PO products. Although both markets include products that are clearly differentiated from the demand side point of view, the market investigation indicated that there is sufficient supply side substitutability within FTF-PVC products and within FTF-PO products to consider that no further segmentation is necessary.

RELEVANT GEOGRAPHIC MARKET

32. The parties submit that the relevant geographic market for industrial foils is at least EEA-wide in scope. They argue that industrial foils designed for a given application are basically the same throughout the world and all major competitors are active on a EEA-wide or even worldwide level. In addition, parties add other arguments such as the existence of significant cross-border supplies in the EEA, low transport costs (less than 5% of the value of the finished product), absence of trade barriers, and similar price level throughout the EEA.
33. The market investigation has largely confirmed the views of the parties and therefore the different segments of the industrial foils market as described above can be regarded as EEA-wide in scope.

COMPETITIVE ASSESSMENT

Waterproofing foils, sheets and foils for medical supplies

34. According to the figures reported by the parties, the combined market share (2004) on the EEA market for waterproofing foils amounts to [10-20%] (Renolit [0-10%], IF Solvay [10-20%]). Other competitors such as Sika/Sarna ([20-30%]), FDT ([5-15%]), Flag ([0-10%]), GSE ([0-10%]) and others are active on the market. On a wider market

³ Unless the machinery was specifically designed to allow for such flexibility, which is generally not the case

for waterproofing materials (synthetic and natural materials), the parties' combined market share would be [0-10%]. It should be noted that Renolit is not active in the production of waterproofing foils but purchases them from a [...] and on-sells them in the EEA. Given the very limited overlap and the fact that Renolit does not have own production facilities, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the Common market in the area of waterproofing foils.

35. According to the figures reported by the parties, IF Solvay has a market share (2004) of [30-40%] on the EEA market for sheets and of [35-45%] on the market for foils for medical supply.⁴ However, Renolit is active neither in sheets nor in foils for medical supply. Therefore, no overlapping activities can be identified. In view of this, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the Common market in the areas of sheets and foils for medical supply.

Decorative laminates

36. The parties have estimated the EEA market for decorative laminates (industrial foil only) to be worth [€ 750-1000] million in 2004. On this basis, they would have a combined market share (2004) of [20-30%] (Renolit [10-20%], Solvay [10-20%]). On a wider market for decorative surface materials, including competing materials, the parties' reported market share would be [5-15%] (Renolit [0-10%], IF Solvay [0-10%]).
37. During the market investigation, the Commission has verified with the market players the sales and market shares estimated by the parties (see table 1). For decorative laminates, the market investigation has indicated that the total size of the market just exceeded [...], against [...] estimated by the parties. On the basis of the Commission's findings, the combined market share of the parties would be [25-35%] (Renolit [10-20%], IF Solvay [10-20%]), against [20-30%] estimated by the parties.

⁴ If alternative materials are added to the market, the reported market shares become [0-10%] and [15-25%] respectively.

Decorative Laminates	Parties' estimates		Market investigation	
Company	Sales (mEUR)	Market Share	Sales (mEUR)	Market Share
Renolit	[...]	[10-20%]	[80-160]	[10-20%]
IF Solvay	[...]	[10-20%]	[80-160]	[10-20%]
Combined	[...]	[20-30%]	[200-280]	[25-35%]
Benecke	[...]	[30-40%]	200-280	25%-35%
Hornschuch	[...]	[0-10%]	40-120	5%-15%
Riken	[...]	[0-10%]	0-80	0%-10%
LG Chem	[...]	[0-10%]	0-80	0%-10%
C.I. Kasei	[...]	[0-10%]	0-80	0%-10%
Alfatherm	[...]	[0-10%]	0-80	0%-10%
Klöchner-Pentaplast	[...]	[0-10%]	0-80	0%-10%
TGM Automotive	[...]	[0-10%]	0-80	0%-10%
Gislaved Folie	[...]	[0-10%]	0-80	0%-10%
Vulcaflex	[...]	[0-10%]	0-80	0%-10%
Griffine Enduction	[...]	[0-10%]	0-80	0%-10%
Others	[...]	[0-10%]	18.7	2%
Total	[750-1000]	100%	802	100%

Table 1: parties' estimate and Commission's findings of 2004 EEA sales and market shares for decorative laminates

38. The market investigation has also shown that the competitors mentioned by the parties were active on the market and that their sales figures were overall in line with the parties' estimates. The most important competitor, Benecke, would have post-merger a similar market share as the parties in decorative laminates. Numerous other competitors would also be present, albeit with smaller market shares.
39. On a narrower market of decorative laminates made of PVC (Renolit only produces PVC decorative laminates, while IF Solvay also produces PO), the combined market share (2004) of the parties would be [20-30%] (Renolit [10-20%], IF Solvay [5-15%]) according to the parties. Other competitors such as Benecke ([25-35%]), Hornschuch ([5-15%]), Rike ([0-10%]), Alfatherm ([0-10%]) and others are active on the market. These market shares are in line with the Commission' findings.
40. Looking at the specific end applications of automotive, consumer electronics, furniture/kitchen, there would be only overlapping activities in the furniture/kitchen segment where the parties would have a combined market share (2004) of [30-40%] (Renolit [10-20%], IF Solvay [15-25%]) according to the parties (and in line with the Commission's findings). Other competitors such as Benecke ([10-20%]), Riken ([10-20%]), C.I. Kasei ([10-20%]), LG ([10-20%]) and Alfatherm ([0-10%]) are active on the market. However, the market investigation has also indicated that, in the furniture/kitchen applications decorative laminates and alternative materials (in particular décor paper), are close substitutes. Therefore the competitive pressure on decorative laminates from alternative materials is particularly high in this area. Furthermore, on a wider market including substituting materials, the combined market shares of the parties will be much lower.
41. It is clear from the above analysis that in none of the alternative markets considered will the transaction allow Renolit to increase its market power to such an extent so as to significantly impede effective competition in the common market. Post-merger, Renolit will still face sufficient competition from other players, including a similarly

sized competitor. It will also face strong competition from alternative materials in the segment where it will become the market leader (kitchen furniture).

42. Based on these elements, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the Common market in the areas of decorative laminates.

Flexible technical films (FTF-PVC and FTF-PO)

43. The parties have estimated the overall EEA market for FTF (industrial foil only) to be worth [€1000-1250] in 2004, of which [€600-850] million in PVC and the remaining part in PO.
44. During the market investigation, the Commission has verified with the market players the sales and market shares estimated by the parties. The figures for FTF (both PVC and PO) are reported in table 2 below.

FTF (PVC and PO)	Parties' estimates		Market investigation	
Company	Sales (mEUR)	Market Share	Sales (mEUR)	Market Share
Renolit	[...]	[15-25%]	[170-255]	[20-30%]
IF Solvay	[...]	[10-20%]	[85-170]	[10-20%]
Combined	[...]	[30-40%]	[300-385]	[35-45%]
Profol	[...]	[0-10%]	43-128	5%-15%
Nordenia	[...]	[0-10%]	0-85	0-10%
Alfatherm	[...]	[0-10%]	0-85	0-10%
Hornschuch	[...]	[0-10%]	0-85	0-10%
KWH	[...]	[0-10%]	0-85	0-10%
Mondoplastico	[...]	[0-10%]	0-85	0-10%
Vulcaflex	[...]	[0-10%]	0-85	0-10%
Wardle Storeys	[...]	[0-10%]	0-85	0-10%
Others	[...]	[30-40%]	223	26%
Total	[1000-1250]	100%	853	100%

Table 2: parties' estimate and Commission's findings of 2004 EEA sales and market shares for FTF (PVC and PO)

45. As the Commission has concluded that separate markets exist for FTF-PO and FTF-PVC, the focus of the competitive assessment will be on these two markets. Table 3 shows 2004 sales for FTF-PVC.

FTF- PVC	Parties' estimates		Market investigation	
Company	Sales (mEUR)	Market Share	Sales (mEUR)	Market Share
Renolit	[...]	[20-30%]	[150-200]	[30-40%]
IF Solvay	[...]	[15-25%]	[50-100]	[10-20%]
Combined	[...]	[30-40%]	[250-300]	[50-60%]
Alfatherm	[...]	[0-10%]	0-50	0-10%
Hornschuch	[...]	[0-10%]	25-75	5-15%
KWH	[...]	[0-10%]	0-50	0-10%
Mondoplastico	[...]	[0-10%]	0-50	0-10%
Vulcaflex	[...]	[0-10%]	0-50	0-10%
Others	[...]	[30-40%]	102	20%
Total	[600-850]	100%	504	100%

Table 3: parties' estimate and Commission's findings of 2004 EEA sales and market shares for FTF-PVC

46. It is clear from table 3 that the total 2004 sales that could be verified by the Commission in the FTF-PVC market are considerably lower than the parties' estimates. The difference between the Commission's and the parties' figures is due both to lower actual sales attributable to the competitors that whose sales were explicitly reported by the parties (together, the five companies named account for [€100-200] million in sales, against [€150-250] million estimated by the parties) and to lower actual sales attributable to 'others' (accounting for € 102 million against [€200-300] million estimated by the parties)⁵.
47. Therefore, according to the Commission's figures, the parties' combined market share on the FTF PVC market would reach [50-60%] (Renolit [30-40%]; IF Solvay [10-20%]), significantly higher than the [30-40%] estimated by the parties. Importantly, competitors are much smaller in size: the sales of the largest competitor Hornschuch, are only a fraction of the parties.
48. For FTF-PO, the total 2004 sales that could be verified by the Commission in the FTF-PVC market are by and large in line with the parties estimates⁶ (see table 4). The parties combined market shares would be significantly lower than for FTF-PVC. Additionally, in FTC-PO competitors (both Profol, mentioned by the parties, and other competitors that the parties did not explicitly mention) are of a comparable size to the merged entity. After the merger the combined entity will rank second after the market leader Profol.

⁵ In order to verify the sales of 'Others' the Commission has contacted all competitors that were indicated by the parties as active in FTF. From a majority of them, it could obtain the actual sales of FTF-PVC in 2004. For the minority for which sales data could not be obtained, the Commission estimated a global sales amount.

⁶ The parties' estimates have been calculated by subtracting the figures for FTF-PVC from the figures for all FTF products.

FTF -PO	Parties' estimates		Market investigation	
Company	Sales (mEUR)	Market Share	Sales (mEUR)	Market Share
Renolit	[...]	[5-15%]	[17,5-52,5]	[5-15%]
IF Solvay	[...]	[10-20%]	[0-35]	[10-20%]
Combined	[...]	[20-30%]	[70-105]	[20-30%]
Profol	[...]	[20-30%]	87.5-122.5	25%-35%
Mondoplastico	[...]	[0-10%]	0-35	0-10%
Nordenia	[...]	[10-20%]	0-35	0-10%
Wardley Stores	[...]	[0-10%]	0-35	0-10%
Others	[...]	[20-30%]	121	35%
Total	[350-550]	100%	349	100%

Table 4: parties' estimate and Commission's findings of 2004 EEA sales and market shares for FTF-PO

49. It follows from table 3 above, that the market share of the parties in FTF-PVC, in excess of 50%, is already indicative of the creation of a dominant market position. In addition, the merger would combine the largest and second largest player in the FTF-PVC market whilst the next competitor post merger would have a market share many times smaller than the combined entity.
50. Other elements gathered during the investigation confirm that the merger would be likely to confer market power on the merged entity so as to significantly impede effective competition in the FTF-PVC market.
51. Firstly, Renolit and IF Solvay are perceived as the *closest competitors* in the FTF-PVC market. In this respect, it should be borne in mind that FTF-PVC production is characterised by the presence of highly differentiated goods. Only part of the production of FTF-PVC is made of standardised products that can be effectively purchased from different producers. Indeed, customers often require custom-made products⁷ that need to be developed together with the supplier, even when actual volumes of the specific product will be low. The costs of product development (both in monetary and time terms) imply that customers are subsequently locked in with their existing suppliers for the specific product.
52. During the market investigation, a significant number of customers indicated that they consider Renolity and IF Solvay to be the closest competitors for specific products. Respondents mentioned the R&D capabilities and proven track record of the two companies as a decisive factors for the choice of a supplier with whom to develop new products. Some respondents have mentioned that the parties' existing large 'library' of product formulations as a distinctive competitive advantage.
53. Many respondents have also indicated that Renolit and IF Solvay among very few alternative suppliers (sometimes the only alternative suppliers) for high volume orders. Smaller suppliers, it is argued, are often unable to compete with the parties in terms of volumes and delivery times.

⁷ FTF-PVC products can differ with respect to a large number of characteristics, e.g. colour, size, thickness, printability, cuttability, conformability, plastic properties, resistance to exposure and to fire and many others.

54. Secondly, there are significant *barriers to entry* into the market. This is best stated in the Information Memorandum prepared by the bank HSBC for potential buyers of IF Solvay: “[...]”⁸
55. The parties recognised that green field entry in the FTF market is unlikely, due to high investment, strong competition and mature environment. They however stated that expansion to new products within the industrial foils business is relatively easy. While coherent with the parties’ view of supply side substitutability between different types of industrial foils, this claim has not been confirmed by the market investigation.
56. The large majority of industrial foils producers who participated to the market investigation do not consider that expansion into different markets (e.g. from decorative laminates to FTF) is easy. Expansion requires acquisition of know how and R&D capabilities as well as significant time investment and costly adaptation of existing machinery and production processes. As a matter of fact, the majority of respondents indicated that they would not be able to switch to the production of a given foil following a small and permanent price increase of that foil.
57. Thirdly, the EEA market for FTF (and for PVC foils in general) is characterised by *limited imports from extra-European countries*⁹. The parties claimed that competition from players outside the EEA is strong and has intensified in recent years also due to the strength of the Euro against the Dollar. The market investigation has partially confirmed the parties claim that non European players, in particular Asian, are increasing their presence in Europe and may increase it further in the future. However, most respondents rated imports as marginal and did not consider that the situation would significantly change in the medium term, with the possible exception of the lowest value added segments of the market. A number of respondents pointed out that quality of Asian imports is not always consistent with the requirement of demand.
58. Fourthly, competitive pressure from alternative products on FTF-PVC is limited. As already discussed in the section on relevant product market definitions, there is only partial demand side substitutability between FTF-PVC foils and FTF-PO foils. In any event, the parties would still hold significant market power even on an hypothetical market for FTF (PVC and PO), with a combined market share of [40-50%] (Renolit [20-30%], Solvay [10-20%]) as reported on table 2. The merger would still combine number one and two to create a company much larger than the next competitor, with a very strong foothold in PVC products. The same analysis would apply regarding customers limited choice, barriers to entry and limited imports from outside the EEA.
59. Competition with alternative materials (paper, leather, etc.) is similarly limited, and most customers would not switch to different materials in the event of a small and permanent increase in the price of FTF-PVC.
60. Lastly, the market investigation has shown that most customers *lack countervailing buyer power* and would thus not be in the position to prevent unilateral price increases by the merged entity post-merger. In their submission, the parties have claimed that the structure of demand in the FTF area is concentrated and that customers exert

⁸ Information Memorandum Project Eucalyptus, Annex 5.4.1. to the Form CO, page 17.

⁹ “[...]” Information Memorandum Project Eucalyptus, Annex 5.4.1. to the Form CO, page 16. For some segments, e.g. stationary, competition may be stronger downstream, through imported finished products that made use of FTF produced by non-European companies.

significant countervailing buyer power. However, the market investigation has not confirmed this claim.

61. It is true that some of the parties' customers are large. According to the parties, Renolit's top five customers account for [...] of its FTF sales, with the largest one accounting for [...%].¹⁰ For IF Solvay, the top five customers account for [...] of FTF sales, with the largest one account for [...%]. However, the fact that the top customers are relatively large does not immediately translate in countervailing buyer power. Indeed, one clear result of the transaction is that the combined entity would have no competition in terms of production capacity. For at least some large customers, the combined entity would be the only possible supplier, against two (Renolit and IF Solvay) pre merger.
62. Additionally, demand for FTF products cannot be considered as particularly concentrated. In fact, a large number of customers are indeed small and, more importantly, need small volumes of very customised products. The fifth customer of Renolit accounts for only [...%] of its sales, meaning that the remaining [...%] of Renolit's sales are distributed between smaller customers¹¹. The fifth customer of IF Solvay accounts for [...%] of its sales, meaning that the remaining [...%] of IF Solvay's sales are distributed between smaller customers¹².
63. These figures, together with the differentiated nature of the products, mean that buyer power in the FTF-PVC market is rather limited and that by reducing the number of available suppliers, the combined entity would be able to pass price increases on to its clients at least to some extent.
64. In view of these elements, the Commission concludes that, in the absence of appropriate remedies, the proposed transaction raises serious doubts as to its compatibility with the common market as it would be likely to significantly impede effective competition in the EEA FTF-PVC market through the creation of a dominant position, thereby allowing the merged entity to hold significant market power to the detriment of customers.
65. Turning to the FTF-PO market, the Commission has found no elements showing that the transaction will significantly impede effective competition in the common market. The parties would have a relatively modest combined market share post transaction (lower than 25%) and other bigger (Profol) or slightly smaller competitors would ensure sufficient competition within this market, even taking into account high barriers to entry and the limited role of imports from outside the EEA.

VI. MODIFICATION OF THE PROPOSED CONCENTRATION

66. In order to remove the serious doubts resulting from the proposed transaction, the parties formally submitted commitments to the Commission on 01.02.2006. Following the market test, the parties submitted a final commitment package on 15.02.2006 taking account of the Commission's comments. The detailed text of these commitments

¹⁰ The parties did not provide figures for FTF-PVC specifically. However, the figures for FTF products overall provide a sufficiently clear picture of the demand structure.

¹¹ Renolit's 10th customer accounts for only [...%] of its sales; [...%] of sales go to even smaller customers.

¹² IF Solvay's 10th customer accounts for only [...%] of its sales; [...%] of sales go to even smaller customers.

is annexed to this decision. The full text of the annexed commitments forms an integral part of this decision.

67. Renolit therefore proposed to divest the following set of assets:
- The Liancourt plant (France) dedicated to the production of FTF and
 - The Enkhuizen plant (The Netherlands) limited to the FTF production assets. As regards Enkhuizen, the parties commit to carve out the medical supply business not dedicated to FTF production in that plant.
68. The Liancourt plant has two calendaring lines, including IF Solvay's widest calendaring line with a combined capacity of [...] tons/year and covers a broad range of FTF PVC foils, which are high value added speciality products with well established brands. In addition, the plant seems to be a viable stand-alone business. The Enkhuizen plant has four calendaring lines (stationary and niche applications) with a capacity of [...] tons/year and its FTF activities are organised in a distinct business unit. Therefore, six out of the [...] calendar lines (for a capacity of [...] out of [...] tons/year) of IF Solvay will be divested.
69. In addition to the plants, the parties also propose to divest on a permanent and exclusive basis the following trademarks currently used by IF Solvay for its FTF products:
- AlcorCoat®
 - AlkorFix®
 - The name "Alkor Draka" for exclusive use in this combination.
 - Studio X®
 - Mystery Design
 - PAON Stylise
70. Finally, the parties propose to include in the divested business all necessary assets to ensure that the business is viable and can be operated as a stand alone entity. In addition to the plants and trademarks, such assets would include personnel, support functions (administration, IT, accounting, HR, R&D, product development), sales force, existing contracts and customer records, IP rights, product formulations and production know-how.
71. The proposed divestitures will reduce the parties' combined market share to around [30-40%] and the overlap will be limited to around [0-10%]. The divested business will represent a [10-20%] market share on the FTF PVC market. As confirmed by respondents to the market test, the Liancourt and Endhuizen plants are considered a viable and stand-alone business and to be competitive in comparison with similar other FTF PVC plants. As a result, a future purchaser of the divested business would obtain substantial assets in order to compete effectively on the FTF PVC market.

72. These divestitures are accepted on the condition that they will transfer a viable going concern to the Purchaser and will thereby remove the competitive concerns identified on the FTF PVC market.
73. The Commission considers that the commitments are sufficient to eliminate all serious doubts as to the compatibility of the transaction with the common market. The commitments were supported by third parties in their replies to the Commission's market test.
74. In order to ensure that Renolit complies with these commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section B and Schedule 1 of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious doubts identified by the Commission. The other commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the serious doubts identified by the Commission.

VII. CONCLUSION

75. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement, subject to full compliance with: (i) the conditions in Section B and Schedule 1- of the commitments annexed to the present decision; and (ii) the obligations in the other Sections of the said commitments and in Schedule 2. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004

For the Commission
(signed)
Neelie KROES
Member of the Commission

February 13, 2006

COMMITMENTS TO THE EUROPEAN COMMISSION

PURSUANT TO COUNCIL REGULATION (EC) No 139/2004

Case COMP/M.3946 – Renolit/Solvay

**PROPOSED ACQUISITION OF THE INDUSTRIAL FOILS BUSINESS
OF SOLVAY S.A.
BY RENOLIT AG**

February 13, 2006

SHEARMAN & STERLING LLP

February 13, 2006

CASE M.3946 – RENOLIT/SOLVAY

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EEC) No. 139/04 (the “*Merger Regulation*”), Renolit hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the acquisition of Solvay’s industrial foils business by Renolit (together with Solvay the “*Parties*”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

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Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Carve-out: the separation of the PVC FTF- and the medical supply-related part of Solvay's production site situated at Flevolaan 1-5, NL-1601 MA Enkhuizen, a concept for which is provided in the Schedule.

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

Divestment Business: the businesses as defined in Section B and the Schedule that Renolit commits to divest.

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

Effective Date: the date of adoption of the Decision.

Enkhuizen: the PVC FTF-related part of Solvay's production site situated at Flevolaan 1-5, NL-1601 MA Enkhuizen, the Netherlands, the related tangible and intangible assets, personnel and agreements as defined in the Schedule.

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

FTF: flexible technical foils.

Hold Separate Managers: the two persons appointed by the Divestment Business to manage the day-to-day business of Enkhuizen and Liancourt, respectively, under the supervision of the Monitoring Trustee.

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

Liancourt: Solvay's PVC FTF production site situated at Rue Pasteur, F-60140 Liancourt, France, the related tangible and intangible assets, personnel and agreements as defined in the Schedule.

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

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

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

PVC: Polyvinyl chloride.

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

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

Renolit: Renolit AG, incorporated under the laws of the Federal Republic of Germany, with its registered office at Horchheimer Straße 50, D-67547 Worms and registered with the Commercial Register at Worms under number HRB 2284.

Solvay: Solvay S.A., incorporated under the laws of Belgium, with its registered office at Rue Prince Albert 33, B-1050 Brussels and registered with the Commercial/Company Register at Brussels under number RPR 0403 091 220.

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Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Renolit commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14. To carry out the divestiture, Renolit commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Renolit has not entered into such an agreement at the end of the First Divestiture Period, Renolit shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.
2. Renolit shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Renolit has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Renolit shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

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4. The Divestment Business consists of Solvay's PVC FTF production site at Liancourt, France, and the PVC FTF-related part of Solvay's production site at Enkhuizen, the Netherlands. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes
- (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business; and
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "*Assets*"); and
 - (d) the Personnel.

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Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Renolit shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Renolit undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Renolit

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

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7. Until Closing, Renolit shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by Renolit. Renolit shall appoint Hold Separate Managers who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager for Enkhuizen shall be appointed not later than the Effective Date in order to ensure timely accomplishment of the Carve-out. The Hold Separate Manager for Liancourt shall be appointed without undue delay thereafter. The Hold Separate Managers shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Renolit.

Ring-fencing

8. Renolit shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Renolit may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Renolit is required by law.

Non-solicitation clause

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

Due Diligence

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

Reporting

11. Renolit shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
12. Renolit shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

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Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to Renolit;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Renolit and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the ***“Purchaser Requirements”***).
14. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Renolit has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Renolit must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

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Section E. Trustee

I. Appointment Procedure

15. Renolit shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Renolit has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Renolit at that time or thereafter, Renolit shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Renolit

17. No later than one week after the Effective Date, Renolit shall submit a list of one or more persons whom Renolit proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Renolit shall submit a list of one or more persons whom Renolit proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to

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carry out its assigned tasks;

- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

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

New proposal by Renolit

19. If all the proposed Trustees are rejected, Renolit shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 15 and 18.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

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Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Renolit with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Renolit, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Renolit, determine all necessary measures to ensure that Renolit does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Renolit as the disclosure is reasonably necessary to allow Renolit to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Renolit or Affiliated Undertakings in general and in particular the Carve-out of Enkhuizen;

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- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Renolit such measures as the Monitoring Trustee considers necessary to ensure Renolit's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending Renolit a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Renolit a non-confidential copy at the same time, if it concludes on reasonable grounds that Renolit is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no

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minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Renolit, subject to Renolit's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

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

III. Duties and obligations of Renolit

25. Renolit shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Renolit's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Renolit and the Divestment Business shall provide the Trustee upon request with copies of any document. Renolit and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
26. Renolit shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Renolit shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee

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access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Renolit shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

27. Renolit 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, Renolit shall cause the documents required for effecting the sale and the Closing to be duly executed.
28. Renolit shall indemnify the Trustee and its employees and agents (each an ***“Indemnified Party”***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Renolit for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of Renolit, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Renolit’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Renolit refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Renolit. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Renolit during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

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

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- (a) the Commission may, after hearing the Trustee, require Renolit to replace the Trustee; or
 - (b) Renolit, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-20.
32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

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Section F. The Review Clause

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

- (i) Grant an extension of the time periods foreseen in the Commitments, or
- (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Renolit seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Renolit be entitled to request an extension within the last month of any period.

duly authorised for and on behalf of Renolit

.....
Dr. Heinz Gärtner, Chief Executive Officer, Renolit AG

.....
Michael Kundel, Executive Board Member, Renolit AG

February 13, 2006

SCHEDULE 1

DESCRIPTION OF THE DIVESTMENT BUSINESS

The Divestment Business comprises Solvay's production sites situated at Rue Pasteur, F-60140 Liancourt, France, and the PVC FTF-related part of the Solvay's production site situated at Flevolaan 1-5, NL-1601 MA Enkhuizen, the Netherlands, the related tangible and intangible assets, personnel and agreements as defined in this Schedule.

A. LIANCOURT

1 Tangible Assets

- 1.1 Real estate of approximately 7,300 square meters with production facilities, technical and administrative buildings and parking lot (Annex 1 contains an overview of the site identifying buildings belonging to the Divestment Business);
- 1.2 Production equipment comprising calendering capacity of [...] *per annum*:
 - 1.2.1 Calender 7, which currently produces foils for pressure sensitive (AlkorCoat®) and niche (AlkorFix®) applications (thickness [...] ; cylinder [...] ; glossy cylinders; embossing; calcoil; multi-bands in-line slitting; fully upgraded; new winder);
 - 1.2.2 Calender 8, which currently produces foils for niche (AlkorFix®) applications (thickness [...] ; cylinder [...] ; mat cylinders; embossing; calcoil; modernized post-calender; new winder);
- 1.3 Finishing equipment;
 - 1.3.1 Laminating and embossing line (thickness [...] ; width [...] ; [...], coating in-line);
 - 1.3.2 3 Slitting/winding lines (cylinders [...]);

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- 1.4 Full service R&D center including laboratory and related equipment including infra-red identification and extraction unit);
- 1.5 Raw material storage facilities (silos) with inventory;
- 1.6 Warehouse including special refrigerating equipment) and stock;
- 1.7 Boiler room;
- 1.8 Transformer compound;
- 1.9 Waste deposit facilities.

2 Intangible Assets

- 2.1 The following registered trademarks currently owned by Alkor Kunststoffe GmbH, which will no longer be used by Renolit:
 - 2.1.1 AlkorFix®;
 - 2.1.2 AlkorCoat®;
- 2.2 The registered trademark Alkor Draka®, which will be no longer used by Renolit;
- 2.3 IP rights and know-how including more than 2,000 formulations and embossing patterns developed at Liancourt;
- 2.4 IT comprising fully integrated ERP (Enterprise Resource System) system (MFG-PRO) including software for manufacturing, purchasing, sales and distribution and financials;
- 2.5 Necessary regulatory permits and certificates to operate the production site.

3 Personnel

Headcount of approximately 120 personnel currently located at Liancourt and additional personnel to be transferred to the Divestiture Business including:

- 3.1 Management team of a total headcount of 7 (see Annex 2) including the following functions
 - 3.1.1 Site management;

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- 3.1.2 Production management;
- 3.1.3 Marketing management;
- 3.1.4 Financial management;
- 3.1.5 HR/HSE management;
- 3.2 Sales and distribution team of a total headcount of 11:
 - 3.2.1 2 sales personnel currently located at Solvay's Roissy sales office and active in the sale of products manufactured at Liancourt;
 - 3.2.2 1 sales personnel currently located at Alkor Draka UK and active in the sale of products manufactured at Liancourt in the UK;
 - 3.2.3 1 sales personnel currently located at Solvay's Ouedenaarde plant and active in the sale of products manufactured at Liancourt in Germany and the Benelux countries;
 - 3.2.4 4 customer service personnel currently located at Liancourt;
 - 3.2.5 1 customer service personnel currently located at Solvay's Roissy sales office and active in customer service of products manufactured at Liancourt;
 - 3.2.6 2 marketing personnel currently located at Liancourt;
- 3.3 R&D team of a total headcount of 6 including the R&D manager and R&D staff;
- 3.4 4 accounting and finance personnel currently located at Solvay's Roissy sales office;
- 3.5 2 IT personnel currently located at Solvay's Roissy sales office.

4 Agreements

- 4.1 Existing material supply agreements including agreements for the supply of materials such as pigments, plasticizer, stabilizer, modifier, fillers, titan dioxide);

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- 4.2 Existing customer contracts with Liancourt's more than [...] customers of sales and a complete list of customers;¹³
- 4.3 Existing service agreements including outsourced processing activities;
- 4.4 Co-promotion agreement with [...] (machine supplier).

¹³ A list with Liancourt's top [...] customers in 2004 is provided in Annex 3.

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B. ENKHUIZEN**1 Tangible Assets**

- 1.1 Real estate to be defined after carve out of a current total surface area of 62,000 square meters with production facilities, technical and administrative buildings and parking lot (Annex 4 contains a site layout identifying those parts belonging to the Divestment Business);
- 1.2 Production equipment comprising calendering capacity of [...] *per annum*:
 - 1.2.1 Calender 1, which currently produces stationery applications (thickness [...]; cylinder [...]; glossy cylinders; air knife; roll change cycle under 2 min., maximum [...] webs in-line slitting [...]);
 - 1.2.2 Calender 2, which currently produces stationery applications (thickness [...]; [...] glossy cylinders; automatic embossing rolls, automatic packaging unit; maximum [...] webs in-line slitting [...]);
 - 1.2.3 Calender 3, which currently produces stationery and niche (AlkorFix®) applications (thickness [...]; cylinder [...]; feeding via Bambury, mat cylinders; automatic embossing rolls, automatic packaging unit; maximum [...] webs in-line slitting [...]);
 - 1.2.4 Calender 4, which currently produces stationery and pressure sensitive (AlkorCoat®) applications (cylinder [...]; glossy / mat cylinders; automatic embossing rolls, quick change between 4 and 5 cylinder configuration, maximum [...] webs in-line slitting);
- 1.3 Finishing equipment
 - 1.3.1 Printing line which currently produces high end stationery products and tapes (maximum 2 colors, width [...]);
 - 1.3.2 Embossing and laminating printing machine, which currently produces high end stationery and other stationery applications (maximum 1 color, maximum 2 plies);
 - 1.3.3 3 Slitting/re-winding lines (width [...], maximum 10 to 20 webs);

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- 1.4 Full service R&D center (including 2 roll mills, coater lab line, embossing lab line, UV dryer, ovens, RF welding, raw material and finish product evaluation equipment) and a laboratory with related equipment;
- 1.5 Raw material storage facilities (silos) with inventory;
- 1.6 Warehouse including stock;

2 Intangible Assets

- 2.1 The following registered trademarks for stationery products currently owned by Solvay Draka BV, which will no longer be used by Renolit:
 - 2.1.1 Studio X®;
 - 2.1.2 Mystery Design;
 - 2.1.3 PAON Stylise (peacock) – picture mark;
- 2.2 IP rights and know-how including more than 3,000 formulations, designs and embossing patterns developed at Enkhuizen;
- 2.3 IT comprising fully integrated ERP (Enterprise Resource System) system (MFG-PRO) including software for manufacturing, purchasing, sales and distribution and financials;
- 2.4 Necessary regulatory permits to operate the production site;
- 2.5 Certifications for ISO 9001 in year 2000; ISO 14001 in year 1996 and ISO 13485 in year 2003.

3 Personnel

Head count of approximately 185 personnel currently located at Enkhuizen and dedicated to FTF and additional sales personnel to be transferred to the Divestiture Business including:¹⁴

¹⁴ An additional full time equivalent of 35 personnel at Enkhuizen currently carry out general administrative functions for FTF and the remaining business (medical supply), which is not to be transferred. The exact number of these people to be attributed to the FTF business will be

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- 3.1 Management team (see Annex 5) including the following functions:
 - 3.1.1 Site management;
 - 3.1.2 Marketing management;
 - 3.1.3 Administrative/HR/HSE management;
- 3.2 FTF sales team currently located at Enkhuizen of a total headcount of 15:
 - 3.2.1 3 marketing employees;
 - 3.2.2 5 sales employees (for Benelux and export);
 - 3.2.3 7 customer support;
- 3.3 Sales personnel to be transferred to the Divestiture Business:
 - 3.3.1 1 sales and 2 customer service personnel currently located at Alkor Draka SAS, France, and active in the sale of FTF products manufactured at Enkhuizen in France;
 - 3.3.2 3 sales personnel currently located in the UK (home office) and active in the sale of products manufactured at Enkhuizen in the UK;
 - 3.3.3 2 sales personnel currently located in Germany (home office) and active in the sale of products manufactured at Enkhuizen in Germany;
 - 3.3.4 1 sales personnel currently located in Italy (home office) and active in the sale of products manufactured at Enkhuizen and Liancourt in Italy;
- 3.4 R&D team of a total headcount of 6 including R&D manager, R&D staff (3) and quality staff (2);
- 3.5 engineering personnel.

4 Agreements

- 4.1 Existing material supply agreements;

defined during the carve-out and will ensure stand-alone operation of the Divestiture Business.

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- 4.2 Existing customer contracts with Enkhuizen's over [...] FTF customers and a complete list of customers;¹⁵
- 4.3 Existing service agreements including outsourced processing activities;
- 4.4 Service support agreement for [...] (gas, catering, information systems).

¹⁵ A list with Enkhuizen's top [...] customers in 2004 is provided in Annex 6.

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SCHEDULE 2

CARVE-OUT CONCEPT ENKHUIZEN

The Commitments proposed by Renolit encompass the sale of the FTF PVC-related business of the Target's production site situated at Flevolaan 1-5, NL-1601 Enkhuizen, the Netherlands.¹⁶ Since the Target currently produces both FTF and Medical Supply ("MS") at this plant, the proposed divestiture requires the Carve-out of its FTF-related parts. The envisaged concept for the Carve-out is outlined below.

1. TANGIBLE ASSETS

The real estate on which the Target's Enkhuizen production site is located is currently owned by Solvay Draka BV. The Parties are still in the process of evaluating the possibilities of splitting the real estate pursuant to Dutch real estate law. Renolit is generally willing to either sell or lease the property according to the preferences of the purchaser of the Divestment Business.¹⁷

Annex 1 provides a detailed map of the property at Flevolaan 1-5 indicating the activity (FTF and/or MS) individual areas are used for. The allocation of intangible assets port-carve-out is presented in Annex 2. While pink colour indicates FTF activities, the MS business is highlighted in blue. Areas marked in yellow are used by both business units. The current occupation of the plant (Annex 1) is explained in greater detail in the following:

[...]

Renolit suggests to take the following steps to implement the Carve-out and realise the situation presented in Annex 2:¹⁸

[...]

¹⁶ [...]

¹⁷ [...]

¹⁸ *If necessary, the allocation of building space will be done by installing additional walls and/or entrances.*

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Annex 3 provides an overview on the allocation of the main assets other than buildings.

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2. PERSONNEL

In addition to the personnel currently located at Enkhuizen and dedicated exclusively to FTF (headcount approximately 185), the carve-out concept foresees the transfer of additional personnel currently active for both FTF and MS. These additional personnel is the equivalent of 34.8 full time employees.¹⁹ Annex 4 contains an overview with details on the allocation of personnel currently active for both business units. Organization charts for the Divestment Business (Liancourt and Enkhuizen) are provided in Annex 5 and Annex 6 provides an overview on the sales personnel to be allocated to the Divestment Business.

3. OTHER

Relevant permits will be transferred, duplicated or split, as the case may be. With regard to utilities, Renolit will ensure that the use of separate meters will safeguard the feasibility of separate supply agreements.²⁰ Regarding other shared assets, Renolit is generally willing to enter into supply and service agreements with or transfer them to the purchaser of the Divestment Business taking into account the best interests of both businesses.

¹⁹ *This is due to the fact that some personnel work part time.*

²⁰ [...]