

***Case No COMP/M.4151 -
ORICA / DYN0***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 23/05/2006

***In electronic form on the EUR-Lex website under document
number 32006M4151***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23/05/2006

SG-Greffe(2006) D/202741

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLES 6(1)b & 6(2)
DECISION

PUBLIC VERSION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4151 – Orica/Dyno
Notification of 28.03.2006 pursuant to Article 4 of Council Regulation No 139/2004.**

1. On 27 March 2006 the Commission decided following a request for referral pursuant to Article 22(1) of Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) from the Kingdom of Sweden, joined by the Federal Republic of Germany pursuant to Article 22(2) of the Merger Regulation and by the Kingdom of Norway pursuant to Article 6(3) of Protocol 24 of the EEA Agreement to examine the proposed concentration by which Orica Investments Pty Ltd, belonging to the Australian group Orica Ltd (“Orica”), acquires sole control of certain European, Middle Eastern, African, Asian and Latin American businesses (“the Target”) of Dyno Nobel Holding ASA (“Dyno Nobel”, Norway) with regard to its effect on competition in the territories of Germany, Norway and Sweden.
2. On 28 March 2006, the Commission received a notification of the proposed concentration. The referring Member States also provided to the Commission documentation at their disposal.
3. On Orica’s request, the Commission decided on 11 April 2006 to grant a partial derogation from the suspension obligation under Article 7(3) of the EC Merger Regulation in order to allow Orica to carry out the acquisition of certain businesses and

contracts of the Target Companies situated in Chile, Peru, South Africa, Indonesia and Papua New Guinea pending the Commission's investigation.

4. After examination of the documents submitted by the referring Member States, the parties to the concentration and the results of the market investigation, the Commission concluded that the notified operation would give rise to serious doubts as to its compatibility with the common market and with the EEA Agreement. Orica submitted undertakings designed to eliminate these competition concerns. After examination of these commitments the Commission has concluded that they fully remove the competition concerns.

I. THE PARTIES AND THE OPERATION

5. Orica is a public company, listed on the Australian Stock Exchange and involved in four main businesses, namely mining services, chemicals, consumer products and fertilisers.
6. The target of the acquisition comprises all of the European, Middle Eastern, African, Asian and Latin American businesses of Dyno Nobel, except for Dyno Nobel's 50% interest in DetNet South Africa (pty) Ltd (South Africa) and DetNet International Ltd (Ireland) as well as Dyno Nobel's Mexican initiation systems production facility. The Target is active on the markets of commercial explosives and initiating systems ("IS").
7. The operation arises as a result of the second stage of a two-stage process. In the first stage, the seller, Macquarie Bank Limited ("Macquarie"), acquired the whole of Dyno Nobel from Industri Kapital, a European private equity firm, and Ensign-Bickford Industries. This first transaction was completed on 30 November 2005. Macquarie then separated Dyno Nobel in two separate business entities. Macquarie retained all the Australian, New Zealand and North American businesses and the 50% interest in the DetNet initiation systems joint ventures as well as the Mexican IS facility ("New Dyno"). The operation subject to the present decision consists of the acquisition by Orica of sole control of the Target from Macquarie and therefore is a concentration within the meaning of Article 3 of the EC Merger Regulation.

II. COMMUNITY DIMENSION

8. The concentration does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation. The Commission acquired jurisdiction to review the operation due to a referral by Germany, Norway and Sweden on the basis of Article 22(1) of the EC Merger Regulation.

III. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

9. Within the EEA, both Orica and the Target are active in the manufacturing and sale of commercial explosives and initiating systems. However, the parties' retail sales in these products overlap only in Norway and Sweden, since the Target does not have any retail activities outside these two countries.

1. Explosives

10. Explosives can be divided into two main categories based on functional criteria: primary explosives and secondary explosives. A primary explosive is a single explosive substance which detonates when subjected to flame or other form of energy. A secondary explosive is not easily detonated and requires an igniter or detonator. Secondary explosives consist of commercial explosives and military explosives. As the Target is not active in the manufacturing and supply of primary explosives, there is no horizontal overlap in this market. Furthermore, as only the Target supplies military type explosives for use in both military and civil applications, there is no horizontal overlap on the military explosives market either.
11. Secondary explosives for commercial application can be divided into two main types, namely, bulk explosives and packaged explosives. Bulk explosives can be divided in ANFO (*ammonium nitrate fuel oil*) and bulk emulsion. While these products vary in their typical use, most producers around the world produce all three products and suppliers tend to supply at least ANFO and packaged explosives.
12. ANFO is a simple bulk explosive which is used in situations where large quantities of explosives are required such as mining and quarrying operations. ANFO is only used in dry environments, as it degrades rapidly in moist conditions.
13. Bulk emulsion explosives are particularly useful for wet locations because they are highly water resistant. As indicated by its name, bulk emulsion is not transported in packages or cartridges but rather in large quantities in special trucks or containers for use in mining and quarrying operations. The bulk emulsion is typically mixed or blended in the truck from non-explosive semi products and are sensitised while being pumped straight from the truck or container into the borehole thereby becoming an explosive. Bulk emulsion is used in large surface mines and is now also being used increasingly in underground mining operations, as new technologies are being developed that enable delivery of bulk emulsions to boreholes in confined underground mines.
14. Packaged explosives are typically contained in a cartridge. They tend to be used for smaller projects and in underground mining. However, new technology has increasingly allowed their use in both surface and underground mining applications.
15. Both, Orica and the Target manufacture and sell ANFO explosives and bulk emulsion. On the other hand, the Target does not manufacture packaged explosives but only resells packaged explosives of third party manufacturers as part of its retail business in Norway and Sweden.
16. Based on the market investigation there are indications that packaged explosives, ANFO and bulk emulsion can be regarded as three distinct product markets, and about 70% of the customers have confirmed this. First, prices between packaged explosives and bulk explosives appear to be very different, and around 80% of the customers have indicated that they do not consider switching from bulk explosives to packaged explosives and vice versa. In addition around 70% of the customers indicate that, within the segment of bulk explosives, they do not consider switching from bulk emulsion to ANFO and vice versa.
17. However, as the operation would raise serious doubts relating to the creation or strengthening of a dominant position in the retail market or markets for explosives in

Norway and Sweden under any possible segmentation of the relevant product markets, it can be left open whether or not packaged explosives, bulk emulsion and ANFO constitute separate relevant product markets. In addition, for bulk emulsion and ANFO explosives it can be left open for the same reason whether the retail and wholesale levels constitute separate relevant product markets.

18. However, the market investigation revealed that there exist separate markets for the retail and wholesale level for ANFO and packaged explosives except for bulk emulsion. The wholesale market comprises sales to retailers, who buy these explosives in order to sell them to end-users. On the other hand it comprises sales from manufacturers to major end-customers. The retail market comprises sales to other end-users. End-users purchasing from retailers are typically those who do not have their own storage possibility and who usually require ancillary services, such as professional assistance for the use of explosives.
19. For the purposes of the present decision, the markets affected by the operation are therefore a) a possible retail market for explosives or b) possible separate retail markets for ANFO explosives, bulk emulsion and packaged explosives.

2. Initiating Systems

20. Initiating systems (“IS”) are used to detonate commercial explosives in a predictable, reliable and safe manner. There are three different “generations” of IS available on the market at the moment: electric IS, non-electric IS, and latest-generation electronic IS.
21. Electric detonators, are the first generation of IS and have been present in the market place in various revised forms for over 100 years. As the name suggests they require the use of electric current to initiate the detonator and to start the explosion.
22. Non-electric detonators are the second generation of IS. They do not require an electric current but use a shock wave that is transferred down in a signal tube to the detonator to initiate the explosion. They have displaced electric detonators in many applications in the period since their introduction to the market due to several operational and safety benefits.
23. Electronic detonators are the next generation product and are currently in the process of commercialisation. They provide greater flexibility and performance given their higher level of specification of delay time firing accuracy. The electronic initiating system contains a micro-chip which allows for more complex blast patterns and delays. The electronic initiating system is not yet widely used and the cost of this type of initiator is significantly higher than that of electric and non-electric detonators. There is no horizontal overlap between the parties concerning electronic detonators, as the Target does not produce them.
24. The notifying party indicates in the notification that the relevant product market for the purposes of the assessment of the current transaction is the market for the supply of electric and non-electric IS, if not all IS. From a demand-side perspective, the electric and non-electric IS are largely interchangeable, except for some specific applications, such as certain underground mining operations. Although they might be differentiated on the basis of level of safety, quality and sophistication, the parties submit that they remain on the same relevant market. From a supply-side point of view, an important part of both types of IS (namely, the metallic shall, the pyrotechnic delay element and the explosive base charge) can be produced on the same production line. Only the process

of adding the triggering device (electric cable for electric detonators, shock tube for non-electric detonators) differs. The parties underline that the process of adding the triggering device in case of non-electric detonators is a quick and inexpensive process which can be done in the same production facility or off-site. The patent on the non-electric detonator technology, held by Dyno, has expired in 1993. Since then all IS manufacturers have gradually started to produce both, electric and non-electric IS.

25. The market investigation confirms that there is a high degree of substitutability between electric and non electric IS, although this substitutability is not symmetric. It appears that around 80% of customers who have switched to the more modern non-electric IS, would not be prepared to switch back to electric IS. Nevertheless, around 50% of the customers find these products belonging to the same relevant market from a demand-side perspective. On the other hand, all distributors and competitors with one single exception stressed the high degree of supply-side substitution and accepted the suggested market definition by the parties.
26. From a supply-side perspective, the market investigation has confirmed the parties' assertion (described above more in detail) that the manufacturing of electric and non-electric detonators may be done on the same production line except for the assembly of the detonator cap and the triggering device (cable or shock tube). Both, customers and competitors seem to agree that electric IS, which is the first generation product, constitutes a declining segment, whereas the market segment for non-electric IS is stable/slowly growing. It can be concluded that electric and non-electric IS - although they constitute different product segments - due to the high degree of end-use and supply-side substitution may be considered as belonging to the same relevant product market.
27. The majority of customers does not see the "next generation" electronic detonators, which are about to be introduced to the market, as being part of the same product market mainly due to the substantial price difference. Given that the sale of electronic detonators is below 5% and there is no overlap between the parties in the production of this type of IS, the question whether electronic detonators belong to the market of electric and non-electric IS can be left open, since the final assessment does not change under any alternative.
28. The market investigation revealed that due to the organisation of the distribution in the sector, a distinction can be made between wholesale and retail markets. Even if the parties did not propose to use this distinction in the notification, they have accepted this distinction during the investigation. The Commission considers it to be necessary to distinguish between the wholesale market for IS and the retail market for IS for the reasons outlined below.
29. The wholesale market for IS comprises sales to retailers, who buy IS in order to sell them to end-users. On the other hand it comprises sales from manufacturers to major end-customers. These customers have storage possibility, do not necessarily purchase explosives and IS together and normally do not require professional assistance to use IS. Furthermore, purchasers at the wholesale level do not normally require ancillary services in order to carry out their blasting operations, as they either resell IS or dispose the necessary know-how. Finally, given the CE marking, marketing at wholesale level is possible without facing major regulatory barriers. The wholesale represent roughly one-third of all IS sales within the EEA.

30. The retail market for IS comprises sales to other end-users. End-users purchasing from retailers are typically those who do not have their own storage possibility and who usually require ancillary services, such as professional assistance for the use of IS. These end-users often buy explosives and IS together, as timely delivery of the components of a blasting is crucial. Furthermore, these end-users often prefer to purchase IS and explosives from the same company in order to simplify possible product liability questions. It seems that the level of these services is one of the most determinant elements when choosing supplier, as it reduces the operational costs, improves safety and productivity. Opposite to wholesale, most Member States require a specific licence to sell IS directly to end-users. The market investigation has largely underpinned the difference between wholesale and retail mainly due to the price differences and services provided to clients.
31. Both, Orica and Dyno are active on both, wholesale and retail level. However, overlaps between the retail activities of the parties exist only in Sweden and Norway.
32. For the reasons outlined above the affected IS markets are those of I) the wholesale market for IS II) and the retail market for IS.

B. RELEVANT GEOGRAPHIC MARKET

1. Explosives

33. Consistent with previous national merger decisions, Orica submits that the geographic scope of the markets for bulk explosives (ANFO and bulk emulsions) is national or local. Transportation of bulk explosives across borders does not take place often because of costs, regulatory rules and the volatile nature of explosives. The market investigation has largely confirmed this.
34. As packaged explosives are apparently easily transportable at rather low cost Orica considers the geographic market to be EEA-wide for these explosives. However, the market investigation has only confirmed this for the wholesale market of packaged explosives, as around 60% of the customers see the retail market as national and do not consider purchasing packaged explosives from a supplier based outside the national territory. Also around 70% of the competitors have indicated that they consider the retail market for packaged explosives as national in scope.
35. The Commission therefore considers that the geographic scope of possible wholesale and retail markets for explosives, as well as that of possible wholesale markets for ANFO explosives and bulk emulsion and possible retail markets for ANFO explosives, bulk emulsion and packaged explosives is national.

2. Initiating Systems

36. The parties consider that the geographic market for all types of IS is at least EEA-wide if not world-wide. IS are traded across and sometimes beyond the EEA by manufacturers operating usually one plant in the EEA. Given the low transportation costs and the CE marking, the EEA is characterised by significant cross-border trade flow.
37. Following the market investigation, it appears that 80% of suppliers and 70% of customers sees the wholesale market for IS as EEA-wide. This is underpinned by the fact that IS are CE-marked, therefore they can be sold freely within the EEA. The

market investigation revealed only a few Member States, such as France and Spain where additional tests are required in order to market IS. Transportation costs do not seem to be significant. For instance, one of the competitors, Austin Detonators, supplies its parent company in North America from its plant located in the Czech Republic.

38. On the other hand, the retail market implies direct sales to end-users, who mostly buy explosives and IS together. As stated above, the retail market or markets for explosives are national in scope. Furthermore, most Member States require a specific licence to sell explosives including IS to end users and have special regulations for the transportation of IS.
39. Therefore, for the purposes of this decision, the relevant geographic market for the wholesale of IS can be defined as EEA-wide, whereas the retail market for IS is considered to be national in scope.

IV. COMPETITIVE ASSESSMENT

A. EXPLOSIVES

40. The activities of Orica and the target companies overlap in Sweden and Norway. The target companies are not active in the commercial explosives markets in Germany, and therefore no overlapping activities exist in this Member State.

1. Sweden

41. Orica indicates that the combined market share (2005) of the parties on the retail market for ANFO in Sweden amounts to [50-60]% (Orica [10-20]%, Dyno Nobel [35-45]%). Other competitors are Norab ([20-30]%), Allmex ([10-20]%) and Frölanders ([1-10]%). The combined entity will be more than two times larger than the next competitor. In addition, the market investigation has indicated that in general no entry has occurred recently. On the wholesale ANFO market in Sweden, the combined market share is [60-70]% (Orica [15-25]%, Dyno Nobel [40-50]%).
42. On the retail market for bulk emulsion in Sweden, the parties' combined market share (2005) amounts to [60-70]% (Orica [1-10]%, Dyno Nobel [55-65]%). The only other competitor is Kimit.
43. On a wider market of bulk explosives (ANFO + bulk emulsion) in Sweden, the parties indicate that their combined market share would be [55-65]%.
44. On the Swedish retail market for packaged explosives, the combined market share (2005) of the parties is [50-60]% (Orica [5-15]%, Dyno [40-50]%). In addition, the market investigation has indicated that in general no entry can be identified.

2. Norway

45. On the retail market for ANFO in Norway, the parties estimate their combined market share (2005) at [85-95]% (Orica [5-15]%, Dyno Nobel [75-85]%). Other competitors are Nord ([1-10]%) and Viking ([1-10]%). The first and the second competitor will be combined by the transaction and this will lead to an extremely high combined market share with a substantial increment. In addition, the market investigation has indicated that in general no entry can be identified. Neither Orica nor the Target are active on the wholesale market in Norway.

46. On the retail market for bulk emulsion in Norway, the combined market share (2005) of the parties amounts to [90-100]% (Orica [1-10]%, Dyno Nobel [85-95]%).
47. On a wider market for bulk explosives (ANFO + bulk emulsion) in Norway, the parties' combined market share would be [90-100]%.
48. On the Norwegian retail market for packaged explosives the combined market share (2005) of the parties amounts to [90-100]% (Orica [10-20]%, Dyno Nobel [75-85]%).

3. Conclusion

49. It can be concluded that the parties have a very strong position on the Swedish and Norwegian market for bulk and packaged explosives, on whatever possible product market definition. According to well-established case law¹, very large market shares – 50% or more – may in themselves be evidence of the existence of a dominant position, in particular where the market shares of all other competitors are considerably smaller. The parties are well ahead of the following competitors, and have advantages as integrated manufacturers of explosives and IS in comparison to their competitors which supply IS from other manufacturers. Furthermore, it appears that there are a number of barriers to entry in the explosives sector. In particular, given the nature of the product, there are regulatory rules concerning the production, transport, sale, storage and use of these products. Furthermore, given the sensitivity of the products, well-established long-term relationships with clients are decisive. This is further underpinned by the importance of “ancillary services”, such as professional assistance when selecting supplier. Finally, in order to be profitable the new entrant would be required to produce the whole product range.
50. Based on the above and on the concerns raised during the market investigation by competitors and customers, it can be concluded that the transaction would raise serious doubts as to its compatibility with the common market as it would be likely to significantly impede effective competition in the Swedish and Norwegian retail market or markets for bulk and packaged explosives through the creation or strengthening of a dominant position.

B. INITIATING SYSTEMS

51. The proposed concentration would give rise to overlaps and affected markets in relation to IS at the wholesale market for IS in the EEA and at the retail market for IS in Norway and Sweden.

1. The wholesale market for initiating systems

52. According to the parties' estimates, the structure of the wholesale market for IS (comprising both electric and non-electric IS) is as follows. A comparison of their estimates with the actual sales figures of the market participants has broadly confirmed their accuracy.

¹ See latest Case T-282/02 *Cementbouw v Commission*, not yet reported, paragraph 201.

Manufacturer	Wholesale IS shares in the EEA by volume (in 2005)
Orica	[20-30]%
Target	[15-25]%
Austin	[20-30]%
ERG Bierun	[15-25]%
UEE	[5-15]%
Davey Bickford	[5-15]%
Nitron	[1-10]%
Others	[1-10]%

Source: Orica's estimates

53. According to the parties' estimates, as broadly confirmed by the market investigation, their combined market share would be around [35-55]% (Orica [20-30]%, Dyno [15-25]%) on the wholesale IS market (comprising both electric and non-electric IS). Within the relevant product market including both non-electric and electric IS, the merged entity's position would be stronger in non-electric IS segment ([40-60]%). This is mainly due to the historically strong position of the Target in this technologically more advanced segment (40-50%, down from 100% in 1993 when Dyno Nobel's patents for the non-electric IS technology expired), whilst Orica's position is much weaker ([1-10]%). In the more mature electric IS technology, the parties account for [20-40]% with a minimal overlap (Orica [20-30]%, Dyno [<5]%).
54. After the merger, Orica and Dyno will face competition from five competitors in the market, which each are currently manufacturing both electric and non-electric IS: Austin Detonator (US/Czech Republic) with a [20-30]% market share, ERG Bieruń (Poland) with [15-25]%, Davey Bickford (France) and UEE (Spain) with [5-15]% each and Nitron (Poland) with [1-10]%².
55. Orica submits that the above market shares for the wholesale market of IS overstate the competitive impact of the operation for a number of characteristics of the market and the market position of the notifying parties.

Firstly, Orica argues that the market is competitive, characterised by low barriers to entry. It indicates that the number of seven competitors in the EEA is double that of the number of competitors in the US.

Secondly, Orica claims that market shares of both companies party to the concentration are declining. Orica expects losing its current sales to German coal mining company DSK following the gradual facing-out of deep coal mining activity in Germany. Dyno

² It should be noted that both Polish companies ERG Bieruń and Nitron are state-owned and currently in the process of being privatised as a package.

Nobel's market share seems to have been declining since 1993, when its patent for non-electric IS expired.

Thirdly, Orica underlines, that competition between the parties is not an important dynamic on the market, as they have a different product and customer focus. [.....]

Fourthly, Orica indicates that the market is characterized by substantial excess capacity and finally, that buyer power is an important element on the market.

Barriers to entry and expansion

56. First of all, it should be stressed that in the course of the procedure the parties have underlined the low barriers to expansion rather than to entry, given the entry of new producers of IS to the EEA market.
57. As to the barriers to entry, most answers to the market investigation indicated that well-developed technology and in particular regulatory barriers are an important element on the market for IS. Suppliers of IS need to comply with the CE-marking requirement for IS products. Once an IS product is CE-marked it can be sold in any Member State. At present all market participants comply with the CE-marking requirement for IS products. In general, a manufacturer can obtain a certificate allowing it to CE-mark its products within a period of 6 to 12 months. The marketing of CE-marked IS at wholesale level is possible without facing major regulatory barriers, since the majority of regulatory licence and approval requirements concerning IS affect retail suppliers of IS and explosives (operating on a national/local level) and end-users, and not wholesale suppliers of IS (since these do not utilise local storage facilities to sell their products). For example, most Member States require a specific authorisation to store IS. But, since wholesale suppliers of IS do not need to utilise local storage facilities to sell their products, they do not need to obtain any regulatory licences or approvals for storage when entering new territories. Furthermore, the market investigation revealed only two Member States, France and Spain, where additional (product) tests are required in order to market IS.
58. Wholesale suppliers of IS also need to meet certain national requirements to sell and transport their products in a particular Member State, since most Member States require a specific licence to sell explosives including IS to end-users and have special regulations for transportation of IS. Regarding the licence to sell IS, a new entrant is in a similar position as the current market participants since IS wholesalers sell primarily to national/local retail suppliers of IS, which are affected by the national licensing regulations relating to the sale of IS. As to the regulations for transportation, a new entrant could use one of the numerous licensed third party transportation companies to supply their IS on a wholesale basis whilst applying for their own licences.
59. Therefore, it can be concluded that barriers to entry exist in the wholesale market for IS, but the licensing requirements can certainly be overcome. As to the barriers to expansion, at present all market participants comply with the CE-marking requirement for IS products and the national requirements to sell and transport their products in a particular Member State. Therefore it can be concluded that for the present wholesale suppliers of IS, there are no significant regulatory barriers to expand.

Declining market shares

60. The demand for IS on a wholesale level in the EEA is a quite stable demand, taking into account that the demand for electric IS will decline where the demand for non-electric will slowly increase. Also the market shares of most of the established competitors in the EEA are quite stable. However, the suppliers which only recently started supplying non-electric IS in the EEA (i.e. Davey Bickford in 2000, Austin Detonator in 2001, ERG Bieruń in 2003 and Nitron in 2005) have a growing market share – also on the overall wholesale market for IS - and appear to be competing vigorously with the established European operators.
61. As to the declining market shares of the parties, it is confirmed by the market investigation that the Target market share is declining especially in the non-electric IS segment. This is clear in a historical perspective because the strong position of Dyno Nobel in this segment has more than halved since 1993 when Dyno Nobel's patents for the non-electric IS technology expired.

Closest competitors

62. The proposed merger is a merger between two companies having strong positions in the different product segments for IS (i.e. Orica in electric IS and Dyno in non-electric IS).
63. By far the largest part of customers of the parties' wholesale business as well as competitors have indicated that they do not consider Orica and Dyno to be each others closest competitors in the wholesale market for IS. Thus, the market investigation confirms Orica's view that Orica and Dyno Nobel were not effectively in a position to compete with each other for the largest part of their respective sales in the wholesale IS market in the EEA.

Excess capacity

64. The parties submitted that the excess capacity held by the competing EEA IS manufacturers (i.e. excluding the parties) is around [...] million units. This would represent [...] % of the entire annual consumption of IS in the EEA (which is [70-80] million units).
65. The market investigation has not fully confirmed this amount of unused capacity. Nevertheless, it appears that the unused capacity of the competitors is higher than the actual total production capacity (i.e. current production plus unused capacity) of the parties. Therefore, the presence of [...] excess capacity of the competitors should be more than sufficient to counter any attempt by the merged entity after the operation to reduce its output and increase prices for IS.

Buyer power

66. Almost all customers of the parties who buy their IS on the wholesale market have indicated that they have a good bargaining position and therefore consider their buyer power reasonably strong. These customers also indicated that they would consider to switch to another wholesale supplier of IS if the parties would raise their prices significantly.

Conclusion

67. Despite the parties combined market share on the wholesale market for IS – and in accordance with previous decisions in case of similar market structures³ –, it can be concluded, in view of the foregoing, that there are no serious doubts that the proposed transaction will result in a significant impediment to effective competition in the EEA wholesale market for IS.

2. The retail market for initiating systems

68. The parties submitted that the proposed concentration gives rise to significant horizontal overlaps in the retail market for IS in Norway as well as in Sweden. These overlaps were confirmed by the market investigation.

a) Norway

69. As a result of the concentration the operation would combine in Norway Orica's [1-10]% market share with the Target [75-85]% market share, thus creating a combined market share of [85-95]%. The only competitors left on the retail market for IS in Norway are Nord ([1-10]%) and Viking ([1-10]%). The first and the second competitor will be combined by the transaction and this will lead to an extremely high combined market share with a substantial increment.

Supplier	Retail IS shares in Norway by volume (in 2005)
Target	[75-85]%
Orica	[1-10]%
Nord	[1-10]%
Viking	[1-10]%
Total	100%

Source: Orica's estimates

70. The Target company had a dominant position in the Norwegian market already before the concentration. According to the information received by this authority the parties have more competence and capacity with respect to providing technical support than their smaller competitors. Furthermore, the parties are the only suppliers of emulsion explosives in Norway, and IS are not compatible with other supplier's products. Finally, customers prefer Orica and the Target, as they are the only companies who can provide a full range of products and services.

b) Sweden

71. As a result of the concentration the operation would combine in Sweden Orica's [1-10]% market share with the Target [50-60]% market share, thus creating a combined market share of [60-70]%. The only competitors left on the retail market for IS in

³ See decision of 23 October 1998 in case IV/M.1298 - Kodak/Imation.

Sweden are Kimit ([5-15]%), Norab ([1-10]%), Frölanders ([1-10]%) and Allmex ([1-10]%). The first and the third competitor will be combined by the transaction and this will lead to an extremely high combined market share with a substantial increment.

Supplier	Retail IS shares in Sweden by volume (in 2005)
Target	[50-60]%
Kimit	[5-15]%
Orica	[1-10]%
Norab	[1-10]%
Frölanders	[1-10]%
Allmex	[1-10]%
Total	100%

Source: Orica's estimates

c) Conclusion

72. Based on the above, and due to the very high level of the market share of the parties well ahead of their next competitors⁴, it can be concluded that the notified transaction would raise serious doubts as to its compatibility with the common market as it would be likely to significantly impede effective competition in the Swedish and Norwegian retail markets for IS through the creation or strengthening of a dominant position.

V. COMMITMENTS OFFERED BY ORICA

73. In order to render the concentration compatible with the common market, Orica has entered into the following commitments, which are annexed to this decision and form an integral part thereof.

74. Orica commits to divest within a time limit specified its wholly-owned subsidiaries:

- Orica Scandinavia Mining Services AB (“OSMS Sweden”); and
- Orica Scandinavia Mining Services AS (“OSMS Norway”).

75. In addition the parties enter into related commitments regarding the preservation of viability, marketability and competitiveness of the divestment businesses, including the appointment of a monitoring and, if necessary, a divestiture trustee, in accordance with common practice.

⁴ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, p. 5, paragraph 17.

VI. ASSESSMENT OF THE COMMITMENTS

76. The offered remedies concern on the one hand the manufacture, storage, distribution, transportation and sale of bulk explosives in Norway and Sweden, on the other hand the retail supply of packaged explosives and IS directly to end users, including the relevant IS manufacturer's own integrated retail explosives business. The businesses to be divested are existing businesses which operate on a stand-alone basis.
77. Orica currently achieves all of its bulk explosive supply, and its packaged explosives and retail IS supply in Sweden and Norway through OSMS Sweden and OSMS Norway. Therefore, the commitments offered will entirely remove the overlap of the parties' activities in the above markets. The purchaser will have the choice to enter into supply contract to purchase bulk explosives, IS and packaged explosives from any manufacturer or assembler.
78. The market test of the remedies has underpinned the appropriateness of the commitments, as there were no concerns expressed with regard to the effectiveness of the remedies.
79. Given the fact that the remedies will entirely remove the overlaps in all the markets where the Commission has identified competition concerns and their appropriateness was entirely confirmed, the commitments entered into by Orica are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market.

VII. CONDITIONS AND OBLIGATIONS

80. In order to ensure that Orica complies with these commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section B and the Schedule of Divestments 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.

VIII. CONCLUSION

81. For the above reasons, subject to full compliance with the commitments submitted by the notifying party, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,
signed,
Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 4301

European Commission – Merger Task Force

DG Competition

Rue Joseph II 70 Jozef-II straat

B-1000 BRUSSELS

Case No. COMP/M.4151 – Orica/Dyno

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “***Merger Regulation***”), Orica Limited, a company duly organised and existing under the laws of the State of Victoria (with company no. ABN 24 004 145 868), whose registered office is at 1 Nicholson Street, Melbourne, Victoria 3000, Australia (“***Orica***”), hereby provides the following Commitments (the “***Commitments***”) in order to remove any serious doubts that the European Commission (the “***Commission***”) may have with regards to the compatibility of the Notified Concentration (as defined herein), thereby enabling the Commission to declare the Notified Concentration compatible with the common market and the functioning of the EEA Agreement by adopting a 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.

Any term used in these Commitments shall be interpreted in the light of the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

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In these Commitments, the following expressions shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Orica, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of concentration under the Merger Regulation.

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

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

Divestiture Trustee: one or more natural or legal person(s), independent from Orica, who is approved by the Commission and appointed by Orica and who has received from Orica 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.

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

Hold Separate Manager: [...], who has been appointed by Orica for the Divestment Business to manage the day-to-day business 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.

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

Notified Concentration: the acquisition of the entire share capital of certain European, Middle East, African, Latin American and Asian businesses of the Dyno Nobel ASA group of companies by Orica, which was notified to the Commission on 28 March 2006.

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

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

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

Trustee Mandate: the agreement between Orica and the Trustee relating to the engagement of the Trustee, as approved by the Commission.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Orica 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

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accordance with the procedure described in paragraph 15. To carry out the divestiture, Orica 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 Orica has not entered into such an agreement at the end of the First Divestiture Period, Orica shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

2. Orica shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Orica 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 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] 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, Orica shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of Orica Scandinavia Mining Services AB (“OSMS Sweden” and formerly Orica Kimit Explosives AB) and its wholly owned subsidiary Orica Scandinavia Mining Services AS (“OSMS Norway” and formerly Orica Kimit Norge AS) and OSMS Sweden and OSMS Norway may be hereinafter collectively referred to as “OSMS”. 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 as presently conducted;

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- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “*Assets*”);
- (d) the Personnel of the Divestment Business including the General Manager and his management team;
- (e) a licence to:
 - (i) the Orica intellectual property (IP) presently used by OSMS, including the IP covering the POWERGEL surface bulk emulsion technology; and
 - (ii) for a period of [...] following Closing, the right to use the POWERGEL bulk emulsion brand; and
- (f) continuation at the Purchaser’s request of all current arrangements under which Orica or companies in the Orica group supply products to the Divestment Business. Products currently purchased by OSMS Sweden and OSMS Norway from Orica and any Orica affiliates will continue to be made available by Orica

- [...];

- [...]; and

- [...],

all at the Purchaser's discretion.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Orica 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 Orica 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 Orica

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

7. Until Closing, Orica 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 Orica. Orica shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Orica.

8. [Not used]

Ring-fencing

9. Orica 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. Orica may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Orica is required by law.

Non-solicitation clause

10. Orica undertakes, 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

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

12. Orica 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).

13. Orica 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 the information memorandum to the Commission and the Monitoring Trustee.

Section D. The Purchaser

14. 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 Orica;
- (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 Orica 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**”).

15. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Orica 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. Orica must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

16. Orica shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Orica has not entered into a binding sale and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected all purchasers proposed by Orica at that time or thereafter, Orica shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestment Period.

17. The Trustee shall be independent of Orica, 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 Orica 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 Orica

18. No later than one week after the Effective Date, Orica shall submit a list of one or more persons whom Orica 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, Orica shall submit a list of one or more persons whom Orica 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 17 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. 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, Orica 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, Orica 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 Orica

20. If all the proposed Trustees are rejected, Orica 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 16 and 19.

Trustee nominated by the Commission

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

II. Functions of the Trustee

22. 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 Orica, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. 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 Orica 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 Orica, 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 Orica, determine all necessary measures to ensure that Orica does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the

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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 Orica as the disclosure is reasonably necessary to allow Orica 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 Orica or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Orica such measures as the Monitoring Trustee considers necessary to ensure Orica'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 Orica 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

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Commission, sending Orica a non-confidential copy at the same time, if it concludes on reasonable grounds that Orica is failing to comply with these Commitments;

- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, 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

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no 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 15. 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 Orica, subject to Orica's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

25. 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 Orica.

III. Duties and obligations of Orica

NON-CONFIDENTIAL VERSION

26. Orica 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 Orica'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 Orica and the Divestment Business shall provide the Trustee upon request with copies of any document. Orica 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.

27. Orica 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. Orica shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Orica 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.

28. Orica 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, Orica shall cause the documents required for effecting the sale and the Closing to be duly executed.

29. Orica 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 Orica 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.

30. At the expense of Orica, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Orica's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary

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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 Orica refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Orica. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Orica 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

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

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

32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.

33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from Orica 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 Orica 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 Orica be entitled to request an extension within the last month of any period.

.....

Janice van Reyk

Company Secretary, Orica Limited

duly authorised for and on behalf of

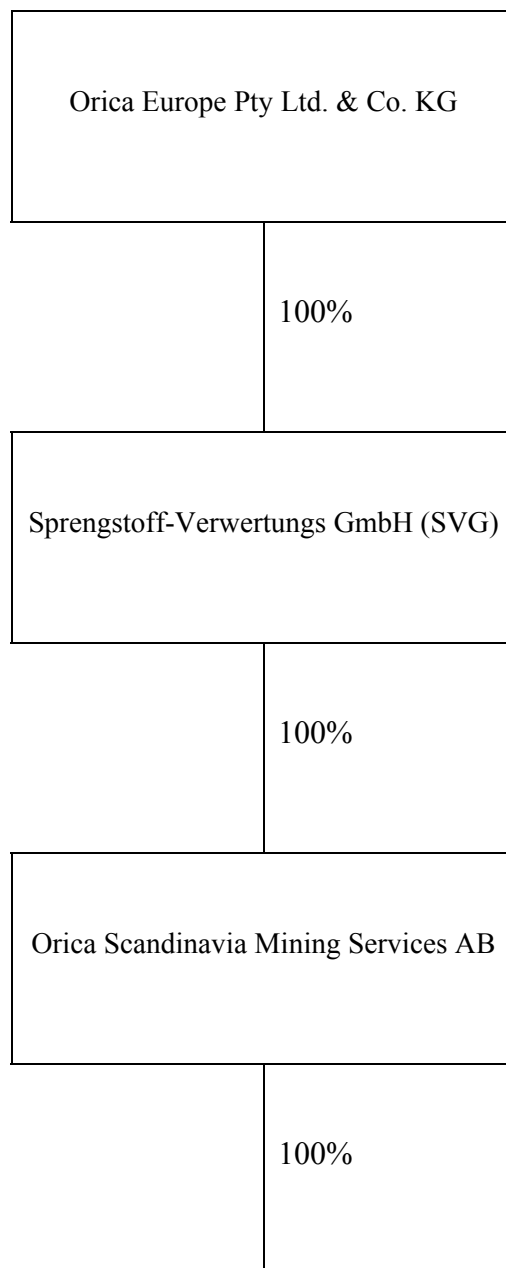
Orica Limited

.....

Date

SCHEDULE OF DIVESTMENTS

1. The Divestment Business as operated to date has the following legal and functional structure:



Orica Scandinavia Mining Services AS

2. The Divestment Business consists of the following legal entities:

- a. Orica Scandinavia Mining Services AB (“OSMS Sweden”) (formerly Orica Kimit Explosives AB), a limited liability company incorporated under the laws of Sweden (Registration Number 556588-7857), and with its registered office at Eskilstuna.
- b. Orica Scandinavia Mining Services AS (“OSMS Norway”) (formerly Orica Kimit Norge AS), a limited liability company incorporated under the laws of Norway (Registration Number 859 243 592), and with its registered office at Holmestrand.

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

- (a) the following main tangible assets:

Please see **Annex A**.

- (b) the following main intangible assets:

Please see **Annex B**.

- (c) the following main licences, permits and authorisations:

Please see **Annex C**.

- (d) the following main contracts, agreements, leases, commitments and understandings

Please see **Annex D**.

- (e) the following customer, credit and other records:

Please see **Annex E**.

- (f) the following Personnel:

Please see **Annex F**.

- (g) the following Key Personnel:

Please see **Annex G**.

- (h) Other

Please see **Annex H**.

3. The Divestment Business shall not include:

(i) The right to continue to use the “Orica” House mark after Divestment has been completed

(ii) The right to continue to use the “Powergel” trade mark beyond [...] following divestment

(iii) The access to credit facilities secured or provided by Orica

ANNEX A

Main Tangible Assets

Orica Scandinavia Mining Services Facility Inventory Template

#	Country	Name & Location	Type of facility				Description of facility
			Plant (Y/N)	Storage of explosives (Y/N)	Bulk emulsion distribution (Y/N)	MMU (Y/N)	
							<ul style="list-style-type: none"> ▪ Plant ▪ Storage of Explosives and Bulk Emulsion Distribution ▪ MMU ▪ Office
1	Sweden	Hugelsta, Eskilstuna	Y	Y	Y	Y	Land and buildings [...] Plant [...] Storage [...] MMU [...] Delivery truck[...]
2	Sweden	Skellefteå Björkdal	N	Y	Y	Y	Rented land in a Gold mine

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							Storage [...] Bulk emulsion [...] MMU [...] Office [...]
3	Sweden	Gothenburg	N	Y	N	N	Rented land, office and magazines Storage [...] Office [...]
4	Sweden	Södra Sandby	N	N	Y	N	Emulsion tank [...] MMU [...]
5	Norway	Andebu	N	Y	N	N	Land and buildings are leased [...] Storage capacity [...] Three delivery trucks

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6	Norway	Hillestad, Holmestrand	N	N	N	N	Main office Norway, leased [...] [...] Storage capacity of AN[...]
7	Norway	Geithus	N	N	Y	Y	Leased [...] One MMU[...] Storage capacity of matrix and AN[...]
8	Norway	Hamremoen	N	Y	N	N	[...]
9	Norway	Kristiansand	N	Y	N	N	Lease contract [...] [...]

ANNEX B

Main Intangible Assets

The main intangible assets of OSMS Sweden are the Powergel™ brand name for bulk emulsion explosives together with the Kimanol brand name for ANFO products. This is coupled with the associated with the Intellectual Property right to manufacture surface bulk emulsion explosives which will be transferred with the Divestment Business

The main intangible assets of OSMS Norway also include the Powergel™ brand name for surface bulk emulsion explosives together with the Kimanol brand name for ANFO products.

ANNEX C

Main licences, permits and authorisations

- Approval for operations from the Environmental Court according to Miljöbalken.
- Approval to produce, store and trade explosive material.
- ADR certification of drivers and MMUs.
- Qualified personnel passing the FEX education (authorised engineer).
- Authorised engineer - approved person holding the authority and responsibility to conduct an explosives operation in Sweden.
- Approved magazines for explosives and detonator storage from the local police (Norway and Sweden).

ANNEX D**Contracts, Leases, Commitments & Understandings**

	Type	Country	Location	Details
1	Land & Buildings	Sweden	Eskilstuna	[...]
2	Land & Buildings	Sweden		[...]
3	Land & Buildings	Sweden	Skellefteå Björkdal	[...]
4	Land & Buildings	Norway	Andebu	[...]
5	Land & Buildings	Norway	Hillestad, Holmestrand	[...]
6	Land & Buildings	Norway	Geithus	[...]
	Land & Buildings	Norway	Kristiansand	[...]
	Land & Buildings	Norway	Hamremoén	[...]

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9	Intellectual Property	Norway & Finland	OSMS AB	[...]
10	Branding	Norway & Finland	OSMS AB	[...]
11	Product Supply	Norway & Finland	OSMS AB	[...]
12	Equipment	Norway & Finland	OSMS AB	[...]

ANNEX E

Customers, Credit and Other records

Orica Kimit (OSMS Sweden)

[...]

Orica Kimit (OSMS Norway)

[...]

Credit Facilities:

[...]

[...]

ANNEX F**GROUP EMPLOYEES**

As of 1 March 2006, the group consists of 25 employees and 2 contract operators.

	Sweden	Norway	Total
Managers	1	2	3
Administration & sales	4	2	6
Technical & engineers	3	1	4
Plant operators	2	0	2
MMU operators	6	2	8
ADR Drivers		2	2
Total	16	9	25
Contract operators	2	2	4

ANNEX G

Key Personnel

[...], General Manager, OSMS AB[...]

[...]

[...], Business Manager, Sweden[...]

[...]

[...], Plant Manager, Hugelsta[...]

[...]

[...], Marketing Manager, Norway[...]

[...]

[...], Operation coordinator, Hugelsta, Sweden [...]

[...]

[...], Finance Manger & Supply Chain, OSMS AB[...]

[...]

[...], Bulk Manager Norway[...]

[...]

ANNEX H

Other

The Divestment Business will also include:

1. a licence to:
 - (i) the Orica intellectual property (IP) presently used by OSMS, including the IP covering the POWERGEL surface bulk emulsion technology; and
 - (ii) for a period of [...] following the completion of the transaction the right to use the POWERGEL bulk emulsion brand; and
2. continuation at the Purchaser's request of all current arrangements under which Orica or companies in the Orica group supply products to the Divestment Business. Products currently purchased by OSMS Sweden and OSMS Norway from Orica and any Orica affiliates will continue to be made available by Orica.
 - [...];
 - [...]; and
 - [...],

all at the Purchaser's discretion.