

***Case No COMP/M.4961 -
COOKSON / FOSECO***

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

ARTICLE 6(1)(b) DECISION
IN CONJUNCTION WITH ARTICLE 6(2) -
NON-OPPOSITION
Date: 04/03/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/03/2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Dear Sir/Madam,

Subject: Case No. COMP/M.4961 – Cookson/ Foseco
Case Notification of 15.01.2008 pursuant to Article 4 of Council Regulation No 139/2004¹

- (1) On 15.01.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation"), by which the undertaking Cookson plc ("Cookson", United Kingdom) intends to acquire sole control of the undertaking Foseco plc ("Foseco", United Kingdom) by means of a public offer announced on 11.10.2007.

I. THE PARTIES AND THE TRANSACTION

- (2) Cookson is a materials science company operating on a worldwide basis in the ceramics, electronics and precious metals industries. Cookson's Ceramics division is primarily a supplier of refractories to a number of industries such as the iron & steel industry and to a lesser extent, technical ceramics (in particular filters) to the glass, solar power and foundry industries.
- (3) Foseco is a supplier of primarily consumable products for use in foundries (e.g. filters) and to lesser extent refractory products for use in the production of iron & steel. The company is active on a global scale.

¹ OJ L 24, 29.1.2004, p. 1.

II. THE CONCENTRATION

- (4) On 11 October 2007 Cookson made an offer announcement concerning the acquisition of the entire share capital of Foseco. Foseco's board of directors considers the terms of the offer fair and reasonable and recommends to vote in favour of it.
- (5) Since Cookson will gain sole control on a lasting basis over Foseco's activities, the transaction constitutes a concentration within the meaning of Article 3 (1) EC Merger Regulation.

III. COMMUNITY DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion (Cookson € 2,437 million (EEA € [...]); Foseco € 599 million [...] and a combined aggregate turnover of more than EUR 100 million in [...]. In [...] the turnover of both companies is more than EUR 25 million. The notified operation has a Community dimension within the meaning of Article 1(3) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

- (7) Both Cookson and Foseco are active in the ceramics industry. This industry produces a wide variety of products made from ceramics, i.e. metallic and non-metallic materials with specific heat-resistant properties. Such products include bricks and tiles, sanitary ware, clay pipes, tableware, refractories and technical ceramics (e.g. filters). The European ceramics industry had an overall turnover of EUR 26.2 bn, 12% of which in the refractory segment and 8% in the technical ceramics.²
- (8) Within the ceramics industry the parties' activities overlap in the supply of refractories to the iron and steel industry and the supply of technical ceramics, in particular filters, to the foundry industry.

A) Relevant markets

1. Relevant product markets

a) Refractories for the Iron and Steel Industry

- (9) Refractories are non-metallic ceramics which can resist temperatures of up to 1800°C and are primarily employed as a heat buffer or lining in industrial devices such as furnaces, kilns and ovens. They are used to protect the outer shell of the furnace, but can also be used to control the flow of molten metal.
- (10) According to the notifying party refractories can be supplied either shaped or unshaped. Unshaped refractories include all monolithic (powder-based) products used for linings and are usually processed and applied in the equipment itself. Shaped

² Figures for the year 2003 according to the European Refractories Producers' Federation.

refractories are supplied in a form which is immediately useable for the customer (e.g. bricks, ladles, tubes), they normally have a denser structure than unshaped products.

- (11) In addition to shape, refractories can be differentiated by raw material: products consisting mainly of magnesium oxide and calcium oxide are classified as basic, whereas products based on bauxite and andalusite or silica are known as non-basic. Depending on the chemical composition a refractory can be used in different environments (basic in an alkaline one, non-basic in an acidic or neutral one).
- (12) Based on this categorisation refractories could be sub-divided into four segments: shaped basic refractories; shaped non-basic refractories; unshaped basic refractories; and unshaped non-basic refractories. Following the parties within each of the four segments supply-side substitution is strong, while limited between categories, whereas from a demand-side perspective substitution – even within a segment – is hardly possible as each refractory fulfils a specific function within the steelmaking process.
- (13) In a previous case³ the Commission has in the field of refractory products distinguished two different product markets: (i) furnace bricks and linings for converters, furnaces, ladles and tundishes and (ii) refractories for the protection and control of the flow of molten steel in a continuous casting process. In addition, the Commission concluded that a further subdivision of the relevant markets along product lines would not be necessary because of sufficient supply-side substitutability.
- (14) While the merging parties broadly agree with the Commission's view concerning supply-side substitutability, they however submit that one should use the above-mentioned segmentation into shape/unshaped and basic/non-basic for defining relevant product markets.
- (15) In addition, within the segment of shaped non-basic refractories a further subdivision is possible into isostatically pressed products ("IPPs") and other products such as bricks. IPPs are refractories used in the continuous casting of steel and are produced using a special ("isostatical") pressing and manufacturing process with certain qualities as to homogeneity and thermal shock resistance. The manufacturing process involves the use of a special technology.
- (16) The market investigation broadly confirmed the proposed relevant market definition of the parties. A majority of respondents – customers as well as competitors – agreed that refractories should be sub-divided into four segments based on form and composition, but pointed out that IPPs should be viewed as a separate market due to the special production process, which considerably limits supply side substitutability even within the shaped non-basic segment. A separate market for IPP's is further supported by the fact that only a portion of refractories suppliers is currently active in IPP's. Furthermore, the parties' IPP products are marketed under distinct brand names ("Viso" and "Deltek").
- (17) In the light of the results of the market investigation the relevant product markets where an overlap exists are: (i) Isostatically pressed products (IPPs); (ii) unshaped non-basic refractories and (iii) unshaped basic refractories.

³ Case No IV/M.472 – Vesuvius/Wuelfrath.

b) *Filters for the Foundry Industry*

- (18) Foundries produce metal castings from either ferrous or non-ferrous alloys. The main manufacturing process used in the industry is traditional casting, where molten metal is introduced into a sand or metal mould and allowed to solidify within the mould. For certain castings where a high degree of finish is required a more specialised process – investment casting – is used. Here refractory shell moulds are used to define the outer shape and surface of the casting and a removable wax or foam core defines the inner shape and surface.
- (19) Filters are a type of technical ceramic used by foundries during the casting of molten metal. They reduce impurities and inclusions in castings. According to the parties two main types of foundry filters are used in the marketplace: porous foam-like structures with interconnected pores that vary in direction or cross-section ("foam filters"); and cellular or honeycomb structures with cells of various sizes and consistent cross-sections ("strainers"). Filters can also be differentiated according to their chemical composition. The following table provides an overview of different filters and their application:

Table 1: Range of filters available and their application

Filter						
Type of casting		SiC foam	Zirconia foam ⁴	Alumina foam	Strainers	Metal grid or cloth (Silica glass grid)
Traditional casting	Iron casting	√	x	x	√	x
	Steel casting	x	√	x	x	x
	Non-ferrous casting	√	x	√	√	√
Investment casting	Steel super alloys	x	√	x	x	x
	Non-ferrous alloys	x	x	√	x	x
Aluminium cast houses ⁵	Aluminium	x	x	√	x	x

Source: Form CO

- (20) The Parties have submitted that there is only partial substitutability between different types of filters (see Table 1) because filters are largely tailored to the metals and the casting operations. From a supply-side point of view the parties argue that different technical skills are required for producing strainers or metal grid and foam filters.

⁴ Carbon-bonded filters are niche filters used in steel casting which are not regarded as a principal filter for the purposes of this decision.

⁵ Aluminium cast houses use large alumina foam filters to filter molten aluminium. Cookson manufactures a very small amount of these filters (around €[...] in 2006). Foseco does not manufacture alumina foam filters for aluminium cast houses.

Consequently, there is no supply-side substitutability between either strainers or metal grid on the one hand and foam filters on the other.

- (21) Within foam filters, the manufacturing processes are according to the Parties standard across various types of filters and all major manufacturers produce all foam filters across the range of applications. The only exception has to be made within traditional casting, where there is a distinction between direct pour and non-direct pour manufacture. For direct pour systems – roughly [10-20]% of traditional casting processes in the EU – filtering is done through an integrated unit comprising a filter housed in a refractory sleeve. Foseco currently holds patent rights until 2009 in respect of the direct pour systems and consequently is the only supplier of such systems world-wide.
- (22) As a consequence, the parties have proposed as the relevant product markets for the competitive assessment (i) the supply of all foam filters (excluding direct pour) and (ii) the supply of foam filter systems for direct pour.
- (23) The market investigation did not confirm the proposed product market definition of the parties, but points to a more narrow definition of the market.
- (24) The investigation showed that from a demand side point of view foam filters for different applications are not interchangeable. Filters are tailored to the metals and casting operations they are used in. In steel casting (traditional and investment casting) only Zirconia foam filters can be used. SiC and Alumina foam filters are due to their chemical composition no alternative and strainers – with a significantly worse temperature resistance than foam filters – cannot meet the standards required in the industry. In iron casting only SiC foam filters are used. Technically it would be possible to use Zirconia foam filters, too. But as Zirconia foam filters are 5-10 times more expensive than SiC foam filters no foundry can switch to this alternative. The use of Alumina foam filters is limited to non-ferrous applications.
- (25) According to the investigation, from a supply side perspective substitutability is also limited. Alumina foam filters on the one hand and Zirconia filters / SiC filters on the other hand are manufactured on different production facilities. Only some filter manufacturer produce all types of foam filters whereas others have specialised e.g. on Alumina foam filters. Manufacturers with such a specialisation generally consider an entry into the production and supply of other foam filters as difficult, in particular as regards the production of Zirconia foam filters. Zirconia filters are more sophisticated in production than SiC filters and require special know-how and experience. Typically producers enter the more basic SiC foam filter segment and only after several years of experience consider producing Zirconia foam filters. According to respondents in the investigation, in the future Chinese suppliers may become more active in the SiC segment but may need significantly more time to become reliable suppliers of Zirconia foam filters.
- (26) The Commission therefore considers that Alumina filters on the one hand and SiC and Zirconia filters on the other hand constitute distinct product markets. Furthermore, there are indications that Zirconia and SiC filters each constitute separate product markets. However, for the purpose of this decision the latter question may finally be left open as even under the broader market definition – a market comprising Zirconia and SiC foam filters – the transaction raises serious doubts as to its compatibility with

the common market.⁶ It can also be left open whether the direct pour technology should be included in the relevant market, as the competitive assessment would not change due to the fact that there is no overlap between the parties as Foseco is currently the only supplier.

2. Relevant geographic markets

a) Refractories for the Iron and Steel Industry

- (27) The parties submit that the geographic scope of the market for refractories is EEA-wide since there is significant cross-border trade between member states, low transport costs and homogeneous demand conditions.
- (28) This is in line with a previous Commission decision⁷ where it has been concluded that the relevant geographic market for refractories is at least EEA-wide.
- (29) Market respondents agreed that the scope could be at least EEA-wide. While in particular the multinational steel companies like ArcelorMittal, ThyssenKrupp or Corus often have international supply agreements with producers based in- and outside the EEA, the sourcing pattern of most customers seems to be regional, i.e. EEA, North-America, South-America etc. Indeed, several steel companies indicated that up to 90% of their European refractory purchases are coming from production facilities within the EEA. Respondents also mentioned that sourcing from a distance reduces flexibility as orders have to be placed three months in advance and increases the price.
- (30) Thus, the Commission considers that the relevant geographic market for refractories is EEA-wide.

a) Filters for the Foundry Industry

- (31) The Parties submit that the geographic scope of the market for filters used in foundries should be regarded as world-wide because all main manufacturers have only one or two plants from which they provide customers across all continents.
- (32) The investigation confirmed that transport costs are not a limiting factor for the geographic activities of a filter supplier. This is further illustrated by the fact that the parties respectively manufacture filters at one production site (Cookson in the USA) or at two production sites (Foseco in the UK and in Japan) from which they supply to foundries worldwide.
- (33) On the other hand, the market investigation revealed that filter customers – in the majority small and medium sized foundries with only limited R&D activities – rely on the local presence of a sales and technical support team of their filter supplier. As a general rule, experts from the filter suppliers are involved in the testing of new filter types in the foundries and cooperate closely with the foundry to adjust the production

⁶ See below at para 41.

⁷ Case No IV/M.472 – Vesuvius/Wuelfrath.

process to the filter type in order to optimise the casting results. Furthermore, filter suppliers focus to some extent on certain regions. For example, some suppliers that are active in the US do not supply in the EEA. There are therefore indications that the relevant geographic market could be smaller than world-wide, i.e. EEA-wide. There are no indications that the market could be smaller than EEA-wide.

- (34) The exact geographic market definition can however be left open, as the transaction raises serious doubts as to its compatibility with the common market under both the assumption of a world market and of an EEA-wide market.

B) Assessment

1. Refractories for the Iron and Steel Industry

- (35) Based on the relevant product and geographic market definition the proposed merger between Cookson and Foseco will lead to one affected market – the supply of IPPs in the EEA where the current No 1 Cookson will acquire the No 2 creating a player with a combined market share of [70-80]%.
- (36) Concerning the supply of unshaped non-basic refractories as well as the supply of unshaped basic refractories the combined market shares of the parties would be well below 15% (see Table 2 below) which excludes competition concerns; the following assessment will therefore focus on the market for IPPs.

Table 2: Parties' market shares in the relevant markets

Relevant market	Market size	Cookson	Foseco	Combined
Supply of shaped refractories isostatically pressed (IPPs) in the EEA	approx. €[140-180 m]	[55-65]%	[10-20]%	[70-80]%
Supply of unshaped non-basic refractories in the EEA	approx. €[600-700m]	€[...] ([0-10]%)	€[...] ([0-10]%)	[5-15]%
Supply of unshaped basic refractories in the EEA	approx. €[250-300m]	€[...] (<[0-10]%)	€[...] ([0-10]%)	<[0-10]%

Source: Form CO, Cookson's estimates.

- (37) The proposed concentration would create a strong market leader in IPPs ([70-80]%) with a significant overlap of [10-20]%, followed in great distance by rather small competitors, such as RHI ([5-15]%), IFGL ([0-10]%), Staverma ([0-10]%) and TYK ([0-10]%). These market shares have been broadly confirmed in the market investigation.
- (38) During the market investigation a majority of customers and competitors raised concerns with respect to IPPs. In addition to the large market shares, respondents indicated that the products of the parties are marketed under brands which are widely recognised as the industry leaders, and the parties' products are considered as close

substitutes in terms of quality and specifications. Several customers informed the Commission that they pursue a multi-sourcing strategy typically using Cookson and Foseco as alternative suppliers. Thus, the proposed merger would eliminate the closest competitor of the current market leader Cookson.

- (39) Moreover, customers seem to have limited possibilities of switching from the parties to other suppliers. Respondents to the market investigation explained that while other producers were in principle available, a pre-testing of up to one year would be necessary to confirm the quality of the product and certify a new supplier. It was also indicated that other producers were not able to match the required quality which is offered by the merging parties.
- (40) Based on this market structure and the substantiated concerns voiced during the market investigation, the Commission concludes that there are serious doubts as to the concentration's compatibility with the common market given that it may lead to the creation or even strengthening of a dominant position in the market for IPPs.

2. Filters for the Foundry Industry

a) Market structure

- (41) The tables below show the parties' and their main suppliers' market shares on alternative markets:

Table 3: Parties' market shares in the *Zirconia filters* market

2006	Worldwide		EEA	
	€ 000	%	€ 000	%
Cookson	[...]	[40-50]%	3600	[40-50]%
Foseco	[...]	[30-40]%	4200	[45-55]%
Combined	[...]	[70-80]%	[...]	[80-90]%
<i>Selee</i>	[...]	[5-15%]	[...]	[0-5%]
<i>Drache</i>	[...]	[0-5%]	[...]	[5-10%]
<i>Lanik</i>	[...]	[0-5%]	[...]	[0-5%]
<i>Joymark</i>	[...]	[0-5%]	[...]	[0-5%]
<i>Chinese Suppliers</i>	[...]	[0-5%]	[...]	[0-5%]
<i>Others</i>	[...]	[0-5%]	[...]	[0-5%]
Total	[20000-25000]	100,00 %	[8500-9500]	100,00 %

Source: Parties' best estimates, market investigation

Table 4: Parties' market shares in the *SiC and Zirconiafilters* market

2006	Worldwide		EEA	
	€ 000	%	€ 000	%
Cookson	[...]	[5-10]%	[...]	[5-10]%
Foseco	[...]	[70-80]%	[...]	[70-80]%
Combined	[...]	[75-85]%	[...]	[75-85]%
Selee	[...]	[5-10]%	[...]	[0-5]%
Drache	[...]	[0-5]%	[...]	[0-5]%
Lanik	[...]	[1-5]%	[...]	[5-10]%
Joymark	[...]	[0-5]%	[...]	[0-5]%
Chinese Suppliers	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[5-10]%	[...]	[5-10]%
		100,00		100,00
Total	[115000-135000]	%	[40000-50000]	%

Source: Parties' best estimates, market investigation

b) Arguments of the parties

- (42) The Parties – who defined a market comprising all foam filters (SiC, Zirconia and Alumina foam) and calculated their combined market share with [60-70]% worldwide – submitted that the transaction would not raise serious doubts as to its compatibility with the common market because (i) existing competitors could easily expand their supply in case of a price increase by the merging parties, (ii) the increment ([5-15]%) would not be significant and in addition, the parties were not close competitors but active in different segments of the filter market and (iii) new entry could be expected from Chinese suppliers.

c) Results of the market investigation and assessment

- (43) The transaction would lead to a clear market leader on all alternative markets with a large distance to the following competitors. The new entity would be 6 to over 10 times stronger than the next closest competitor. On all markets the increment is substantial and adds to an already leading position. The parties' combined position would be even stronger if sales of direct pour systems were included.
- (44) Numerous respondents expressed concerns about the transaction, in particular with regard to Zirconia filters. Respondents argued that the merging parties were the most important and closest competitors in the supply of these filters. They were consistently ranked as No.1 and 2 regarding quality and technical support. Some customers explicitly referred to the Parties as the only suppliers who could match their requirements. The casting process in the foundry is adapted and fine-tuned to the products of a specific filter supplier with the help of the supplier in order to optimise the casting result in quality and efficiency. Customers stressed the importance of quality and support even above price, as this is essential for the quality of their end products which are often certified by their clients and have to meet high standards (e.g., moving parts for the truck industry).
- (45) Respondents also indicated that both parties were important innovators on the market,

as illustrated by several patented and trademark products. Foseco is the only producer of certain industry standard type of filters (so-called carbon bonded filters distributed under the brand name "Stelex Pro"). Foseco is further the patent protected only supplier of the innovative direct pour filter system. Market participants stressed that the merger therefore would combine the two key suppliers in the industry.

- (46) Although other suppliers were available in principle, respondents indicated that they do not provide the necessary quality and/or the technical on-site support to adapt the filter to the casting process. This applies in particular, but not exclusively, to the Chinese suppliers, which were not considered as suitable alternatives to the merging parties.
- (47) Customers further explained that there are significant hurdles regarding the switching of filter suppliers. A switch would require testing and adjustment of the foundry process, which would take up to half a year and longer. In the typically small sized foundries test runs would disrupt production and therefore lead to significant costs. Customers further stressed the high risk of producing scrap for several production cycles due to adjustment problems, which further increased the cost risk. At the same time, the filter price is only a rather small proportion of the overall production cost. Several customers indicated that instead of switching to an alternative supplier with an unknown quality and limited technical support, therefore risking potential scrap and a loss of reputation and customers, they would rather accept a price increase instead.
- (48) Finally, Foseco's position regarding direct pour systems is a further strengthening element for the combined entity. Even if it was considered to form a separate market, direct pour constitutes an alternative to standard filters for certain traditional casting customers and therefore exercised competitive pressure at least on the margins, which would disappear following the merger.
- (49) Based on the market structure and the concerns expressed during the market investigation the Commission concludes that the transaction raises serious doubts as to its compatibility with the common market with regard to SiC and Zirconia foam filters.

V. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

1. Procedure

- (50) In order to render the concentration compatible with the common market, the notifying party has offered some commitments pursuant to Article 6(2) of the Merger Regulation, which are annexed to this Decision A first commitment package was proposed by Cookson on 12 February 2008. After examination and market testing of this commitment package, the notifying party amended the latter and submitted on 29.02.2008 its final commitments, which were deemed suitable to remedy the competition concerns identified. These commitments are attached to this decision and form an integral part thereof.
- (51) The commitment package contains two sets of commitments: The first commitment provides for the divestment of Foseco's entire global IPP business (with the exception of the Asian manufacturing assets located in Tianjin, China), the second provides for the divestment of Cookson's entire business in the manufacture and supply of reticulated ceramics, i.e. foam filters.

- (52) The Parties had decided to divest Foseco's IPP business already prior to the notification of the transaction and entered into a sales and purchase agreement with a third party (RHI), which is conditional upon the Commission approving this purchaser. The present decision is without prejudice to the assessment of this purchaser under the commitments.

2. IPPs

Description of the commitments

- (53) The divestment business is a distinct business activity within Foseco. In 2006, the worldwide turnover amounted to € [...]million, of which €[...] million was generated in the EU, €[...] million in North America and €[...] million in the rest of the world. The divestment business operates from two production facilities: Bonnybridge, Scotland, and Saybrook, Ohio, USA. It would cover [70-80]% of Foseco's overall production capacity in IPPs. The Bonnybridge plant manufactures products for the [...] and - when required – [...]. Saybrook currently serves the [...] markets
- (54) The divestment business includes inter alia all tangible and intangible assets in the current structure of the divestment business in particular the lease for the IPP production and technical facilities in Bonnybridge and Saybrook and all related tangible property as well as the DELTEK trademark under which Foseco's range of IPP products is sold. The parties further included all relevant contracts, leases, commitments and customer orders of the divestment business; as well as all personnel required by the Purchaser in both the EEA and the US for all relevant DELTEK business areas including production; sales, distribution, marketing and technical support; product development, business management and administrative support. The Divestment Business does not include: the Asian manufacturing assets located in Tianjin, China (and the contracts with the customers who are supplied from the Tianjin manufacturing assets).

Suitability for removing the serious doubts

- (55) The offered divestiture would remove completely the overlap between the parties in IPPs in the EEA. Its scope appears to consist of a viable business that can be expected to act as an effective competitor on the market. This has been confirmed in the market test of the proposed commitments.
- (56) A majority of respondents – customers as well as competitors – confirmed that the divested business is a viable entity covering all necessary functions like distribution and sales, sources of supply, customer base as well as technical support.⁸ In particular customers currently sourcing from Foseco indicated in the market test that they would be willing to switch to the purchaser of the divested business.⁹
- (57) Concerning the effectiveness of the commitment the majority of respondents were of the opinion that the divestment of Foseco's IPP business would be sufficient to ensure that competition on the market for IPPs will be as effective as pre-merger.

⁸ Answers to question 1 – 3 of the market test.

⁹ Answers to question 5 of the market test.

- (58) The market test broadly confirmed that the exclusion of the Chinese plant does not undermine the effectiveness of the remedy. This plant is a start-up dedicated to the growing steel producing market in China/Asia and is only supplying customers in this area. There were no indications that it includes any tangible or intangible assets that would be essential for the operation of the proposed divestment business.
- (59) The majority of the market participants also indicated that the inclusion of the US plant located in Saybrook, Ohio, is an important part of the commitment since it can be used as a back-up facility ensuring security and flexibility in supply to customers of the divested business. In particular large steel companies like ThyssenKrupp representing a significant proportion of overall demand for IPPs indicated that they typically rely on suppliers with more than one production facility for those reasons.¹⁰ Furthermore, the effectiveness of the divestiture would be significantly weakened if the parties retained substantial available capacity to serve this customer group, and others in the EEA. The US plant, which operates at [...], corresponds to [45-55]% of the UK plant's capacity [...]. In the past, there had been occasional cross shipments between the US and the EEA by Foseco. In addition, Foseco's IPPs are sold under a strong world-wide brand name (DELTEK) and their production requires IPRs and know-how. Potential purchasers of the Divestment Business stressed that a separation of those assets would be very difficult and undermine the competitive strength of the business to be divested and its potential to challenge Cookson's remaining market position as before (following divestiture, the Chinese plant will cease to produce Foseco's brand and switch to Cookson's, as all the IPRs will be divested). Therefore, the inclusion of the US plant is a necessary part of the remedy to ensure the viability and the competitiveness of the divested business and to maintain the necessary competitive pressure on the parties as pre-merger.
- (60) Overall, the results of the market test gave a positive feedback on the divestment package. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

3. Foam Filters

Description of the Commitments

- (61) The divestment business consists of the entire global foam filters business of Cookson. The divestment business is operated as part of the Cookson foundry division ("Vesuvius") and trades under the Hi-Tech Ceramics brand name. According to the parties, it is largely a stand-alone business due to the fact that the (then-independent) Hi-Tech company was acquired by Cookson in 1995 and has remained broadly self-sufficient.
- (62) In 2006, Hi-Tech Ceramics total turnover was approximately € [...] million. The worldwide 2006 sales of foam filters manufactured by Hi-Tech Ceramics to foundries were approximately € [...] million, the remainder resulting from sales of a niche

¹⁰ Answers to question 6 of the market test.

product supplied by the same business, fused silica stalk tubes.¹¹

- (63) The divestment business includes inter alia the production and research and development facilities in Alfred Station, New York, USA together with all plant equipment, warehouses, supplies, raw materials, inventory and other tangible personal property located at the plant as well as the main intangible assets, and the necessary personnel.

Suitability for removing the serious doubts

- (64) The offered divestment of Cookson's filter business removes any overlap in the identified markets of foam filters, including Zirconia filters, Cookson's main activity in the supply to foundries. Its scope appears to consist of a viable business that can be expected to act as an effective competitor on the market. This has been confirmed in the market test of the proposed commitments
- (65) A majority of respondents – customers as well as competitors – confirmed that the divested business is a viable entity covering all necessary functions like distribution and sales, sources of supply, customer base as well as technical support. In particular customers currently sourcing from Cookson indicated in the market test that they would be willing to switch to the purchaser of the divested business. The divestment business which mainly produces zirconia filters is a fully integrated production with common supply management and the common use of production facilities. A separation of individual production lines is not practically possible and would undermine the viability of the remedies. It is therefore necessary that the divested business covers the whole production site.
- (66) Concerning the effectiveness of the commitment the majority of respondents were of the opinion that the divestment of Cookson's foam filter business would be sufficient to ensure that competition on this market will be as effective as pre-merger.
- (67) Overall, the results of the market test gave a positive feedback on the divestment package. The Commission therefore considers the commitments suitable for removing the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

VI. CONDITIONS AND OBLIGATIONS

- (68) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
- (69) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common

¹¹ The products together are also called "reticulated ceramics".

market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

- (70) In accordance with the basic distinction described above, the decision in this case is conditional on the full compliance with Section B of the Commitments relating to IPPs and Section B of the Commitments relating to filters.. The remaining requirements set out in the other Sections of the Commitments are considered to constitute obligations.

VII. OVERALL CONCLUSION

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

For the Commission
signed
Neelie KROES
Member of the Commission

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), Cookson Group plc (“**Cookson**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition by Cookson of Foseco 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. 139/2004 and under Commission Regulation (EC) No. 139/2004.

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 (EC) No 139/2004.

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

Cookson: Cookson Group plc, incorporated under the laws of England and Wales, with its registered office at 165 Fleet Street, London EC4A 2AE, United Kingdom.

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

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

Effective Date: the date of adoption of the Decision.

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

Foseco: Foseco plc, incorporated under the laws of the United Kingdom, with its registered office at Coleshill Road, Fazeley, Tamworth, Staffordshire B78 3TL, United Kingdom.

Hold Separate Manager: the person appointed by Cookson 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.

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

Parties: Cookson and Foseco.

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.

Transaction: the proposed acquisition by Cookson of the entire share capital of Foseco.

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

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

Vesuvius: Vesuvius Group S.A., a wholly-owned subsidiary of Cookson, or any of its affiliates or subsidiaries.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Cookson 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, Cookson commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business, prior to or within the First Divestiture Period. If Cookson has not entered into such an agreement at the end of the First Divestiture Period, Cookson 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. Cookson shall be deemed to have complied with this commitment if, (i) by the end of the Trustee Divestiture Period, Cookson has entered into a final binding sale and purchase agreement, (ii) the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and (iii) closing takes place within a period not exceeding [confidential] 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, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of the entire reticulated ceramics business of Cookson, including in particular its global foam filters business. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, as more specifically defined in the Schedule (and subject to the second subparagraph of paragraph 1), 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 exclusive 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; and
- (e) the benefit, for a transitional period of up to twelve months after Closing (to the extent required by the Purchaser) and on terms and conditions equivalent to those at present afforded to the Divestment Business, of the current arrangements under which the Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 5. From the Effective Date until Closing, Cookson 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 Cookson undertake:
 - (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

- 6. Cookson 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. Cookson shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
- 7. From the Effective Date until Closing, Cookson shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Cookson shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

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

Non-solicitation clause

9. Cookson 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 such period, not exceeding two years after Closing, as may be required by the Purchaser.

Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Cookson 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; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

11. Cookson 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. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - (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 Cookson 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. Cookson 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

15. Cookson shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Cookson 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 Cookson at that time or thereafter, Cookson shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
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 the Parties

17. No later than one week after the Effective Date, Cookson shall submit a list of one or more persons whom Cookson 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, Cookson shall submit a list of one or more persons whom Cookson proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (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, Cookson 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, Cookson shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

19. If all the proposed Trustees are rejected, Cookson 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 Cookson 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 Cookson, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Cookson with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Cookson, determine all necessary measures to ensure that Cookson 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 Cookson as the disclosure is reasonably necessary to allow Cookson to carry out the divestiture or as the disclosure is required by law; and
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Cookson 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 Cookson such measures as the Monitoring Trustee considers necessary to ensure Cookson'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 Cookson 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 Cookson a non-confidential copy at the same time, if it concludes on reasonable grounds that Cookson is failing to comply with these Commitments; and
 - (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 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 Cookson, subject to the Parties' 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 the Parties

25. Cookson 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 Cookson'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 Cookson and the Divestment Business shall provide the Trustee upon request with copies of any document. Cookson 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. Cookson 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. Cookson 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. Cookson 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. Cookson 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, Cookson shall cause the documents required for effecting the sale and the Closing to be duly executed.
28. Cookson 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 Cookson 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 Cookson, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Cookson'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 Cookson refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Cookson. 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 Cookson during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

30. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require Cookson to replace the Trustee; or
 - (b) Cookson, 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.

Section F. The Review Clause

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

34. Cookson will no longer be bound by the terms of these Commitments in the event of the proposed Transaction being abandoned as a result of the scheme of arrangement (as explained in Section 3 of the Form CO in case COMP/M.4961) not having become effective (or, where the Transaction is made as a takeover offer, the offer lapsing in accordance with the rules of the City Code on Takeovers and Mergers).

SIGNED by [_____] on 12 February 2008

Duly authorised for and on behalf of Cookson Group plc

Schedule

1 Overview

General

The Divestment Business comprises the entire reticulated ceramics business of Cookson, including in particular its global foam filters business. It will comprise all of the elements required by a Purchaser to run it as a viable business.

The Divestment Business as operated to date has the following legal and functional structure: it is not organised as a separate legal entity, but rather operated as part of the Vesuvius Foundry division and trades under the Hi-Tech Ceramics brand name. As set out below, it is largely a stand-alone business due to the fact that the (then-independent) Hi-Tech company was acquired by Cookson in 1995 and has remained broadly self-sufficient.

Hi-Tech Ceramics produces reticulated ceramics and fused silica stalk tubes. The reticulated ceramics are used primarily as foam filters for use in the casting of molten metal, and the fused silica stalk tubes (sold under the trade name Zycast) are used in aluminium wheel production to transfer molten aluminium from a pressurized furnace to the wheel mould.

In 2006, Hi-Tech Ceramics total turnover was [confidential].¹² The worldwide 2006 sales of foam filters manufactured by Hi-Tech Ceramics to foundries were [confidential]. These sales were split across the following range of filter applications: [confidential]. The worldwide sales of the Zycast stalk tubes produced by Hi-Tech Ceramics amounted to about [confidential].

The geographic footprint of Hi-Tech Ceramics is as follows: in 2006, NAFTA accounted for about [confidential] of the total sales, Europe for [confidential] and the rest of the world for about [confidential], primarily in Japan. More specifically, 2006 sales to steel foundry customers were split as follows: [confidential].

Organisational fit within Cookson

Within the Cookson group, Hi-Tech Ceramics operates as part of Cookson Ceramics' (i.e. Vesuvius) global Foundry division, which is one of Cookson Ceramics' four core business divisions, i.e. Foundry, Steel Flow Control, Linings and Fused Silica. The Foundry division supplies a range of products to foundries including crucibles, linings, stoppers and foam filters. The foam filters business represented approximately [confidential] of the Foundry division's global turnover in 2006, of which steel filters account for approximately [confidential].

Hi-Tech Ceramics produces four different categories of foam filters: zirconia and carbon-bonded foam filters used in traditional steel casting, zirconia foam filters used in investment casting and alumina foam filters principally used in aluminium cast houses (i.e. ingot casting of aluminium).

In NAFTA, the Foundry division is headed by [confidential] who reports to [confidential] (Business President for the NAFTA Region and President of Vesuvius USA Corporation). The most senior manager at Hi-Tech Ceramics is [confidential], Operations Manager, who reports directly to [confidential] (Vice President of the Foundry division, NAFTA). [confidential] is the Product Manager in charge of ferrous foundries, while [confidential] is the Product Manager in charge of investment casting foundries and non-ferrous foundries. Both report to [confidential].

¹² In converting figures from US dollars to Euros, the European Central Bank weighted average bilateral exchange rate for 2006 has been used, i.e. €1: \$1.2556583.

In the EEA, the Foundry division is headed by [confidential], who reports to [confidential] (Business President for the ESAI Region, i.e. Europe, South America and India). [confidential] is Market Development Manager (Ferrous Foundries), who reports to a commercial director ([confidential]) reporting to [confidential], who in turn reports to [confidential]. [confidential] is the most senior employee directly responsible for the sales and marketing of filters for ferrous foundries in the EEA. Sales of filters for investment casting in Europe are mostly managed from Alfred Station by [confidential] (and [confidential]).

Stand-alone business

Hi-Tech Ceramics operates largely on a stand-alone basis, but obtains certain limited shared services from Vesuvius both in the United States and the EEA, including:

- Research & Development: Research and Development for foundry filters is essentially conducted in the R&D department at the Hi-Tech Ceramics premises in Alfred, Station, New York (USA), where Hi-Tech Ceramics' high-quality filters were originally developed prior to the acquisition by Cookson in 1995. Additional marginal R&D support is provided to Hi-Tech from the Vesuvius Pittsburgh R&D Center on an ad-hoc basis. There are no further relevant R&D facilities anywhere else in the world.
- Sales: Foam filters are sold by the Foundry division's sales team as part of a broad portfolio of Foundry division products. As noted above, foam filters represent a small part of the Foundry division's total sales and are proportionately promoted by the sales team. The global filters business is primarily driven by three application experts, who are able to provide specific solutions for customers' technical requirements: [confidential]. Their key role is to interpret the customers' needs and to define the appropriate filtering solution and they are the primary contact for major customers. [confidential].

In *NAFTA*, the sales force for the whole Foundry product range comprises [confidential] sales managers, [confidential] technical specialists and [confidential] additional salesmen. In particular, [confidential], based in the Vesuvius Buffalo office, is the Sales Director USA/Canada for Foundry, and also serves as Product Line Manager for the investment casting industry. [confidential], based in Indianapolis, IN, is the Product Manager for steel foundry filters.

In the *EEA*, aside from [confidential], the Foundry division has a network of [confidential] sales staff ([confidential] sales managers, [confidential] account managers) focusing on sales and marketing of all foundry products, including filters. In addition to Cookson's own sales network, filters are sold [confidential].

- Distribution: In the EEA, filters are primarily sent from Hi-Tech Ceramics, Alfred, New York, USA by container to a central warehouse operated by Cookson Ceramics and located in Grossalmerode, Germany these filters are then distributed from this central warehouse to customers in the EEA. [confidential]. Distribution from the warehouse to the customers is carried out either through collection by the customers' appointed freight companies, or through external freight companies (such as [confidential] in Germany) chosen by Cookson
- Filters for investment casting may be sent direct from Hi-Tech Ceramics, Alfred, New York, USA to large end-users. In the case of filters for investment casting in the UK, some customers are supplied via Cookson's general foundry product warehouse.
- Finance: In *NAFTA*, [confidential], based in the Vesuvius Pittsburgh West office, is responsible for finance for the Foundry division. In the EEA, [confidential], based in Grossalmerode, Germany, is responsible for finance for the Foundry division.

- Other: certain other functions (such as IT and HR) are also shared with the Foundry division.

2 Production

The Divestment Business operates from the following two production facilities, which are about one kilometre apart in Alfred Station, New York, USA:

- Plant I: this facility produces mostly zirconia filters primarily for investment casting and steel foundry and comprises offices, laboratory and production space; and
- Plant II: this facility produces mostly alumina filters for aluminium cast houses and foundries, and the Zycast products.

Both facilities are owned by Vesuvius USA Corporation.

The key raw materials to make foam filters, and in particular foam filters for steel foundries, are zirconia and polyurethane foam. Zirconia is readily available and Hi-Tech Ceramics purchases zirconia direct from two major suppliers in the United States. With respect to foam, there are currently three major suppliers in the US and two in Europe. Hi-Tech Ceramics currently purchases its foam requirements from one major supplier in the United States and has just started to buy from a supplier in Europe. The supply contracts are short term with a duration of up to one year. There is no reason to believe that these suppliers would discontinue supplies to the Divestment Business following the Divestment process.

3 Sales, marketing and technical support

Sales and marketing

Hi-Tech Ceramics' filters are sold through Cookson's own sales force and, to a lesser extent, through agents or wholesalers. In the EEA, sales and marketing of the Divestment Business's full range of filters is carried out by the sales force of the Foundry division for Europe. As noted above, the sales force comprises [confidential] focusing on the full Foundry product range.

Distribution and other logistical support (i.e. handling orders from foundry customers, invoicing, customer service etc.) is largely provided by the Foundry division and, in particular, a production facility in Grossalmerode, Germany; as explained above, some filters for investment casting in the UK are distributed either direct or through Cookson's general purpose warehouse in the UK. The large majority of Grossalmerode's production and distribution activities is non-filter, and comprises other foundry products such as crucibles, stoppers and nozzles. The filters business is incidental to Grossalmerode's activities. It has a large warehouse which, amongst other foundry products, is used for foam filters [confidential] and receives filter supplies directly from Alfred for distribution across the EEA. Distribution is then carried out by external transport companies. In addition to Cookson's own distribution and sales network, there are [confidential] distributors who buy filters from Vesuvius for re-sale [confidential].

In NAFTA, filters are currently sold through the Foundry sales force, distributors, and agents. The Foundry sales force sells the full range of Vesuvius products (including filters) to ferrous and non ferrous foundries. There are [confidential] sales managers selling the entire Foundry product range (including filters), [confidential] technical specialists and [confidential] additional salesmen selling the entire Foundry product range (including filters). Customer Service for the Divestment Business's activities in NAFTA is based in Alfred and is handled by [confidential] people. Zycast tubes are all sold through the Foundry sales force.

Technical support

The product line managers for investment casting ([confidential]), steel foundry NAFTA, South America and Asia ([confidential]) and steel foundry EEA, India and South Korea ([confidential]) provide technical and application support to customers as well as to the Foundry sales force. In the EEA, as set out above, [confidential] provides technical support to customers with respect to filters.

3.1 Product development

Plant I located at Alfred Station includes the core R&D activities, i.e. [confidential] whose ongoing focus is to improve quality and product performance to meet specific customer requirements, and to provide analyses related to filtering. As set out above, certain additional research and development activities are conducted at the general Vesuvius Research Center in Pittsburgh.

3.2 Intellectual property

The Divestment Business includes:

- the active registered trademarks as listed in **Annex 1**;
- the active patents as listed in **Annex 2**; and
- all other intellectual property necessary for the manufacture and sale of products currently made by the Divestment Business.

3.3 Management

The Operations Manager in Alfred Station is [confidential], who provides direction to manufacturing efforts, and co-ordinates the technical and engineering activities to support manufacturing. In addition, he also co-ordinates the management team responsible for the commercial activities of Hi-Tech Ceramics. He manages other activities including customer service, accounting and HR. The Operations Manager also interfaces with the Foundry sales team and corporate manufacturing, finance and HR functions within Vesuvius Foundry - NAFTA. In the EEA, the most senior employee who is primarily in charge of the foam filters business is [confidential] (see above).

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

4.1 the following main tangible assets:

- the reticulated ceramic (in particular foam filters) production and Research and Development facilities in Alfred Station, New York (Plant I is located at 6329 Rte. 21, Alfred Station, New York, 14803, USA; and Plant II is located at 533 Hartsville Hill Road, Alfred Station, New York, USA), together with all plant equipment, warehouses, supplies, raw materials, inventory and other tangible personal property located at the plant; and
- [confidential] storage pallets used for storing filters currently located in the Vesuvius production facility at Grossalmerode, Germany.

4.2 the following main intangible assets:

- the intellectual property rights described in section 3.2;

- all existing goodwill, i.e. customer lists that are currently held centrally by Vesuvius insofar as they relate to the Divestment Business;
- the current licence from Foseco for the manufacture of carbon bonded ceramic filters;
- the related licence for Carbon Applications Technology (“CAT”). Cookson notes that the Divestment Business could operate without the CAT licence, by modifying the products, without adverse effect on the viability of the Divestment Business; and
- all existing know-how and hardware currently held at the Pittsburgh R&D centre insofar as it relates to the Divestment Business.

4.3 the main licences, permits and authorisations (if any).

4.4 the following main contracts, agreements, leases, commitments and understandings:

- all existing sales contracts between Cookson and its customers for the sale of reticulated ceramic products, in particular foam filters;
- all existing supply contracts with the suppliers to the production facilities in Alfred Station, New York;
- all existing distribution and sales contracts between Cookson and its distributors, sales agents and wholesalers the sale of reticulated ceramic products, in particular foam filters, [confidential];
- a licence agreement with Western New York & Pennsylvania Railroad LLC, to occupy a portion of the railroad’s right of way at the Plant II location, which is effective until termination by either party; and
- the relevant insurance cover (.

As requested by the Commission, details of the main contracts in the different categories are included in **Annex 3**.

4.5 all books and records required for ongoing supplies from the Alfred Station plant, including all customer, credit and other records related to supplies that have been made by Cookson in the course of the Divestment Business in the last three years shall be made available to the Purchaser;

4.6 the following Personnel, to the extent required by the Purchaser:

4.6.1 United States

- (i) Production: Hi-Tech Ceramics staff to operate Plant I and Plant II, Alfred Station, New York including [confidential]. The [confidential] salaried employees include the Operations Manager, [confidential] production supervisors, [confidential] technical, [confidential] engineering/ maintenance, and [confidential] administration roles, and the steel foundry product manager. The [confidential] hourly staff are factory workers;
- (ii) Sales: [confidential] of the existing Foundry sales force described at section 3 above;
- (iii) Research & Development: the [confidential] based at Plant I, Alfred Station New York;
- (iv) Business management: see section 4.7.1 below; and

any additional administrative support staff (HR, logistics) based at Plants I and II, Alfred, New York.

4.6.2 EEA

- (i) Production: none, as the production facilities are all based in Alfred Station, New York, USA;
- (ii) Sales: [confidential] of the existing Foundry sales force will be transferred;
- (iii) Research & Development: none, as the Divestment Business's R&D activities are carried out exclusively in the United States;
- (iv) Business management: see section 4.7.2 below; and
any additional administrative support staff (one accountant, one customer service and one inventory staff).

4.7 the following Key Personnel:

4.7.1 USA

- Operations Manager, [confidential];
- Technical Manager, [confidential];
- Customer Service Manager, [confidential];
- Plant Engineer, [confidential];
- Staff Accountant, [confidential];
- Steel Foundry Product Manager, [confidential]; and
- Investment Casting Product Manager, [confidential].

4.7.2 EEA

- Market Development Manager, [confidential].

4.8 the arrangements for the supply with HR, IT, finance, sales and customer service, health and safety and accounting services by Cookson for a transitional period of up to [confidential] after closing to the extent required by the Purchaser on a reasonable cost basis.

Such transitional support services would include (but not be limited to):

- the use of the storage premises at Grossalmerode, Germany, which currently house the [confidential] pallets used for filter storage; and
- the licensed use of any intellectual property rights related to the “Vesuvius” corporate trademark and logo to allow for consumption, re-branding and stock.

4.9 To the extent that assignment of any contract, lease, commitment or understanding requires the consent or approval of any third party, Cookson commits to take such steps as are reasonably necessary to procure that such consent or approval is obtained. If that consent or approval cannot be obtained, Cookson commits to provide for equivalent substitutes to be made available to the Purchaser which give the Purchaser the

equivalent economic effects and benefits reasonably required to ensure the viability of the Divestment Business.

5 The Divestment Business shall not include:

- the Foundry sales force or any other personnel currently employed by the Foundry business division other than the individuals listed in sections 4.6 and 4.7 above;
- any tangible assets located at the facility at Grossalmerode, Germany other than the [confidential] movable pallets currently used for the storage of filters; and
- any other support services of the kind described in paragraph 1 of this schedule above (subject to the provision of transitional support as provided in paragraph 4.8 above).

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), Cookson Group plc (“**Cookson**”) and Foseco plc (“**Foseco**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition by Cookson of Foseco 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. 139/2004 and under Commission Regulation (EC) No. 139/2004.

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 (EC) No 139/2004.

BSA: the final binding sale and purchase agreement dated [confidential] for the sale of the Divestment Business to RHI.

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

Completion of the proposed Transaction: (i) if the Transaction is implemented by way of a scheme of arrangement, the date on which the scheme becomes effective; or (ii) if the Transaction is implemented by way of an offer under the City Code on Takeovers and Mergers, the date on which the offer is declared or becomes unconditional in all respects.

Cookson: Cookson Group plc, incorporated under the laws of the United Kingdom, with its registered office at 165 Fleet Street, London, EC4A 2AE, United Kingdom.

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

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Cookson and who has received from Cookson 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 [confidential] from the Effective Date.

Foseco: Foseco plc, incorporated under the laws of the United Kingdom, with its registered office at Coleshill Road, Fazeley, Tamworth, Staffordshire, B78 3TL, United Kingdom.

Hold Separate Manager: the person appointed by Cookson 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.

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

Parties: Cookson and Foseco.

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.

RHI: RHI UK, VRA and REFIP, collectively and jointly.

REFIP: Refractory Intellectual Property GmbH & Co. KG, incorporated under the laws of Austria, with its registered office at Wienerbergstrasse II, A-1100, Vienna, Austria.

RHI UK: RHI Refractories UK Limited, incorporated under the laws of Scotland, with its registered office at Whitecrook Works, Stanford Street, Clydebank, G81 1RW, Scotland.

Transaction: the proposed acquisition by Cookson of the entire share capital of Foseco.

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

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

VRA: Veitsch-Radex America Inc, incorporated under the laws of Delaware, United States of America, with its registered office at 19434 Wouth 94th Avenue, Mokena, Illinois, 60448, United States of America.

Section B. The Divestment Business

Commitment to divest

35. In order to restore effective competition, Cookson 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, Cookson has found a purchaser, namely RHI, and entered into the BSA for the sale of the Divestment Business to RHI. Should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should the completion of the sale to RHI fail for any other reason, then Cookson commits to find an alternative purchaser, and enter into a final binding sale and purchase agreement for the sale of the Divestment Business, prior to or within the First Divestiture Period. If Cookson has not entered into such an agreement at the end of the First Divestiture Period, Cookson 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.
36. Cookson shall be deemed to have complied with this commitment if either:
- (c) in the event that the Commission approves RHI as the Purchaser and the terms of the BSA in accordance with the procedure described in paragraph 14, Closing of the BSA takes place not later than [confidential]; or
 - (d) in the event that the Commission does not approve either RHI as the Purchaser or the terms of the BSA in accordance with the procedure described in paragraph 14, (i) by the

end of the Trustee Divestiture Period, Cookson has entered into a final binding sale and purchase agreement, (ii) the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and (iii) Closing takes place within a period not exceeding [confidential] after the approval of the Purchaser and the terms of sale by the Commission.

37. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

38. The Divestment Business consists of the entire isostatically pressed products (“IPP”) business of Foseco, with the exception of the Asian manufacturing assets located in Tianjin, China (and the contracts with the customers who are supplied from the Tianjin manufacturing assets). The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, as more specifically defined in the Schedule, includes:
- (e) all tangible and intangible assets (including intellectual property rights) in the current structure of the Divestment Business, which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (f) all licences, permits and authorisations issued by any governmental organisation for the exclusive benefit of the Divestment Business;
 - (g) 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”);
 - (h) the Personnel; and
 - (i) the benefit, for a transitional period as long as may be required by the Purchaser up to a maximum of one year after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of the current arrangements under which the Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

39. From the Effective Date until Closing, Foseco and Cookson shall (taking into account in respect of Cookson that it will not acquire control of Foseco until Completion of the proposed Transaction) 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 the Parties undertake:
- (j) not to carry out any act upon their 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 (this is without prejudice to taking any legal action which is necessary to protect the intellectual property rights of Cookson);

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

- 40. Cookson commits, from Completion of the proposed Transaction 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. From Completion of the proposed Transaction until Closing, Cookson shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
- 41. Foseco and Cookson shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Cookson shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

- 42. Cookson shall implement all necessary measures to ensure that it does not after the Completion of the proposed Transaction 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. Cookson may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Cookson is required by law.

Non-solicitation clause

- 43. 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 such period, not exceeding two years after Closing, as may be required by the Purchaser.

Due Diligence

- 44. Should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should completion of the sale to RHI fail for any other reason, in order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (m) provide to potential purchasers sufficient information as regards the Divestment Business;
- (n) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

Should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should completion of the sale to RHI fail for any other reason:

- 45. Cookson 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).
- 46. To the extent that this will occur after the Effective Date, the Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

- 47. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (o) be independent of and unconnected to the Parties;
 - (p) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (q) 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**").
- 48. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Cookson 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. Cookson 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

49. Cookson shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Cookson 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 Cookson at that time or thereafter, Cookson shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
50. 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 the Parties

51. No later than one week after the Effective Date, Cookson shall submit a list of one or more persons whom Cookson 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, Cookson shall submit a list of one or more persons whom Cookson 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:
 - (r) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (s) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
 - (t) 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

52. 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, Cookson 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, Cookson shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

53. If all the proposed Trustees are rejected, Cookson 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

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

II. Functions of the Trustee

55. 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 Cookson, 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

56. The Monitoring Trustee shall:
- (iii) 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;
 - (iv) 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 Cookson with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Cookson, determine all necessary measures to ensure that Cookson 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 Cookson as the disclosure is reasonably necessary to allow Cookson to carry out the divestiture or as the disclosure is required by law; and
 - (d) monitor any steps taken by Cookson after the Completion of the proposed Transaction with a view to the splitting of assets and the allocation of Personnel between the Divestment Business and Cookson or Affiliated Undertakings;

- (v) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (vi) propose to Cookson such measures as the Monitoring Trustee considers necessary to ensure Cookson'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;
- (vii) should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should completion of the sale to RHI fail for any other reason, review and assess potential alternative purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) such 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) such potential purchasers are granted reasonable access to the Personnel;
- (viii) provide to the Commission, sending Cookson 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 Cookson a non-confidential copy at the same time, if it concludes on reasonable grounds that Cookson is failing to comply with these Commitments; and
- (ix) 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 (or the intended conditions and obligations, should the reasoned opinion be made prior to the adoption of 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

- 57. 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 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 Cookson, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 58. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after

the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

59. The Parties 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 Cookson'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 Cookson and the Divestment Business shall provide the Trustee upon request with copies of any document. Cookson 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.
60. The Parties 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. Cookson and Foseco 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. Should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should completion of the sale to RHI fail for any other reason, Cookson shall inform the Monitoring Trustee on possible alternative purchasers, submit a list of potential alternative purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
61. The Parties 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, Cookson shall cause the documents required for effecting the sale and the Closing to be duly executed.
62. The Parties 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 the Parties 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.
63. At the expense of Cookson, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Cookson'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 Cookson refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Cookson. 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 Cookson 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

64. 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:
- (u) the Commission may, after hearing the Trustee, require Cookson to replace the Trustee; or
 - (v) Cookson, with the prior approval of the Commission, may replace the Trustee.
65. 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.
66. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

67. The Commission may, where appropriate, in response to a request from Cookson showing good cause and accompanied by a report from the Monitoring Trustee:
- (x) Grant an extension of the time periods foreseen in the Commitments, or
 - (xi) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

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

68. The Parties will no longer be bound by the terms of these Commitments in the event of the proposed Transaction being abandoned as a result of the scheme of arrangement (as explained in Section 3 of the Form CO in case COMP/M.4961) not having become effective (or, where the Transaction is made as a takeover offer, the offer lapsing in accordance with the rules of the City Code on Takeovers and Mergers).

SIGNED by [] on []

Duly authorised for and on behalf of Cookson Group plc

SIGNED by [] on []

Duly authorised for and on behalf of Foseco plc

Schedule

- 6** The Divestment Business comprises the entire IPP business of Foseco, with the exception of the Asian manufacturing assets located in Tianjin, China (and the contracts with the customers who are supplied from the Tianjin manufacturing assets). The Divestment Business as operated to date has the following legal and functional structure: it is not organised as a separate legal entity, but is a distinct business activity within the Foseco Steel Division. In 2006, the worldwide turnover of the Divestment Business amounted to [confidential], of which [confidential] was generated in the EU, [confidential] was generated in North America and [confidential] was generated in the rest of the world.

The Divestment Business will comprise all of the elements required by RHI to run it as a viable business. Certain elements were retained because they are not required by RHI for that purpose as RHI has its own structures in place. Should the European Commission consider that RHI does not meet the Purchaser Requirements set out in paragraph 13 or should completion of the sale to RHI fail for any other reason, Cookson would include those elements of the Divestment Business which would be required by that purchaser to run the Divestment Business as a viable business.

6.1 Production

The Divestment Business operates from two production facilities:

6.1.1 Bonnybridge, Scotland: [confidential]. The Bonnybridge plant manufactures products for [confidential]. This facility also comprises a self-standing technical centre housing several full time staff, materials and the development equipment (see further below).

6.1.2 Saybrook, Ohio, US: [confidential]. The plant serves [confidential].

6.2 Sales, marketing and technical support

IPP products are currently sold either directly by Foseco's own sales force or through agents. [confidential].

Sales force and customer service personnel are currently shared with other product groups that will be retained by Cookson. However, a proportion of Foseco's sales force and customer service personnel (as more particularly described below) will transfer with the Divestment Business. RHI has sales teams already active in the regions where the Foseco's DELTEK business operates. Nevertheless, the relevant product managers who are currently dedicated to the Divestment Business will be included in the Divestment Business.

There are, in addition, teams of application engineers and technical employees in Europe and North America, which are specific to the Divestment Business and support the sales team. These teams are also available to assist customers if they encounter operational problems with IPPs that they have purchased. These teams will be transferred to the Purchaser.

Existing logistics which are specific to the distribution of IPPs, such as transportation contracts and warehousing arrangements, will be included in the Divestment Business. In Europe, Foseco [confidential].

6.3 Product development

The technical centre at Bonnybridge carries out product development with a view to testing and improving its existing products as well as developing new mixes of raw materials, new designs and new products to meet specific customer requirements.

6.4 Intellectual property

The Divestment Business includes:

- DELTEK™ trademark under which Foseco's range of IPP products is sold;
- patents, patent applications and patent work in progress related to the DELTEK products;
- manufacturing and design know-how related to the DELTEK products;
- know-how relevant to the application and use of DELTEK products; and
- all other intellectual property necessary to the manufacture of the DELTEK products.

6.5 Management

Global strategic management is provided by the DELTEK CEO who will be transferred with the Divestment Business. In Europe and in North America, the operational management is provided by Foseco's regional organisations including:

6.5.1 In Europe, [confidential].

6.5.2 In North America, [confidential].

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

7.1 the following main tangible assets:

- 7.1.1** the lease for the IPP production and technical facilities in Bonnybridge, Scotland, together with all plant equipment, warehouses, supplies, raw materials, inventory and other tangible personal property located at the plant;
- 7.1.2** the lease for the IPP production facility in Saybrook, Ohio, together with all plant equipment, warehouses, supplies, raw materials, inventory and other tangible personal property located at the plant; and
- 7.1.3** finished goods and stocks held off site from the Bonnybridge and Saybrook manufacturing plants. [confidential].

7.2 the following main intangible assets:

the intellectual property assets described in section 1.4.

7.3 the following main licences, permits and authorisations:

all relevant licences, permits and authorisations have been identified during the commercial negotiations (particularly environmental licences).

7.4 the following main contracts, agreements, leases, commitments and understandings:

- 7.4.1** all (or the part which relates to the Divestment Business) existing sales contracts between Foseco and its customers for the sale of DELTEK products with the exception of sales contracts related to products manufactured at the Tianjin facility which will be terminated;
- 7.4.2** all (or the part which relates to the Divestment Business) existing supply contracts with the suppliers to the production facilities in Bonnybridge, Scotland and Saybrook, Ohio;
- 7.4.3** all (or the part which relates to the Divestment Business) logistics contracts, including transportation and warehousing (as set out below at sections 2.8.2 and 2.8.3 with the exception of [confidential]);

- 7.4.4 all (or the part which relates to the Divestment Business) existing agency and distributorship contracts for the sale and supply of DELTEK products; and
- 7.4.5 all research contracts with universities and individuals.

To the extent that assignment of any contract, lease, commitment or understanding requires the consent or approval of any third party, Cookson commits to take such steps as are reasonably necessary to procure that such consent or approval is obtained. If that consent or approval cannot be obtained, Cookson commits to provide for equivalent substitutes to be made available to the Purchaser which give the Purchaser the equivalent economic effects and benefits reasonably required to ensure the viability of the Divestment Business.

As requested by the Commission, details of the main contracts in the different categories are included in the Annex.

- 7.5 all books and records for supplies from the Bonnybridge and Saybrook plants, including all customer records related to supplies from the Bonnybridge and Saybrook plants. To the extent that computer records are currently held on systems shared with other retained product groups, electronic copies of records will be given to the Purchaser, if requested

- 7.6 the following Personnel:

- 7.6.1 EEA

- (i) Production: there are [confidential] staff (all of whom are located at Bonnybridge or Bonnybridge/ Borken (Germany)) including [confidential] process operators and [confidential] engineers;
- (ii) Sales (including distribution), marketing and technical support: there are [confidential] including [confidential] sales and marketing representatives advising the iron & steel customers on, and selling to, the IPP product range; [confidential] application engineers; [confidential] service technicians; and [confidential] customer service staff;
- (iii) Product development: there are [confidential] staff (most of whom are located at [confidential] including [confidential] engineers and technicians focused on new product development, [confidential]); and
- (iv) Business Management and administrative support: there are [confidential] staff (most of whom are located at [confidential]).

The most senior management staff that will be transferred as part of the Divestment Business are [confidential], the [confidential], the [confidential] and the [confidential].

- 7.6.2 United States

The personnel in the US are structured in a very similar way to those employed in the EEA, but on a considerably smaller scale due to the smaller US operations.

- (i) Production: there are [confidential] staff (all of whom are located at [confidential]) including [confidential] operators;
- (ii) Sales (including distribution), marketing and technical support: there are [confidential] staff (located at [confidential]) including [confidential] sales and marketing representatives and [confidential] CBC application

engineers and [confidential] technical employee supporting the sales team;

- (iii) Product development: there are [confidential] staff ([confidential]) including [confidential] draftsman and [confidential] water/math model engineer. [confidential]; and
- (iv) Business Management and administrative support: there are [confidential] staff ([confidential]) including [confidential] finance and HR administration employee. [confidential].

Please note that some Personnel may choose not to transfer with the Divestment Business. This should not however affect the viability and competitiveness of the Divestment Business.

7.7 In order to facilitate the transition for the Divestment Business (in particular with respect to the shared services), the Purchaser will be provided with such support services to the Divestment Business (which could include HR, IT, finance, health & safety, accounting services and any other services which the parties may agree) to the extent and for such period as may be agreed between the parties. [confidential].

7.8 The Divestment Business shall not include:

7.8.1 the building and associated manufacturing assets that comprise the IPP plant in the Tianjin Economic Technological Development Area [confidential] which achieved a total turnover in 2006 of [confidential]. This is a start-up business established in 2005 to serve the Asian market. [confidential];

[confidential]

(i) [confidential]; and

(ii) [confidential].

7.8.2 the warehouse holding finished goods [confidential]. Because equivalent warehousing facilities are easy to lease, the exclusion of this warehouse from the Divestment Package will not affect the Divestment Business' viability or competitiveness. RHI have not requested that the existing warehouse capacity be made available to them during the transitional phase - it is believed that RHI have warehouse arrangements already in place to which DELTEK stock could be transferred post Closing. In the event that the Commission does not approve RHI as the Purchaser, the parties would provide the Purchaser with the existing warehouse capacity during the transitional period, if requested

7.8.3 the warehouse holding finished goods [confidential]. Because equivalent warehousing facilities are easy to lease, the exclusion of this warehouse from the Divestment Package will not affect the Divestment Business' viability or competitiveness. RHI have not requested that the existing warehouse capacity be made available to them during the transitional phase - it is believed that RHI have warehouse arrangements already in place to which DELTEK stock could be transferred post Closing. In the event that the Commission does not approve RHI as the Purchaser, the parties would provide the Purchaser with the existing warehouse capacity during the transitional period, if requested ;

7.8.4 sales and administration personnel not required by the Purchaser. Some of Foseco's marketing and sales force is not product-specific to DELTEK and is not required to enable an effective transfer of the Divestment Business (particularly given the availability to RHI of its own marketing and sales force) whilst it is required for the retained activities of Foseco. This includes (i) in

Europe, [confidential] and (ii) in the United States [confidential]. In the event that the Commission does not approve RHI as the Purchaser or in the event that completion of the sale to RHI fails for any other reason, the parties would provide the Purchaser with additional staff including in particular any additional sales staff which are required by the Purchaser; and

7.8.5 product development capabilities not required by RHI [confidential].
