EN

Case No COMP/M.5180 - MANITOWOC/ ENODIS

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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: 19/09/2008

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PUBLIC VERSION

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

To the notifying party:

Subject: Case No COMP/M.5180 – Manitowoc/ Enodis
Notification of 31.07.2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 31 July 2008, the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking The Manitowoc Company, Inc. ("***Manitowoc***", United States) acquires, within the meaning of Article 3(1)(b) of the Council Regulation, sole control of the undertakings Enodis plc ("***Enodis***", United Kingdom) by way of purchase of shares.

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

I. THE PARTIES AND THE OPERATION

3. **Manitowoc** is a US company active in the production of cold-focused ('cold side') equipment in the foodservice industry, acting as a manufacturer of ice-cube machines, ice/beverage dispensers, and commercial refrigeration equipment. Outside the EEA, it is also a major provider for the global construction industry, including lattice-boom cranes, tower cranes, mobile telescopic cranes, and boom trucks, as well as a provider of shipbuilding, ship repair, and conversion services for government, military, and commercial customers throughout the U.S. maritime industry.

4. **Enodis** is a global food and beverage equipment manufacturer offering a broad range of products catering to the needs of foodservice and food retail industries. In the EEA it sells the following types of equipment: ice machines, beverage dispensers, cooking

[1] OJ L 24, 29.1.2004 p. 1.

equipment, ware washers, water coolers, beer coolers, soft drink coolers, commercial refrigeration equipment, food retail refrigeration equipment, and smallwares (such as frying pans, pots and slicers).

5. On 19 May 2008, Manitowoc launched a takeover offer to acquire the entire issued and to be issued ordinary share capital of Enodis through its subsidiary MTW County Ltd. Upon completion, Manitowoc intends to acquire sole control of Enodis and thus the present transaction constitutes a concentration within the meaning of Article 3(1)(b) of Merger Regulation.

II. COMMUNITY DIMENSION

6. The proposed transaction has a Community dimension. It meets the threshold set out in Article 1(3) of the ECMR, as the parties' combined worldwide turnover exceeds EUR 2,500 million (EUR 2,922 million for Manitowoc, EUR 1,188 million for Enodis), the combined aggregate of the undertakings concerned achieves more than EUR 100 million in [three or more] Member-States and each of the undertakings concerned have more than EUR 25 million in [three or more] Member-States. The Community-wide turnover of each of the two undertakings is more than EUR 100 million (EUR […] for Manitowoc, and EUR […] million for Enodis). The undertakings concerned do not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

III. COMPETITIVE ASSESSMENT

7. In the EEA, the proposed transaction will give rise to: (i) a horizontal overlap in relation to the production and sale of ice making machines; (ii) a horizontal overlap in the in relation to beverage dispensing machines, and (iii) a vertical relationship in relation to beverage dispensing machines.

8. Both Manitowoc and Enodis have interests in the foodservice industry, in particular both manufacture and sell ice machines and beverage dispensing equipment in the EEA.

A. Relevant product markets

(i) Ice making machines

9. Ice machines produce ice for a wide number of different uses, primarily for the foodservice sector (restaurants, hotels, bars, etc…), although certain of these machines may also be used in specific industrial applications, such as cement production.

10. Ice machines may be differentiated according to a number of different parameters, namely (i) the technology used to produce the ice[2], (ii) the type of ice produced and (iii) the capacity of the machines. On this basis, and according to the notifying party, customers generally perceive four separate types of ice machine: self-contained

[2] According to Manitowoc, the different technologies which can be used are spray technology (which uses a compressor to pump water up into an inverted ice cube mould), finger technology (which involves stirring water around a tray which has vertical rows of fingers) and vertical technology (which uses a vertical evaporator grid plate, over which water is poured to form a sheet of ice cubes in the cells of the grid). These technologies have a significant impact, in particular as regards the clarity of the ice produced.

cubers, modular cubers, flake machines and scale ice machines (these are used to make industrial ice).

11. In the ice machine business the parties' activities give rise to an overlap in the wholesale supply to distributors, key account customers, private label customers of three types of ice-machines in the EEA: (i) self-contained ice cubers, (ii) modular ice cubers, and (iii) flake machines, as Manitowoc does not supply scale machines in the EEA. The most significant overlap occurs in relation self contained and modular ice cubers.

12. The notifying party refers that sales to dealers are a vertical element to the transaction as Enodis, but not Manitowoc, is active in direct sales to dealers in a number of countries for self-contained ice cubers, modular ice cubers, and flake machines, arguing essentially that this is distinct from sales to distributors given the geographic dimension of trading by dealers (which as opposed to distributors trade at a sub-national level). For the reasons set out in detail on the section on geographic market (below), however, it may remain open, for the purposes of the present decision, whether direct sales to dealers should be considered a distinct relevant market from wholesale supply to distributors, key account customers and private label customers.

13. **Modular cubers** are ice machines that produce ice cubes, normally using vertical technology (producing not so clear ice cubes). They are larger machines which do not have an integrated storage bin. Modular cubers typically produce more than 125kg per day, and they take up more space than self-contained cubers as they cannot be stored horizontally. The Parties also supply ice storage bins of different capacities and dispensing units which can be used with modular cubers.

14. **Self-contained cubers** are low capacity machines which make and store ice, normally using spray technology that produce very clear ice cubes, and are relatively small machines that may be easily stored (they are sometimes referred to as “undercounter” cubers), and typically produce less than 150kg ice per day.

15. **Flake machines** produce different types of ice to the self-contained and modular cubers, as they produce flakes and not cubes. They also use different technology, producing flakes (as opposed to cubes) of unclear ice in machines with production capacities ranging from very small (60kg) to very large (over 2,000kg). Smaller machines are used to serve ice with drinks (i.e. cocktails) while the large capacity machines have a non-catering use (e.g. in chilled displays in supermarkets, transporting of fish, meat, etc…). Manitowoc sells only very limited quantities of flake machines.

16. The notifying party takes the view that customers generally do not regard the different types of ice machines as strict alternatives, and regard them as separate products, even if at the margin, it considers that there may be some substitution between certain models of self-contained and modular cubers (e.g. by customers requiring around 100kg-200kg ice production capacity).

17. Whilst the notifying party also sets out that there is a degree of supply-side substitutability between the different ice machines and that it is relatively easy for a supplier to switch production from one type to another. Manitowoc does, however, admit that smaller producers tend to concentrate on one type of ice machine only, which was generally confirmed by the market investigation. Although the market investigation has not shown that this would indicate that there is an overall market for

the manufacturing of ice-machines, this supply side consideration is taken into account in the assessment of the overall impact of the proposed transaction.

Self-contained cubers / modular cubers

18. As regards self-contained and modular cubers, the market investigation has shown whilst they are substitutable in their general function of producing cube shaped, clear ice, there are considerable differences between the use of two product types. The market investigation has shown that the mutual substitutability of self-contained and modular cubers by customers is rather limited, as a majority of respondents did not consider these machines to be substitutable.

19. In effect, whilst both self-contained and modular cubers are purchased by commercial users, for self-contained cubers the demand is mostly from small commercial users – e.g. cafes and bars as these machines can be stored easily, do not take up much space, and do not require a separate storage bin. They also require very clear ice (called gourmet ice) that only spray technology may deliver. On the other hand, larger commercial users – e.g. nightclubs and fast food chains – often require more ice than can be produced by a machine in an hour, and not necessarily such clear ice. They therefore typically purchase modular machines with storage bins or dispensers in order to be able to have large quantities of ice available at peak times.

20. On the other hand, of the respondents that considered that such machines could be substitutable the majority considered that whilst the smaller modular cubers may be substitutable, from the demand side, for the larger self-contained cubers, the same is not true for self-contained cubers as regards all other modular cubers.

21. Further, the market investigation revealed that, from a supply-side, the spray technology used in self-contained cubers is much more expensive than the vertical technology used in modular cubers, and that it would not be economically feasible to scale self-contained cubers to higher capacity ice production.

22. Therefore, on the basis of the above, given the limited demand side and supply-side substitutability between modular and self-contained cubers, these are considered to be two separate product markets. However, in light of the fact that the competition assessment would not be significantly different and that the Manitowoc has submitted a remedy that would serve to remove the serious doubts in any of the possible alternative market definitions for modular cubers, the exact scope of the market definition may be left open for the purposes of the present decision.

Flake and scale ice machines

23. Indeed, the market investigation has confirmed that, from a demand-side perspective, cubers and flakers cannot be regarded as substitutable, due essentially to the different type of ice produced (in terms of shape and clarity), and thus to the different characteristics and use given to the ice produced, translating into different types of customers acquiring these machines. Indeed flakers are bought mainly by industrial users requiring larger machines and where the shape and clarity is less important (such as in supermarket displays or for transport for fish or meat). Cubers are used for commercial users (e.g. nightclubs and cafes) where shape and clarity are of the utmost importance.

24. As regards industrial users, the notifying party notes that whether industrial users purchase a flake or scale machine depends on the precise application. In some cases the machines could be viewed as complementary as flake and scale ice can be used together in supermarket displays (i.e. scale ice forming a cold base on which flake ice is displayed with fish/meat products for sale). In other cases they are substitutable ways of transporting meat and fish over distance. For other applications, only one of the machines would be suitable (e.g. flake ice for serving with beverages, scale ice for use in cement mixing).

25. Whilst the results of the market investigation are that the vast majority of market players consider these two types of machines not to be substitutable, a few responses to the market investigation also indicated that there is some substitutability between flake machines and scale machines, although given that (i) the parties do not overlap (Manitowoc does not sell scale machines), that the (ii) overlap in flake machines is very minor, and (iii) the remedies offered, the exact market definition may be left open for the purposes of the present decision.

Conclusion

26. On the basis of the above, and in particular given the limited degree of demand and supply-side substitutability between different types of machine may be observed, it is considered, on balance, for the purpose of this decision that there are separate product markets for the production and wholesale supply of (i) self-contained cubers, (ii) modular cubers and (iii) flake ice machines. As the activities of the parties do not overlap in relation to scale machines, this product will not be further described.

(ii) Beverage dispensing machines

27. Both Manitowoc and Enodis sell components used to make post mix soft drinks beverage dispensers in the EEA. Post mix soft drinks dispensers are machines which dispense soft drinks by carbonating water and mixing it with syrup at the point of dispense.

28. According to the notifying party such machines have three main components: a remote cooler/carbonator which carbonates the water and cools the water and syrup; a dispensing point (being either valves mounted on a fixed dispensing tower or a handheld bar gun); and insulated tubing which connects the two (a "python"). Components of remote-cooled systems are generally purchased separately by customers. Alternatively, an over-counter unit can be used which integrates the cooler/carbonator and dispensing tower at point of dispense.

29. Whilst Manitowoc has a very limited presence in the EEA, there is nonetheless an overlap in the sale of (i) remote cooler/carbonators, (ii) over-counter beverage dispensers and (iii) beverage dispensing towers in the EEA. Manitowoc also supplies post mix valves to customers and other manufacturers including Enodis.

Remote cooler/carbonators and over-counter beverages

30. The main difference between over-counter dispensers and remote cooled dispensers is that whilst the first is a self-contained, lower capacity unit, normally customer facing and used in outlets where customers can pour their own drinks, the latter machine is modular and only has the dispenser point on display - these therefore tend to be larger

capacity machines, often stored in another part of the building, given the space considerations involved.

31. According to the notifying party, over-counter dispensers and remote cooled systems are substitutable for one another in a number of circumstances, particularly in smaller/lower capacity food and beverage outlets, although the vast majority of the respondents (including all customers) during the market investigation considered these to be distinct products that are not substitutable.

32. A competitor during the market investigation pointed to supply side substitutability reasons (use of similar technology) to consider that remote-cooled systems and post mix dispensing equipment markets should also include other beverages than soft drinks, such as carbonated water, beer and fruit juice. However, post-mix soft drinks dispensers are used to carbonate water and mix it with syrup to produce a soft drink dispensed on site at a food / drink outlet, which is not necessary for beer which comes ready to drink. Further, customers are different. Finally, Manitowoc is only present in the sale of soft drink beverage equipment, and the competitive assessment would not change should other types of beverage equipment be considered, and it may thus be left open whether these equipments should be part of relevant product markets.

33. Given that no serious doubts as to the compatibility with the common market arise from the transaction as regards these product segments (taken together or separately), the exact market definition may be left open for the purposes of the present decision.

Dispensing towers

34. As to dispensing towers, these are fixed towers that support the dispensing valves for the soft drink and are a separate component of the remote cooler / carbonator equipment and may be bought separately from different manufacturers. An alternative component to dispense the soft drink is the bar-gun – a handheld device attached to the end of the python that is generally used at a bar (neither Manitowoc nor Enodis supply this alternative component).

35. The notifying party considers that handheld bar-guns (which the parties do not supply) can be used instead of beverage dispensing towers to dispense the drink, although it notes that the latter is more used in restaurants whilst the handheld bar-guns are used more often in bars.

36. Furthermore, it considers that beer dispensers and pre-mix soft drinks dispensers contain similar components to post-mix soft drinks equipment and therefore may act as a supply-side constraint on post-mix dispensing equipment suppliers.

37. Given that even considering the narrowest segment (only dispensing towers) no serious doubts as to the compatability with the common market arise as a result of the proposed transaction, the exact market definition may be left open for the purposes of the present decision.

Post-mix valves

38. Manitowoc also supplies post mix valves to customers (Enodis does not produce such valves). As referred to above post-mix valves are the components that produce the mix of syrup and carbonated water specified by the syrup supplier at the point of dispensing and manually/automatically fill the beverage cup. Such valves are thus a separate add-on component of the beverage dispensing towers.

39. Manitowoc sells Pepsi-approved post-mix valves under its Servend brand to other beverage dispenser manufacturers including Enodis. Post-mix valves are used in conjunction with dispensing towers only, and may be bought with the towers or separately.

Conclusion

40. Based on the results of the market investigation and taking into account the considerable differences from the demand perspective, it is likely that the as regards beverage dispensers the relevant market could be segmented into (i) remote coolers / carbonators, (ii) over the counter dispensers, (iii) dispensing towers and (iv) post-mix valves. However, for the purpose of the current decision it can be left open as irrespective of market definition no serious doubts as to the compatibility with the common market arise (see further below).

B. Relevant geographic markets

(i) Ice making machines

41. The notifying party submits that the production and wholesale sale of ice making machines to distributors, private label customers and key account for each of the different types of ice making machines are at least EEA-wide if not world-wide. Additionally, it also considers that direct sales to dealers would have a national dimension as dealers buy and sell machines on a national basis. It therefore considers that given that Enodis sells direct to dealers in some countries in close proximity to its plants these would require different market definitions, based on their different geographic scope. These will be analysed in turn, and given that no specific particularities exist for any of the ice machines under examination, they will be discussed together.

Supply to distributors, private label and key account customers

42. For the purposes of supply to distributors, private label customers and key account customers the notifying party points to a number of factors to consider the markets as being at least EEA-wide: (i) distributors purchase machines from manufacturers that are located world-wide, (ii) manufacturers publish global or EEA-wide price lists from which they offer a standard discount to distributors (iii) expansion by manufacturers into other countries is easy from a production perspective, as there are no barriers to prevent entry into countries if there are distributors available to sell to, (iv) manufacturers do not require a local presence to sell ice machines in any particular country.

43. The market investigation generally confirmed that most distributors (that account for 75% of all sales of ice machines) purchase from EEA manufacturers, and that price lists are indeed set for EEA-wide level.

44. However, both some statements from the notifying party as well as a number of responses received in the market investigation contradict the view that the market is purely EEA-wide. In fact, there are a number of national aspects and complexities to the sale by manufacturers of ice machines, which means that it also not possible, in a first phase investigation, to eliminate the possibility that sales to dealers and distributors should be considered together at a national level.

45. In particular, the responses obtained from the market investigation produced mixed results as regards the role of distributors to enter and expand into a member state market as well as of a local presence by the manufacturers. Some competitors pointed to the need for a local presence in a particular country in order to be successful there. They also referred that it is not always easy to expand into a new EEA country, given the difficulty of finding distributors as the market investigation has shown that these normally carry only one manufacturer's brand and are *de facto* exclusive.

46. Further, market responses have clearly revealed that after-sales services are very important and whilst they are normally provided at dealer level, distributors play a very significant role, but that manufacturers also play a role, even if a less important one[3].

Direct sales to dealers

47. The national dimension to these markets is further enhanced by the fact that Enodis itself has a sales force in Italy, and own integrated distributors in Spain and Germany and that certain other competitors also sell direct to end users (as confirmed also by the market investigation) or to dealers should a manufacturer have a local sales force, thus circumventing the distributors. In effect, this means that there is no single distribution model in place by all manufacturers in the EEA, as some have exclusive sales through distributors, whilst others sell to distributors but also directly to dealers and customers in certain member states.

48. Finally, an analysis of market shares for the various players are very distinct at the national market level, which further suggests that conditions are distinct at a national level.

49. Given that the remedy offered solves the serious doubts that could arise at either national or EEA level, the exact geographic scope of the markets may be left open.

50. As regards the direct sales of ice machines to dealers the notifying party also submits that direct sales to dealers would have a national dimension as dealers buy and sell machines on a national basis. It refers that there is limited cross-border trade by dealers (typically only across small countries with similar languages) and that they will usually only purchase from suppliers located in the same country. However, as the notifying party itself refers it has direct sales from its plants in Italy to dealers located in Italy and Austria. Also, Enodis owns distribution companies in Germany and Spain.

51. Given that the remedy offered solves the serious doubts that could arise at either national or EEA level, the exact geographic scope of the markets may be left open.

Conclusion

52. Based on the results of the market investigation there are elements to support an EEA wide market for ice making machines however there are also indications of national markets. As serious doubts would arise irrespective of the geographic market definition that would be solved by the commitments offered by the notifying party, the

3 In most cases Manufacturers' factory play a supporting role to the distributors, but at one competitor referred to own service support team.

exact scope of the geographic definition of the identified ice machine markets may remain open (see further below).

(ii) Beverage dispensing machines

53. Manitowoc does not have any plants in the EEA and imports beverage dispensing machines from its plants in the US, shipping to two distributors, which have distributions centres, one in the UK, the other on the Swiss/German border. Enodis supplies the EEA from its manufacturing plant in the UK, from which it distributes these equipments.

54. The notifying party submits that the relevant markets for all types of beverage dispensers under analysis are global, in particular given the important role of the key account customers: McDonalds, Pepsi and Coca-Cola. In effect, Manitowoc refers that these key accounts approve suppliers on a global basis that may then be selected by the franchisees and bottlers (these are the final customers)[4]. These customers account for [90-100%] of Manitowoc's few sales in the EEA and approximately [80-90]% of the total sales of Enodis. According to the notifying party prices are negotiated globally by these key accounts.

55. Other customers include other food and beverage outlets that purchase directly from the suppliers (an example is Quick, a hamburger chain), as well as other syrup suppliers such as Grapos (active in the EEA) and Ben Shaws and Cabana (both in the UK). These smaller customers also negotiate prices centrally, which apply over all of their operations.

56. The market investigation has confirmed that these markets are at least EEA-wide, so for the purposes of the present transaction it may be considered that the geographic scope for beverage dispensing equipment is at least EEA wide.

2. COMPETITIVE ANALYSIS

A. Horizontal effects

57. By way of background, the rationale of the proposed transaction for Manitowoc is to expand its activities in the horeca[5] equipment sector by buying Enodis' large range of activities in this area, particularly in the so-called "hot side" sector of the market.

I. Ice machines

58. The Commission's market investigation has shown that irrespective of how the geographic market definition is drawn, for the product markets defined, the proposed transaction raised serious doubts.

59. Although the Commission's investigation has not indicated that there is a world-wide market for ice-machines, it is noted that even on the basis of the widest possible market definition, the proposed transaction would have combined the largest and second largest player in the world, with a [60-70]% combined market share ([30-40]% + [20-30%])%. Closest competitor would be Hoshizaki with an overall position of around [20-30]%,

[4] From the market investigation it resulted that Selbach is the only exception, as it is approved for Germany only.

[5] Horeca stands for hotel, restaurant, and catering / café activities.

followed by Brema [5-10]% and ITV [0-5]%. The merged entity would also be the largest player globally for modular cubers, self-contained cubers and flake ice machines with a market for modular cubers of [70-80]% ([30-40]%+[30-40%]), self-contained cubers [50-60]% ([30-40]%+[10-20]%) and flake ice machines [50-60]% ([30-40]% + [10-20]%).

60. As regards the EEA market, it is noted that manufacturers of ice machines market their products in the EEA through four different channels: (i) sales to key account customers (such as Mc Donalds or Burger King), (ii) private label sales, (iii) sales to wholesale distributors (which then re-sell the machines to dealers), and (iv) direct sales to dealers. In total, the EEA market for all types of ice machines amounted to EUR […] million in 2007.

61. The parties have provided EEA shares for private label sales and EEA and national shares of sales to distributors and dealers noting that distributors account for over [70-80]% of Manitowoc's EEA sales and over [60-70]% of Enodis' EEA sales. The parties have not provided detailed shares in relation to sales to key account customers, which in 2007 amounted only to € […] million in the EEA (Manitowoc € […], Enodis € […]). At any rate, the market investigation has not revealed any issues in relation to key account customers and therefore, this sales channel will not be further discussed.

62. As regards the other sales channels, the market shares analysis provides a complex and fragmented scenario that cannot be properly assessed only from an EEA perspective. Currently, there are five leading players in the EEA ice machines sector (Manitowoc Enodis, Hoshizaki, Brema and ITV). The proposed transaction will reduce the number to four players, reinforcing the position of Enodis, which is the current market leader in almost every product segment and almost every member state (in most cases, holding a market share already indicative of unilateral effects).

63. However, after the merger, although each of the three remaining competitors will offer the full range of machines (modular and self-contained cubers a well as flake machines), their market shares will differ substantially across member states and product areas, i.e., a given competitor may be the strongest competitor to the merged entity for particular machine in a particular member state but will be just a fringe player for another type of machine in the same member state or for the same type of machine in another member state.

64. Accordingly, the merged entity will be consistently strong in every product and member state whereas other competitors will be weaker "across the board". Hence, the total EEA share may not be an optimal proxy to assess the real competitive strength of the remaining competitors.

(i) Modular cubers (without accessories)

(a) EEA-wide

65. Modular cubers are larger machines which do not have an integrated storage bin and which are therefore used together with external storage bins and/or dispensers. The three elements are not technically integrated and can be purchased either together or separately from different suppliers, although according to one competitor, customers prefer to buy the storage bin from the same supplier of the modular cuber. Set out below is the assessment for modular cuber machines only (without accessories). The parties have provided market shares in relation to the supply of modular cubers with storage bins and dispensers that will be discussed in below (see recital 95).

66. The proposed transaction would give rise to a combined EEA market share of [70-80]% (Manitowoc [10-20]%; Enodis [50-60]%) well above the level unilateral effects may arise. Moreover, the resulting HHI after the proposed transaction would be [5800-6000], with a delta of []1900-2100] reinforces this argument[6]. The closest competitors in terms of market shares would be Hoshizaki ([10-20]%), Brema ([5-10]%) and ITV ([0-5]%).

67. The proposed transaction would reinforce the already significant position of Enodis by removing its largest competitor on an EEA-wide basis. The market share of the next largest competitor (Hoshizaki) would be [several times] smaller than that of the combined entity.

68. In addition to the significant market shares and the increase in concentration levels due to the reduction in the number of competitors, there are a number of additional reasons supporting the view that the proposed transaction would raise significant concerns and to serious doubts as its compatibility with the common market.

69. A number of respondents in the market investigation have indicated that Manitowoc and Enodis are close competitors. According to a large number of responses, only Manitowoc is comparable in terms of overall quality and perceived recognition to Scotsman, the top-line brand of Enodis, and by far the most important brand in terms of sales in the EEA. The next largest player (Hoshizaki) is also identified by a number of respondents as a top quality brand in the member states where it achieves the largest market shares but it cannot match the EEA-wide strength of the merged entity. The next largest competitor, Brema, is perceived by a number of respondents as having products of inferior quality, although some replies also note that it is catching up. Some replies also express the view that Brema is rather a competitor to Icematic, the second brand of Enodis. It appears that Enodis' portfolio of brands (including Scotsman, Icematic and Simag as well as imports of the US' Ice-O-Matic brand) caters to all the price segments of the market. No other competitor has been signalled as a strong competitor to the merging parties.

70. The market investigation has highlighted the power of branding and loyalty in these markets in a number of member states. In this regard, the merged entity would be the only player having a portfolio of brands covering the top-end to lower end brands, as well as a significant private label position. Also, the market investigation has shown that, in a vast majority of cases across virtually all the member states in which high market shares arise, distributors normally sell one brand of the manufacturer it represents and all types of ice-machines under that brand. In addition, in some member states, there is a strong brand loyalty at end-customer level and dealers usually are loyal to their distributors. Also, the investigation showed that a number of distributors and dealers believe that in a number of member states, quality, reliability and after-sales service (and not only price) as important purchasing factors. However, the market investigation revealed some differences in this regard across different member states as in some countries price plays a more important, if not absolute, role and brand loyalty is a much less relevant factor. At any rate, overall responses confirm the power and recognition of the Scotsman brand across the board. In addition, after-sales services are considered a factor of great importance.

6 See in this regard, the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines" or "HMG")[6]

71. Contrary to the statements of the notifying party, the market investigation has shown that many distributors have limited possibilities of switching suppliers. Most distributors consider that switching suppliers is a long and difficult process due to, *inter alia*, the role of after-sales activities (need to re-train personnel, building a stock of spare parts etc.) [7], brand loyalty, and disputes about existing inventories. Also, as distributors carry all type of machines under a certain brand, and it would not readily switch to carry only one type of ice machine (e.g. modular cubers) from another manufacturer, nor switch the whole portfolio of ice machines. In fact, a number of distributors have indicated that they would not consider switching suppliers even in the event of a 5-10% price increase. A key element in this regard is that a vast majority of distributors work on a *de facto* exclusive basis with only one manufacturer or brand of ice machines.

72. In relation to barriers to expansion, the notifying party notes that Manitowoc's experience of expansion is that the only investment required is the time and cost of finding an effective distributor. However, many distributors do not tend to switch suppliers and, therefore, it takes time and can be difficult to find a suitable distributor for a new entrant in the market. The market investigation also shows anecdotal evidence that distributors tend to focus on the distribution of catering / horeca equipment in general and not only on ice machines. This may reinforce the reluctance of distributors to switch supplier only for one type of ice-machine.

73. Chinese manufacturers are also a source for new entry according to the parties. It is claimed that the quality of their products is improving and that they are a growing threat, particularly in relation to private label and more commoditised products. However, the market shares supplied by the parties for every product type in every EEA country fail to identify a single Chinese producer. Moreover, only few of the respondents to the market investigation regard the Chinese producers as credible alternatives. It seems that Chinese producers would be more active in those countries where customers are more sensitive to price. Overall, they are perceived to be of less quality. A number of distributors have confirmed that they would not switch to supplying such products. This is also confirmed by response of a Chinese producer which indicates that it is difficult to find a qualified distributor in Europe and that this acts as a barrier to entry.

74. The market investigation has shown no indication of countervailing buyer power with the possible exception of key accounts, where the buyer side is highly concentrated. However, the relevance of this sales channel is virtually *de minimis*.

75. Therefore, the transaction raises serious doubts as to the compatibility with the common market for a possible relevant market of modular cubers with an EEA wide geographic scope.

(b) National markets

76. The Commission also has concerns that the proposed transaction could raise serious doubts on the basis of national markets in a number of Member States.

77. The following table displays the market shares of each player in all the national markets for modular cubers in which (i) the combined entity will remain market leader after the merger, (ii) the market share of the combined entity is above [60-70]%, (i.e. above the level at which unilateral effects concerns may arise), and (iii) the overlap caused by the transaction is in excess of 2%. At any rate, the transaction as modified by the proposed

7 In the EEA, after-sales servicing and repairing of ice machines are typically performed by the distributors and dealers and requires a well – trained workforce.

commitments would also solve the competition concerns in the national markets, if they were to be defined on this basis.

<u>Table 1</u>: Share of supply of modular cubers in the EEA in 2007 Source: Notifying parties

Country	Manitowoc	Enodis	MTW + Enodis	Brema	Hoshizaki	ITV	Other	Total
Austria	[10-20]%	[40-50]%	[60-70]%	[10-20]%	[20-30]%	[0-5]%	[0-5]%	100%
Cyprus	[30-40]%	[40-50]%	[80-90]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	100%
Czech Republic	[20-30]%	[50-60]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	100%
Denmark	[5-10]%	[60-70]%	[70-80]%	[5-10]%	[20-30]%	[0-5]%	[0-5]%	100%
Finland	[80-90]%	[10-20]%	[90-100]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	100%
France	[10-20]%	[50-60]%	[70-80]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	100%
Germany	[30-40]%	[40-50]%	[70-80]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	100%
Greece	[10-20]%	[80-90]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	100%
Ireland	[5-10]%	[70-80]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	100%
Italy	[0-5]%	[50-60]%	[60-70]%	[30-40]%	[0-5]%	[0-5]%	[0-5]%	100%
Poland	[5-10]%	[70-80]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	100%
Spain	[0-5]%	[70-80]%	[80-90]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	100%
Sweden	[20-30]%	[70-80]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	100%
UK	[20-30]%	[50-60]%	[70-80]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%	100%
Bulgaria	[30-40]%	[40-50]%	[70-80]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%	100%
Romania	[20-30]%	[70-80]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	100%

78. Set out below is a discussion of the competitive situation in each individual member states, as well as some national particularities resulting from the market investigation in addition to those referred to above for the EEA (barriers to entry and buyer power).

79. The transaction would give rise to a four-to-three situation in <u>Austria</u>. The combined entity will hold a very strong market share of [60-70]% with an addition of [10-20]% (Enodis [40-50]%, Manitowoc [10-20]%). This market share is an indication of potential unilateral effects. Moreover, the resulting HHI index in this market after the proposed transaction would be [4500-4900], with a delta of [1400-1600]. The two only other competitors (Hoshizaki and Brema) will hold a market share several times smaller than that of the combined entity (Hoshizaki [20-30]%, Brema [10-20]%). As with the arguments indicated for the EEA wide market, Respondents to the market investigation have also indicated that quality is an important purchasing factor in Austria, which reinforces the merged entity's position in this market. On this basis, the transaction raises serious concerns in relation to modular cubers in Austria.

80. The transaction would give rise to a three-to-two situation in <u>Bulgaria</u>. The combined entity will hold a significant market share ([70-80]%) with an addition of [30-40]% (Enodis [40-50]%, Manitowoc [30-40]%). This market share is an indication of potential unilateral effects. The only other meaningful competitor (Hoshizaki) will hold a market share several times smaller than that of the combined entity ([20-30]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. Also in this market, the market investigation has revealed that brand and dealer loyalty play an important role in the market which reinforces barriers to switching and expansion. On this basis, the transaction raises serious concerns in relation to modular cubers in Bulgaria.

81. In Cyprus, the transaction would also give rise to a four-to-three situation. The combined entity will hold a very significant market share of [80-90]% with an addition of [30-40]% (Enodis [40-50]%, Manitowoc [30-40]%). This market share is an indication of potential unilateral effects. The two only other meaningful competitors (Hoshizaki and Brema) will hold market shares several times smaller than that of the combined entity (Hoshizaki [10-20]%, Brema [5-10]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. Also, a number of respondents have pointed out that quality and reliability are important purchasing factors and that there is brand loyalty at customer level. Manitowoc and Enodis (Scotsman and Icematic) are perceived as the closest competitors to each other. On this basis, the transaction raises serious concerns in relation to modular cubers in Cyprus.

82. Equally, the transaction would give rise to a three-to-two situation in the Czech Republic. The combined entity will hold a market share indicative of unilateral effects of [80-90]% with an addition of [20-30]% (Enodis [50-60]%, Manitowoc [20-30]%). The only other meaningful competitor (Hoshizaki) will hold a market share several times smaller than that of the combined entity ([10-20]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. There is no evidence available on any mitigating factors to these high market shares.

83. The transaction would give rise to a four-to-three situation in Denmark. The combined entity will hold a very strong market position with a [70-80]% market shares with an addition of [5-10]% (Enodis [60-70]%, Manitowoc [5-10]%). This is an indication of unilateral effects . The two only other competitors (Hoshizaki and Brema) will hold a market share several times smaller than that of the combined entity (Hoshizaki [20-30]%, Brema [5-10]%). In addition to the arguments raised above, as regards barriers to entry generally and buyer power, the market investigation in Denmark has specifically pointed to the fact that it would be difficult for distributors to switch brands here. On this basis, the transaction raises serious concerns in relation to modular cubers in Denmark.

84. In Finland the proposed merger would lead to a 3 to 2 scenario with the merged entity enjoying a quasi-monopoly position with a ([90-100]% market share (Enodis [80-90]%, Manitowoc [10-20]%). Hoshizaki would be the only remaining competitor ([5-10]%). There is no evidence available on any mitigating factors to these high market shares. On this basis, the transaction raises serious concerns in relation to modular cubers in Finland.

85. As regards France, the proposed transaction would give rise to serious concerns as the combined entity will hold a market share of [70-80]% (Enodis [50-60]%, Manitowoc [10-20]%), which is an indication of potential unilateral effects. The other competitors (Hoshizaki, Brema and ITV) will hold market shares several times smaller than that of the combined entity (Hoshizaki [10-20]%, Brema [10-20]%, ITV [0-5]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. A number of respondents have noted that there is a strong degree of dealer loyalty *vis-à-vis* distributors and that Manitowoc and Scotsman are closely substitutable. On this basis, the transaction raises serious concerns in relation to modular cubers in France.

86. The transaction would give rise to a four-to-three situation in Germany. The combined entity will hold a high market share ([70-80]%) with an addition of [30-40]% (Enodis

[40-50]%, Manitowoc [30-40]%), which is an indication of potential unilateral effects. Moreover, the resulting HHI index in this market after the proposed transaction would be [5400-5600], with a Δ of [2500-2700]. The two only other competitors (Hoshizaki and Brema) will hold a market share several times smaller than that of the combined entity (Hoshizaki [10-20]%, Brema [0-5]%) and the transaction would remove the current largest competitor (Manitowoc) to the pre-merger market leader. According to one respondent, there is some degree of brand loyalty at customer level and Manitowoc and Scotsman are close competitors. On this basis, the transaction raises serious concerns in relation to modular cubers in Germany.

87. The combined entity would enjoy a quasi-monopoly ([90-100]%) in Greece with a market share addition of [10-20]% (Enodis [80-90]%, Manitowoc [10-20]%). Hoshizaki would be the only remaining competitor with a [0-5]%. Important purchasing factors in the Greek market is not only price but also quality and reliability. Brand and dealer loyalty also seem to exist, thereby reinforcing the merged entity's position. On this basis, the transaction raises serious concerns in relation to modular cubers in Greece.

88. In Ireland, the transaction would give rise to a four-to-three situation. The combined entity will hold a market share indicative of unilateral effects ([80-90]%) with an addition of [5-10]% (Enodis [70-80]%, Manitowoc [5-10]%). The two only other competitors (Hoshizaki and Brema) will hold a market share several times smaller than that of the combined entity (Hoshizaki [10-20]%, Brema [0-5]%). There is no evidence available on any mitigating factors to these high market shares.

89. The transaction would give rise to a four-to-three situation also in Italy. The combined entity will hold a market share indicative of unilateral effects ([60-70]%) with an addition of [0-5]% (Enodis [50-60]%, Manitowoc [0-5]%). Moreover, the resulting HHI index in this market after the proposed transaction would be [4900-5100], with a Δ of [300-400]. The two only other competitors (Brema and Hoshizaki) will hold a market share several times smaller than that of the combined entity (Brema [30-40]%, Hoshizaki [0-5]%). The market investigation has revealed that Scotsman and Manitowoc are closest competitors to each other, that brand and reliability are important purchasing factors as well as switching distributors is not an easy task. On this basis, the transaction raises serious concerns in relation to modular cubers in Italy.

90. The transaction would also give rise to a three-to-two situation in Poland. The combined entity will hold a market share of [80-90]% (Enodis [70-80]%, Manitowoc [5-10]%) which is an indication of potential unilateral effects. The only other meaningful competitor (Hoshizaki) will hold a market share several times smaller than that of the combined entity ([10-20]%). There is no evidence available on any mitigating factors to these high market shares.

91. The transaction would give rise to a monopoly (share of 100%) in Romania. The market investigation has confirmed that Enodis and Manitowoc are close competitors. On this basis, the transaction raises serious concerns in relation to modular cubers in Romania.

92. The transaction would also give rise to a four-to-three situation in Spain. The combined entity will hold a market share of ([80-90]%) with an addition of [0-5]% (Enodis [70-80]%, Manitowoc [0-5]%) which is an indication of potential unilateral effects. Moreover, the resulting HHI index in this market after the proposed transaction would be [6900-7100], with a delta of [600-800]. The two only other meaningful competitors

(ITV and Brema) will hold a market share several times smaller than that of the combined entity (ITV [10-20]%, Brema [5-10]%). The investigation has indicated that there are difficulties of switching brands, the strong brand loyalty at customer level and, despite ITV's significant presence, the fact that Manitowoc and Scotsman would be the closest competitors to each other. On this basis, the transaction raises serious concerns in relation to modular cubers in Spain.

93. The transaction would give rise to a monopoly (share of 100%) in Sweden. According to the market investigation, Manitowoc and Scotsman are close competitors and switching distributors is not an easy exercise. On this basis, the transaction raises serious concerns in relation to modular cubers in Sweden.

94. The transaction would give rise to a three-to-two situation in the UK. The combined entity will hold a market share of ([70-80]%) with an addition of [20-30]% (Enodis [50-60]%, Manitowoc [20-30]%) which is an indication of potential unilateral effects. The only other meaningful competitor (Hoshizaki) will hold a market share several times smaller than that of the combined entity ([20-30]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. The market investigation has revealed that switching distributors is difficult, that there is brand loyalty between the least price-sensitive customer segment and that the parties are close competitors to each other. On this basis, the transaction raises serious concerns in relation to modular cubers in the UK.

Modular cubers with integrated storage bins and dispensers

95. In the EEA, the parties would have a combined EEA market share of [70-80]% (Manitowoc [10-20]%; Enodis [50-60]%). They would be followed by Hoshizaki ([10-20]%), Brema ([5-10]%) and ITV ([0-5]%). At national level, the transaction would raise market shares in excess of [50-60]% with an overlap of at least [0-5]% in 16 member states in relation to sales of sales of modular cubers, storage bins and dispensers taken altogether. Post-merger, there would remain only one other competitor with a market share of at least [0-5]% in Czech Republic, Finland, Germany, Greece, Poland, Sweden, Romania and the UK. In other 8 countries (including France and Italy) the transaction would be a four-to-three merger, thereby potentially giving rise to competition concerns.

96. At any rate, given the serious doubts raised in relation to the supply of modular cubers, and in light of the fact that the parties have submitted an overall remedy, it is not necessary to discuss whether the transaction would give rise to serious issues in relation to every member state in relation to the supply of modular cubers, bins and dispensers.

(ii) Self-contained cubers

(a) EEA-wide level

97. The proposed transaction would give rise to a high combined EEA market share of [40-50]% (Manitowoc [30-40]%; Enodis [0-5]%), . The combined entity would be followed by Hoshizaki ([5-10]%), Brema ([20-30]%) and ITV ([10-20]%). Moreover, the resulting HHI index in this market after the proposed transaction would be [5800-6000], with a Δ of [1900-2100].

98. The transaction would reinforce the leadership position of Enodis by removing a large competitor across the EEA, with an unrivalled footprint and access to national markets. The share of the largest competitor Brema would be substantially smaller than that of the combined entity. Also, the market investigation has shown that although Brema has a significant position overall in the EEA, Manitowoc is considered a close competitor to the Scotsman brand (by far, Enodis' most relevant brand in the EEA).

99. The conclusions of the market investigation of self-contained cubers follow largely the findings set out above in relation to modular cubers. In fact, respondents often discuss modular cubers and self-contained cubers in the same terms. A reason for that may be that there are supply-side factors such as the main competitors manufacture both type of machines and that distributors and dealers sells the whole range of machines within a brand. As indicated in the product market sections, there is also limited substitutability (depending on the size/capacity of the machines) from a demand side.

100. Also with modular cubers a number of respondents have indicated that Manitowoc and Enodis are very close competitors, although Brema is mentioned more times than in relation to modular cubers and ITV is also identified as a meaningful competitor in some member states. However, as noted above, Brema is more identified as a competitor to Icematic (Enodis' second brand) than the leading Scotsman brand.

101. The statements above on the power of branding and loyalty are also relevant for self-contained cubers as well as with modular cubers (see recital 70). The market investigation has highlighted the power of branding and loyalty in these markets in a number of member states. In this regard, the merged entity would be the only player having a portfolio of brands covering the top-end to lower end brands, as well as a significant private label position. Also, the market investigation has shown that in a vast majority of cases across in virtually all the member states in which high market shares arise distributors normally sell one brand of the manufacturer it represents and all types of ice-machines under that brand.

102. In addition, in some member states, there is a strong brand loyalty at end-customer level and dealers usually are loyal to their distributors. Also, the investigation showed that a number of distributors and dealers believe that quality, reliability and after-sales service (and not only price) as important purchasing factors in a number of member states. However, the market investigation revealed some differences in this regard across different member states as in some countries price plays a more important, if not absolute, role and brand loyalty is a much less relevant factor. At any rate, overall responses confirm the power and recognition of the Scotsman brand across the board. In addition, after-sales services are considered a factor of great importance.

103. Additionally, as explained in relation to modular cubers in paragraph 71, contrary to the statements of the notifying party, the market investigation has shown that many distributors have limited possibilities of switching suppliers. Most distributors consider that switching suppliers is a long and difficult process due to, *inter alia*, the role of after-sales activities (need to re-train personnel, building a stock of spare parts etc.) [8], brand loyalty, and disputes about existing inventories. Also, as distributors carry all type of machines under a certain brand, and it would not readily switch to carry only one type of ice machine (e.g. modular cubers) from another manufacturer, nor switch the whole

8 In the EEA, after-sales servicing and repairing of ice machines are typically performed by the distributors and dealers and requires a well – trained workforce.

portfolio of ice machines. In fact, a number of distributors have indicated that they would not consider switching suppliers even in the event of a 5-10% price increase. A key element in this regard is that a vast majority of distributors work on a *de facto* exclusive basis with only one manufacturer or brand of ice machines.

104. As indicated above in paragraph 72, in relation to barriers to expansion, the notifying party notes that Manitowoc's experience of expansion is that the only investment required is the time and cost of finding an effective distributor. However, many distributors do not tend to switch suppliers and, therefore, it takes time and can be difficult to find a suitable distributor for a new entrant in the market. The market investigation also shows anecdotal evidence that distributors tend to focus on the distribution of catering / horeca equipment in general and not only on ice machines. This may reinforce the reluctance of distributors to switch supplier only for one type of ice-machine.

105. On this basis, the transaction raises serious concerns in relation to self-contained cubers in the EEA. In any case, the commitments offered by the notifying party would solve any competition issues in relation to self-contained cubers.

(b) National markets

106. The following table displays the market shares of the each player in the national markets for self-contained cubers in which (i) the combined entity will remain market leader after the merger, (ii) the market share of the combined entity is above [50-60]%, (i.e. at the level at which unilateral effects concerns may arise), and (iii) the overlap caused by the transaction is in at least [0-5]%. Again, it must be noted that Enodis was already the market leader in each of these countries and that the removal of Manitowoc will solidify the pre-existing situation.

Table 2: Share of supply of self-contained cubers in the EEA in 2007
Source: Notifying parties

Country	MTW	Enodis	MTW + Enodis	Brema	Hoshizaki	ITV	Other	Total
Denmark	[0-5]%	[40-50]%	[40-50]%	[20-30]%	[10-20]%	[10-20]%	[0-5]%	100%
Finland	[5-10]%	[40-50]%	[50-60]%	[20-30]%	[5-10]%	[5-10]%	[10-20]%	100%
France	[0-5]%	[50-60]%	[50-60]%	[20-30]%	[5-10]%	[10-20]%	[5-10]%	100%
Germany	[10-20]%	[30-40]%	[40-50]%	[20-30]%	[10-20]%	[0-5]%	[20-30]%	100%
Greece	[5-10]%	[40-50]%	[50-60]%	[10-20]%	[0-5]%	[5-10]%	[20-30]%	100%
Poland	[5-10]%	[30-40]%	[40-50]%	[20-30]%	[5-10]%	[0-5]%	[10-20]%	100%
Sweden	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	100%
UK	[10-20]%	[30-40]%	[40-50]%	[10-20]%	[20-30]%	[0-5]%	[10-20]%	100%
Bulgaria	[20-30]%	[30-40]%	[50-60]%	[30-40]%	[0-5]	[5-10]%	[0-5]%	100%

107. Set out below is a discussion of the competitive situation in each individual member states as well as some national particularities resulting from the market investigation.

108. The transaction would give rise to serious concerns in Bulgaria as the combined entity will hold a market share which can be indicative of unilateral effects ([50-60]%), by removing a close competitor and reinforcing Enodis' leading position with an addition of [20-30]% (Enodis [30-40]%, Manitowoc [20-30]%). Hoshizaki, and ITV will hold market shares substantially smaller than that of the combined entity (ITV [5-10]% and Hoshizaki [0-5]%). Brema will have a significant market position with [30-40]% but the market investigation has revealed that brand and dealer loyalty play an important role in the market, which as a result increase barriers to entry and expansion. There is no

evidence available on mitigating factors to these high market shares. On this basis, the transaction raises serious concerns in relation to self-contained cubers in Bulgaria.

109. As regards Finland, the proposed transaction would give rise to serious concerns as the combined entity will hold a market share which may be indicative of unilateral effects ([50-60]%) with an addition of [10-20]% which will strengthen its current share which is already above the level at which unilateral effects concerns may arise levels (Enodis [40-50]%, Manitowoc [10-20]%). The other competitors (Brema, Hoshizaki, and ITV) will hold market shares substantially smaller than that of the combined entity (Brema [20-30]%, Hoshizaki [5-10]% and ITV [5-10]%). On this basis, the transaction raises serious concerns in relation to self-contained cubers in Finland.

110. The transaction would give rise to serious concerns in France as the combined entity will hold a market share ([50-60]%) with an addition of [0-5]% (Enodis [50-60]%, Manitowoc [0-5]%), which is an indication of unilateral effects. Other competitors (Brema, Hoshizaki and ITV) will hold market shares less than half of that of the combined entity (Brema [20-30]%, Hoshizaki [10-20]%, ITV [0-5]%). A number of respondents have noted that there is a strong degree of dealer loyalty *vis-à-vis* distributors and that Manitowoc and Scotsman are closely substitutable. Thus, barriers to entry are high. On this basis, the transaction raises serious concerns in relation to self-contained cubers in France.

111. The transaction would give rise to a four-to-three situation in Greece. The combined entity will hold a very high market share of [50-60]% with an addition of [5-10]% which may be indicative of unilateral effects (Enodis [5-10]%, Manitowoc [40-50]%). The two only other meaningful competitors are Brema and ITV. They hold market shares several times smaller than that of the combined entity (Brema [10-20]%, ITV [5-10]%). Important purchasing factors in Greece are quality and reliability of after-sales services. Brand and dealer loyalty is also important. As discussed above, this reinforces the difficulties of customers to switch suppliers. On this basis, the transaction raises serious concerns in relation to self-contained cubers in Greece.

112. The combined entity would enjoy a quasi-monopoly ([90-100]%) in Sweden with a market share addition of [0-5]% (Enodis [90-100]%, Manitowoc [0-5]%). There seem to be no other active competitors. According to the market investigation, Manitowoc and Scotsman are close competitors and switching distributors is not an easy exercise. On this basis, the transaction raises serious concerns in relation to self-contained cubers in Sweden.

113. In addition, there a number of countries (Denmark, Germany, Poland, and the UK) and in which the transaction will give rise to high market shares. However, it is not necessary to conclude whether these shares would give rise to serious doubts because as the proposed commitments would remove any competition concerns also in these member states.

114. The transaction would give rise to serious concerns in Denmark as the combined entity will hold high market shares ([40-50]%) with an addition of [0-5]% (Enodis [40-50]%, Manitowoc [0-5]%), thereby reinforcing Enodis' current leading position. The other competitors (Brema, Hoshizaki and ITV) will hold a market share, [significantly less] than that of the combined entity (Brema [20-30]%, Hoshizaki [10-20]%, ITV [5-10]%). The market investigation has confirmed that it would be difficult for distributors to switch brands and that thus, barriers to entry and expansion are high.

115. The situation is very similar in Germany as the combined entity will hold a significant market share ([40-50]%) with an addition of [10-20]% (Enodis [30-40]%, Manitowoc [10-20]%). The other competitors (Brema, Hoshizaki and ITV) will hold a market share smaller ([significantly less]) than that of the combined entity (Brema [20-30]%, Hoshizaki [10-20]%, ITV [0-5]%). According to the investigation, there is some degree of brand loyalty at customer level and Manitowoc and Scotsman are perceived as close competitors.

116. In Poland, the combined entity will hold a high share ([40-50]%) with an addition of [5-10]% (Enodis [30-40]%, Manitowoc [5-10]%) to Enodis' leading position. The other competitors (Brema, Hoshizaki and ITV) will hold a market share smaller than that of the combined entity (Brema [20-30]%, Hoshizaki [10-20]%, ITV [0-5]%).

117. Finally, in the UK, the merged entity would hold a high combined market share of [40-50]% with an addition of [10-20]% (Enodis [30-40]%, Manitowoc [10-20]%). The other competitors (Hoshizaki, Brema and ITV) will hold a market share substantially smaller than that of the combined entity (Hoshizaki [20-30]%, Brema [10-20]%, ITV [0-5]%). The market investigation has revealed that switching distributors is difficult, that there is brand loyalty between the least price-sensitive customer segment in which the parties are active

(iii) Flake ice machines

(a) EEA

118. The proposed transaction would lead to a combined EEA market share of [50-60]% in flake machines. Remaining competitors at this geographic scope include Brema ([5-10]%), Hoshiza ki ([0-5]%) and ITV ([0-5]%). The strong market position of the merged entity can be an indication of potential unilateral effects. However, the increment added by Manitowoc is not significant ([0-5]%). At the same time none of the other competitors have very significant market shares and the merged entity would be significantly larger than its next competitor. In addition, the merged entity enjoys an unparalleled position overall in the EEA for flake ice-machines as no other competitor would be close in terms of market position and overall footprint. In any event, it is not necessary to conclude on serious doubts at the EEA level as any concerns would be removed by the proposed remedy.

(b) National markets

119. The following table displays the market shares of the each player in all the national markets for flake ice machines in which (i) the combined entity will remain market leader after the merger, (ii) the market share of the combined entity is high (above [30-40]%), , and (iii) the overlap caused by the transaction is in excess of [0-5]%. As Enodis was already the market leader in each of these countries, the removal of Manitowoc will strengthen the pre-existing situation.

Table 3: Share of supply of flake machines in the EEA in 2007
Source: Notifying parties

Country	Manitowoc	Enodis	MTW + Enodis	Brema	Hoshizaki	ITV	Other	Total
Czech Republic	[10-20]%	[50-60]%	[60-70]%	[10-20]%	[0-5]%	[0-5]%	[20-30]%	100%
Finland	[0-5]%	[90-100]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	100%
Greece	[0-5]%	[80-90]%	[80-90]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	100%
Malta	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[0-5]%	[0-5]%	[50-60]%	100%
Netherlands	[5-10]%	[40-50]%	[50-60]%	[0-5]%	[30-40]%	[0-5]%	[5-10%	100%
Poland	[0-5]%	[40-50]%	[50-60]%	[0-5]%	[20-30]%	[0-5]%	[20-30]%	100%
Spain	[0-5]%	[40-50]%	[50-60]%	[0-5]%	[0-5]%	[5-10]%	[40-50]%	100%
UK	[5-10]%	[70-80]%	[70-80]%	[0-5]%	[5-108%	[0-5]%	[10-20]%	100%
Bulgaria	[10-20]%	[40-50]%	[60-70]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	100%
Romania	[0-5]%	[60-70]%	[70-80]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	100%

120. Set out below is a discussion of the market shares in each individual member states as well as, where relevant, some national particularities resulting from the market investigation in addition to the general comments about barriers to entry and buyer power as discussed above.

121. The transaction would give rise to a *de facto* monopoly in Bulgaria as the parties are unable to identify any competitors to the combined entity, which would hold a combined share of [60-70]% (Enodis [40-50]%, Manitowoc [10-20]%). Also, the market investigation has revealed that brand and dealer loyalty play an important role in the market and that barriers to entry are thus high. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in Bulgaria.

122. The combined entity would enjoy a quasi-monopoly ([90-100]%) and 3 to 2 scenario in Finland with a market share addition of [0-5]% (Enodis [90-100]%, Manitowoc [0-5]%). The market shares are an indication of potential unilateral effects. Further, the only other competitor, Hoshizaki has a market share of [0-5]%. Given the overall high barriers to entry and expansion in these markets, the proposed transaction raises concerns in Finland. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in Finland.

123. The transaction would also give rise to a three-to-two situation in Greece. The combined entity will hold a very high market share of [80-90]% with an addition of [0-5]% (Enodis [80-90]%, Manitowoc [0-5]%), which is an indication of potential unilateral effects. The only other meaningful competitor (Brema) will hold a market share [significantly] smaller than that of the combined entity ([5-10]%). Important purchasing factors in Greece are not only price but also quality and reliability. Brand and dealer loyalty also seem to exist reinforcing barriers to both entry and expansion. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in Greece.

124. The transaction would give rise to significant market power in the Netherlands. The combined entity will hold a market share indicative of unilateral effects ([50-60]%) with an addition of [5-10]% (Enodis [40-50]%, Manitowoc [5-10]%), which is an indication

of potential unilateral effects. The merger Hoshizaki would keep a significant share ([30-40]%), the two only other competitors (Brema and ITV) will hold significantly lower market shares (Brema [0-5]%, ITV [0-5]%). Switching suppliers does not seem to be an easy exercise. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in the Netherlands.

125. The transaction would give rise to a very strong position in Romania and a *de facto* 2 to 1 scenario. The merged entity would hold a combined share of [70-80]% (Enodis [60-70]%, Manitowoc [0-5]%), which is an indication of potential unilateral effects. Further, the parties have been unable to identify any competitors to the combined entity with a market share above 1%. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in Romania.

126. The transaction would give rise to a four-to-three situation in Spain. The combined entity will hold a very significant market share ([50-60]%) with an addition of [0-5]% (Enodis [40-50]%, Manitowoc [0-5]%), which is an indication of potential unilateral effects. The two only other meaningful competitors (ITV and Brema) will each hold a market share several times smaller than that of the combined entity (ITV [5-10]%, Brema [0-5]%). During the market investigation it was noted that there are difficulties of switching brands, the power of brand loyalty at customer level and, despite ITV being a Spanish company, it has not been considered as the closest competitor to the parties. In fact, Manitowoc and Scotsman are perceived as the closest competitors to each other. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in Spain.

127. The transaction would also give rise to a three-to-two situation in the UK. The combined entity will hold a very high market share ([70-80]%) with an addition of [5-10]% (Enodis [70-80]%, Manitowoc [5-10]%), which is an indication of unilateral effects. The only other meaningful competitor (Hoshizaki) will hold a market share several times smaller than that of the combined entity ([5-10]%). The market investigation has revealed that switching distributors is difficult, that there is brand loyalty between the least price-sensitive customer segment and thus barriers to entry and expansion are difficult. On this basis, the proposed transaction raises serious concerns in relation to the supply of flake machines in the UK.

128. In addition, there a number of countries (Czech Republic, Poland and Malta) and in which the transaction will give rise to high market shares. However, it is not necessary to conclude whether these shares would give rise to serious doubts because as the proposed commitments would remove any competition concerns also in these member states.

129. The transaction would give rise to a four-to-three situation in the Czech Republic. The combined entity will hold a significant market share ([60-70]%) with an addition of [10-20]% (Enodis [50-60]%, Manitowoc [10-20]%), which is an indication of potential unilateral effects. The two other meaningful competitors (Brema and Hoshizaki) each hold a market share several times smaller than that of the combined entity (Brema [10-20]%, Hoshizaki [0-5]%) and the proposed transaction would remove the current largest competitor (Manitowoc) to the pre-merger market leader.

130. As for Poland, the transaction would also give rise to a three-to-two situation. The combined entity will hold market share indicative of unilateral effects ([50-60]%) with an addition of [0-5]% (Enodis [40-50]%, Manitowoc [0-5]%). The only other

meaningful competitor (Hoshizaki) will hold a market share [significantly less] of that of the combined entity ([20-30]%).

131. Finally, in Malta, the transaction would give rise to a three-to-two situation. The combined entity will hold a high market share of [30-40]% with an addition of [10-20]% (Enodis [20-30]%, Manitowoc [10-20]%). The only other meaningful competitor (Brema) will hold a market share several times smaller than that of the combined entity ([5-10]%) and the transaction will remove the current largest competitor (Manitowoc) to the pre-merger market leader. Also, Manitowoc and Scotsman are considered as closely substitutable and reliability is an important purchasing factor.

Conclusion

132. For the reasons set out above, the Commission has come to the conclusion that the proposed concentration raises serious doubts as to its compatibility with the common market to the extent that it may lead to unilateral effects concerns of Enodis in the EEA markets for modular and self-contained cubers alternatively in a number of national markets for modular and self-contained cubers and flake ice machines. Whether or not the proposed transaction raises serious doubts also for flake ice machines in the EEA or in any Member States , can be left open as the proposed remedy would remove any concerns in such markets. At any rate, the scope of the remedy would be the same regardless of the exact geographic market definition used.

II. Beverage dispensers

133. As seen above, Manitowoc has a very residual presence in the beverage dispensing equipment business in the EEA, selling all of its products in the relevant markets to either McDonalds, Pepsi or Coca-Cola. Enodis, on the other hand, was market leader in 2007 in remote coolers / carbonators segment but is a minor player in all other markets. In all the relevant markets a number of other suppliers are active, mostly acting globally, but there are also some EEA specific players. According to the notifying party six major suppliers of soft drink beverage dispensers are active in the EEA. These include Cornelius, considered the world's leading supplier of beverage dispensing that manufactures post mix beverage dispensing systems, beer dispensers, juice and tea dispensers, frozen beverage dispensers and accessories. Other suppliers to the EEA include Lancer, Celli, Vin Service, Nuti and Selbach.

(i) Remote cooler / carbonators and over the counter beverage dispensers

134. The proposed transaction would give rise to a combined EEA market share of [40-50]% (Manitowoc [0-5]%; Enodis [40-50]%) for a remote cooler / carbonator segment, and a [10-20]% combined market share (Manitowoc [0-5]%; Enodis [10-20]%) for a over the counter beverage dispenser segment. In the remote cooler / carbonator segment the main competitors would be Cornelius with [30-40]%, followed by Celi and Vin Service with [5-10]% each. For the over the counter dispenser segment Lancer and Cornelius would be market leaders with [30-40]% each.

135. Should these segments be taken together i.e., including both over the counter beverage dispensers and remote cooler / carbonators, the combined market share would be lower ([30-40]% of the total EEA wide in value), and Cornelius would be the bigger player (with [30-40]%). Other competitors would be Lancer with approximately [5-10]%, Celi with around [5-10]% and Vin Service with [5-10]%.

136. The notifying party points to a number of factors to consider that effects of the merger for remote cooler/carbonators or over the counter beverage dispensers, taken together or separately, will be limited: (i) the increment in market shares in the EEA is very small because Manitowoc is not a significant player and represent in any of the cases only [0-5]% of the market; but in any event (ii) market shares are unrepresentative of market power as there is buyer power.

137. As regards the latter, Manitowoc argues that market shares are not representative of market power in these segments given that three major customers account for the vast majority of market demand. Therefore, it considers that whilst an approved supplier of a particular component to one or more of these key customers would have a high market share, its prices are in fact constrained by the existence of available alternative suppliers.

138. The market investigation has demonstrated that almost all sales in the EEA are made to customers at prices negotiated globally, namely Coca-Cola, Pepsi or McDonalds. Manitowoc, however, is not an approved supplier of Coca-Cola. Pepsi and McDonalds account for all the sales of Manitowoc ([90-100]% of all remote coolers are sold to McDonalds with its large Multiplex remote cooler / carbonator) and approximately [90-100]% of sales of remote coolers and [80-90]% of over the counter dispensers in obtained by Enodis, in the EEA.

139. Several other suppliers, including Cornelius, and at least three other suppliers of remote cooler/carbonators are approved by Coca-Cola or Pepsi and are present in the EEA. Enodis is an approved supplier for Coca-Cola and Pepsi. Manitowoc is an approved supplier to McDonalds and Pepsi, whilst Cornelius, for example, is an approved supplier for all three of the big accounts. Their bottlers / franchisees can buy equipment only from the approved list at the global price, as has been confirmed by the market investigation.

140. According to the notifying party, all manufacturers have sufficient capacity to be able to supply key accounts or could do quickly with some investment (which could be supported by one of the key customers). The market investigation has shown that the key accounts consider a number of competitors as credible competitors of the new entity. An instance of significant switching due to price increases by one of the approved suppliers was confirmed during the market investigation, where Cornelius, as it implemented a price increase, lost significant market shares between 2005 and 2007 as an important bottler […] changed its supplies to Enodis. This suggests that bottlers are not only able to change supplier, but do change supplier as a reaction to a price increase.

141. In the light of these considerations, the Commission has concluded that despite significant market position in this market the proposed concentration does not raise serious doubts as to its compatibility with the common market in respect of any of the possible market definitions on account of horizontal effects.

(ii) Dispensing towers

142. The proposed transaction would give rise to a combined EEA market share of only [10-20]% (Manitowoc [0-5]%; Enodis [5-10]%) for dispensing towers. Main competitors are Vin Service with estimated market share of [30-40]%, Celli with [20-30]% and Cornelius with [10-20]% of the market. Further, as discussed in the section on relevant market, the handheld bar-guns may be used instead of beverage dispensing towers to dispense the drink, and none of the parties are active in the production and sale of such dispensing equipment in the EEA. Therefore, should the relevant market include hand-held bar guns, the market shares of the parties presented would be even lower.

143. Further, as the parties' sales for dispensing towers are sold mainly to […] key accounts […]. In particular, [reference to amount of sales to key accounts in EEA], whilst [90-100]% of all Enodis' sales of these products are to the key accounts.

144. Several other suppliers, including Cornelius, and at least five other suppliers of dispensing towers are approved by Coca-Cola or Pepsi and are present in the EEA. McDonalds has a policy of approving only two suppliers (today Manitowoc and Cornelius), Enodis not being one of them. Enodis is an approved supplier for Coca-Cola and Pepsi. Manitowoc is an approved supplier to McDonalds and Pepsi, whilst Cornelius, for example, is an approved supplier for all three of the big accounts. Their bottlers / franchisees can buy equipment only from the approved list at the global price, as has been confirmed by the market investigation.

145. Finally, the market investigation has confirmed that the key accounts consider a number of competitors as credible competitors of the new entity in the segment of dispensing towers.

146. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of any of the possible market definitions on account of horizontal effects.

B. Vertical effects: dispensing towers / post mix valves

147. Post-mix valves are the components that produce the mix of syrup and carbonated water specified by the syrup supplier at the point of dispensing and are thus a necessary separate add-on component of the beverage dispensing towers.

148. Manitowoc sells post-mix valves that are approved by Pepsi for use in dispensing its product as a component of the beverage dispensing towers. [information on values for other key customers]. Enodis has no sales of post-mix valves […], whilst the parties' main competitor, Cornelius is an approved manufacturer for all three key accounts. Pepsi and Coca-Cola operate dual supply models for post mix valves, Lancer being the other currently approved supplier of post-mix valves for Coca-Cola.

149. The Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings considers in recital 23 that "*non-horizontal mergers pose no threat to effective competition unless the merged entity has a significant degree of market power (which does not necessarily amount to dominance) in at least one of the markets concerned*". It also refers in recital 25 that "*The Commission in unlikely to find concern in no-horizontal mergers, be it of a coordinate or of a non-coordinated nature, where the market share post-merger of the new entity in each of the markets concerned is below 30% and the HHI is below 2000*".

150. Given that for the beverage dispensing equipment market referred to above the new entity would have no market power, it becomes necessary to verify whether the notifying party has market power in the post-mix valve market.

151. According to the notifying party, Manitowoc would have [20-30]% of the post-mix valve market, which it has calculated on the basis on an estimation of the percentage of total sales to Pepsi and to the latter's market share in the purchase of all such valves.

152. As for the remaining beverage dispenser equipment markets, the notifying party argues that there is buyer power and there is a global price for the valves and a purchaser (generally a bottler or another beverage dispenser supplier) can choose from either of the two approved suppliers. The market investigation has also confirmed that the parties' customers in this segment are strong.

153. Further, post-mix valves are used in conjunction with dispensing towers and may be bought with the towers or separately as, according to the notifying party and confirmed by the market investigation, valve brands are interchangeable amongst towers and other components of the beverage dispense system subject only to suppliers' requirements. A customer may therefore choose to purchase a valve from a supplier of dispensing towers with the towers or can purchase the valve and dispensing tower separately. This applies equally to over-counter beverage dispensers which also require valves but where different brands of valve are interchangeable.

154. In Enodis' case, where a Pepsi bottler wishes to purchase a valve (along with other beverage dispensing equipment) the bottler will generally nominate which valve it wants to purchase (Cornelius or Manitowoc). It has the option of buying this itself directly or having Enodis supply it as part of the package it is buying. Enodis would sell the valve to the bottler at the approved price plus a specified mark-up covering transaction costs. Manitowoc considers that around [90-100]% of Pepsi valves would be sold directly to bottlers (and other non-competitor customers) with the remainder being sold to competitors, such as Enodis.

155. The transaction would not increase the ability or incentives of the combined entity to foreclose supply of valves to competing suppliers of beverage dispensers for use with Pepsi products as: (a) beverage dispenser suppliers could simply switch to Cornelius valves, which are also available at a global price set between Pepsi and Cornelius; (b) bottlers can buy directly from valve manufacturers, foreclosing competing beverage dispense suppliers would have no effect because units could be sold without valves, with bottlers buying valves separately (as already occurs in the market); (c) in the event of foreclosure that would be detrimental to Pepsi bottlers, As such, Pepsi could remove its approval for the Manitowoc Servend valve and approve another supplier in order to retain its dual supplier model. This might impact the combined entity's relationship with Pepsi which could affect sales of its other products such as over-counter and remote cooler/carbonators, further reducing incentives to increase prices or foreclose supply.

156. Enodis also purchases valves from Cornelius. However, even if the merged entity in future purchased only Manitowoc valves this would likely not lead to an anticompetitive effect on competition as: (a) Cornelius has its own competing downstream activities which can purchase Cornelius valves, thus giving a guaranteed customer base; (b) Enodis currently already purchases most of its valves from Manitowoc (approx. [90-100]% of its purchase of post-mix valves). There would therefore be an insignificant difference in the potential customer base for Cornelius' valves should the combined entity stop purchasing Cornelius' valves for use in its Pepsi dispensing equipment. Again, in the event that Pepsi considered that its bottlers were being disadvantaged by customer foreclosure behaviour leading to higher prices for valves (or other equipment) it could exercise its buyer power to approve further downstream competitors of the combined entity (and even withdraw approval from the combined entity's downstream products) in order to maintain the lowest possible cost to its bottlers, as it admitted during the market investigation.

157. In the light of these considerations, the Commission has concluded that the concentration does not raise serious doubts as to its compatibility with the common market in respect of dispensing towers market and / or post-mix valves on account of vertical effects.

IV. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

158. On 29 August 2008 Manitowoc offered Commitments to remove the identified serious doubts. The Commitments include the divestment of the entire ice machine business of Enodis, including all brands and production facilities. On 18 September 2008 the parties submitted a final remedy proposal, which contained certain modifications, but did not change the fundamental scope of the remedies.

1. DESCRIPTION OF THE COMMITMENTS

159. The Commitments include the divestment of all the ice machine brands, including the largest brand in the EEA (Scotsman), as well as also the (lesser) ice machine brands Simag and Barline, Icematic and Ice-O-Matic, as well as the scale ice machines businesses Scotsman and Oref (the "Divestment Business"). In 2007, the Divestment Business achieved a turnover of EUR […] million in the EEA and […] million worldwide.

160. The Commitments include the divestment of all the plants where these brands are produced. As regards Europe, this includes three plants located in Italy (Frimont, Ice Works and Castel MAC). The Commitments also include assets outside the EEA, including a number of other tangible assets such as production facilities in the United States and China (at the option of the purchaser) as well as administrative and sales offices in the United States, Africa and the Middle East. The transfer also involves all the employees related to these assets including key personnel.

161. The Divestment Business includes all relevant intangible assets such as intellectual property rights. In this regard, the parties have offered to divest Scotsman and other brands on a global basis including all patents, trademarks, logos, copyright, know how, and confidential information necessary for the Divestment Business. Manitowoc will be granted by the Divestment Business (i) a sole and exclusive perpetual royalty-free global licence to use the Scotsman brand in connection to Enodis' beverage dispensing systems in the EEA currently sold under the Scotsman brand, and (ii) perpetual royalty-free global rights to the design and technology of an ice making component used in a Scotsman beverage systems product in the EEA.

162. The Commitments also include the assignment of all the main contracts, agreements, and leases relating to the Divestment Business, such as (i) all existing customer contracts, orders, notably with key account customers, private label customers, and Scotsman, Ice-O-Matic, Simag, Oref, Icematic and Barline distributors in the EEA, and (ii) all existing supply contracts with suppliers and all logistics, transport and warehousing contracts.

163. The situation with respect to customer contracts is different in Spain and Germany, where Enodis has its own distribution subsidiaries as opposed to the distribution in other Member States, where Enodis works with third party distributors. In addition to the distribution/after sales servicing of ice machines (which do not account for a significant part of these distributors' activities), these subsidiaries have as their main activity, the distribution/after sales servicing of hot-side products such as cooking equipment.

164. These Enodis-owned distributors in Spain and Germany are not included in the Commitments. In these countries therefore, Manitowoc has offered, if required by the Purchaser, either the benefit of contracts for the acquisition of distribution services relating to the products of the Divestment Business in Germany and Spain from Manitowoc or Affiliated Undertakings for a period of 12 months after Closing, or, if required by the Purchaser, the transfer to the Purchaser or to a distributor of the Purchaser's choice, of the key sales and marketing personnel primarily associated with the ice machine side of the German and Spanish distribution subsidiaries to be retained by Manitowoc, together with the following assets in Spain and Germany which relate exclusively or primarily to the products of the Divestment Business: all dealer contracts which transfer with the Divestment Business by operation of law; the assignment of such other dealer contracts to the extent not so transferred (where such contracts are assignable); all lists of actual dealer customers of the Divestment Business (including previous and current order information and records); and all relevant documents and records which relate to servicing or marketing and promotion of the relevant products including relevant service, training and installation manuals, spare parts lists, specification sheets, catalogues, exploded drawings, maintenance and engineering reports and descriptions of sales visits.

165. In case the Purchaser requests the benefit of contracts for the acquisition of distribution services relating to the products of the Divestment Business in Germany and Spain from Manitowoc or Affiliated Undertakings for a period of 12 months after Closing, the following transitional rules would apply: i) Manitowoc branded ice machines will not be distributed through or by the same subsidiaries; and ii) confidential information relating to customers of the Divestment business will not be disclosed to any employees of Manitowoc who have responsibilities for ice machines.

2. ASSESSMENT OF THE COMMITMENTS

166. The Commitments would remove the overlap between the parties' ice-machines businesses in the EEA. The market test of the proposed remedies confirmed that the proposed commitments are, overall, with some adjustments[9], sufficient to restore competition and remove the identified serious doubts[10].

Viability and competitiveness

167. Manitowoc is proposing to submit the sale of inter alia the Scotsman brand. The Scotsman brand (as well as the "Icematic", "Simag", "Barline" and Ice-o-Matic" brands) is used for all types of ice-machines. As such, the parties propose to divest also the plants that manufacture the machines under the brands divested.

168. In this regard, it is noted that the production of modular and self contained cubers sold in the EEA market is not limited to one single plant. Both Castel Mac and Frimont produce these types of machines and there are supply links between the two as well as

9 The adjustments provide for the removal of any serious doubts on the vertical link with Enodis' distribution businesses in Spain and Germany, as will be detailed below in recital 176.

10 The majority of respondents considered the Divestment Business to be sufficient in scope. There was only one isolated suggestion that the Divestment Business should also include the beverage dispensing business of Enodis, where the Commission did not raise serious doubts.

with the US manufacturing operations. For example, Castel MAC supplies modular cubers and evaporator plates to Frimont; whilst on the other hand, Frimont supplies self-contained models sold in Spain under the Icematic brand (held by Castel MAC) and as well as components used in two Icematic flaker models. As regards the plants in the United States, these currently supply ice machines of the divested brands into the EEA; and there are also some supply links for some components (e.g. evaporator plates coming from the US).

169. Some characteristics of the market, described in more detail above (e.g. the tendency of competitors to supply all three types of machines, and of most distributors to sell a whole range of ice machines within a brand, as well as the *de facto* exclusivity of distributors), also point to the importance of keeping the integrity of the brand in terms of the product offering. The integrity of the brand would also be compromised should it be split along national lines, e.g. if it was divested in some Member States but not in others, of if it was to be divested in the EEA and not in the US. This could in turn impact on the viability of the Divestment Business.

170. Since all plants are included in the Divestment Business, its viability is neither jeopardised by any limitations in production assets, the severance of significant supply links and any subsequent need to reorganise production nor by the splitting up of the brands along product and/or national lines. On the other hand, the commitments regarding Enodis' distributors in Spain and Germany will ensure that the purchaser obtains access to these member states' markets, equivalent to the access obtained in other member states by the assignment of the distribution contracts.

171. The market investigation has also confirmed that the Divestment Business overall is viable business.

Standalone business and potential purchasers

172. As the Divestment Business includes all pre-existing Enodis companies active in the production and wholesale of ice machines, it can be considered to be a standalone business.

173. The market test has also confirmed that the Divestment Business would be viable as a stand alone business, could operate as an independent, standalone company and could be interesting even for financial investors. The market test has also shown that the Divestment Business would be attractive both for new entrants or for existing players in the ice machine market wishing to expand their business.

174. There were, however, indications that an existing distribution network on the part of the purchaser would be a considerable advantage. In this regard, potential purchasers active in the wider foodservice equipment business appear particularly well-placed to make the Divestment Business viable as they are already in the EEA market and have an existing distribution network. At the same time it was noted that the know-how related to selling ice-machines and access to the national markets was important.

175. In particular, there were some indications with respect to Spain and Germany that even with an established distribution network in foodservice equipment the addition of the ice machine line may require significant time and resources. This would be in particular the case when introducing a new brand in a particular country, which is of course not the case at present as Enodis is currently number 1 in both countries. On the other hand, the

market investigation also provided indications that the strength of the divested brands would facilitate distribution and that the Divestment Business could easily and in a timely fashion find distributors.

176. In response to the concerns expressed by third parties that it would not be sufficient to commit only to transfer key personnel of the Enodis-owned distributors in Spain and Germany (as originally proposed by the parties in the remedies submitted on 29 August), the parties submitted on 18 September 2008 a revised remedy that also included, in addition to key personnel, the transfer of assignable contracts, records and other relevant documents (as described in more detail in paragraphs 163 and 164 above). This will further facilitate access for the purchaser to the relevant customer base in these markets thus eliminating any possibility of customer foreclosure concerns in these countries due to Enodis' vertically integrated distribution network

Conclusion on the commitments

177. In light of the above, the Commission considers that the commitments, as modified on 18 September 2008, are suitable for remedying serious doubts as to the compatibility of the concentration with the Common Market and the EEA.

3. CONDITIONS AND OBLIGATIONS

178. 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.

179. The fulfilment 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 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.

180. The decision in this case is conditioned on the full compliance with Section B of the Commitments submitted by the Notifying Party on 18 September 2008. The remaining requirements set out in the other Sections of the Commitments submitted by the Notifying Party on 18 September 2008 are considered to constitute obligations.

181. The full text of the Commitments is annexed to this decision and forms an integral part thereof.

V. CONCLUSION

182. The Commission has concluded that the remedies submitted by the notifying party are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the notifying party, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is

adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

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

For the Commission
(signed)
Siim KALLAS
Vice-President of the Commission

By hand and by fax: 00 32 2 296 4301
European Commission – Merger Task Force
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Case M. 5180 – The Manitowoc Company Inc/Enodis Plc

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 as amended (the "**Merger Regulation**"), The Manitowoc Company Inc ("**Manitowoc**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the acquisition of Enodis Plc by Manitowoc compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**").

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

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 and its draft revised Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

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's Consolidated Jurisdictional Notice.

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

Completion of the Proposed Transaction: The date on which the Scheme of Arrangement relating to the Transaction becomes effective (anticipated to be 27 October 2008).

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 Manitowoc and who has received from Manitowoc 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.

Enodis: Enodis plc, a public limited company incorporated in England and Wales with registered number 00109849.

First Divestiture Period: the period of […] months from Completion of the Proposed Transaction.

Hold Separate Manager: the person appointed by Manitowoc 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.

Manitowoc: The Manitowoc Company Inc., incorporated under the laws of the US, whose head office is at 2400 South 44th Street, PO Box 66, Manitowoc, WI 54221-0066.

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

Parties: Manitowoc and Enodis.

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 of Enodis by Manitowoc.

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

Trustee Divestiture Period: if no binding sale and purchase agreement has been concluded within the First Divestiture Period, the period of […] months from the end of the First Divestiture Period, although if any requisite approvals pursuant to Section D (or similar corresponding legislation in other jurisdictions) have been withheld by the Commission (or any other relevant competition authority), the later of:

(i) the period of […] months from the end of the First Divestiture Period; or

(ii) the period of [...] months from the latest date on which any relevant competition authority indicates that it is withholding any approval pursuant to Section D (or similar corresponding legislation).

Section B. The Divestment Business

<u>Commitment to divest</u>

1 In order to restore effective competition, Manitowoc 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 13. To carry out the divestiture, Manitowoc commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Manitowoc has not entered into such an agreement at the end of the First Divestiture Period, Manitowoc shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 22 in the Trustee Divestiture Period.

2 Manitowoc shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Manitowoc has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 13 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

3 In order to maintain the structural effect of the Commitments, 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.

<u>Structure and definition of the Divestment Business</u>

The Divestment Business consists of the global ice machine business that is operated under the Scotsman, Ice-O-Matic, Simag, Barline, Icematic and Oref brand names, as well as the global commercial refrigeration and other non-ice businesses that are operated under the Tecnomac and Icematic brand names. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes

(a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business and the transitional supply agreements described in paragraphs 2.8 and 4 of the Schedule, (items referred to under (a)-(c) hereinafter collectively referred to as “Assets”); and

(d) the Personnel.

Section C. Related commitments

<u>Preservation of Viability, Marketability and Competitiveness</u>

4 From Completion of the Proposed Transaction until Closing, Manitowoc 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 Manitowoc undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans*;* 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.

<u>Hold-separate obligations of Parties</u>

5 Manitowoc commits, from the Completion of the Proposed Transaction until Closing, to keep the Divestment Business separate, or to the extent not separate at that date to effect the separation of the Divestment Business 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, Manitowoc shall also ensure that the Personnel do not report to any individual outside the Divestment Business.

6 Manitowoc 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. Manitowoc 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

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

Non-solicitation clause

8 Manitowoc 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 […] years after Closing.

Due Diligence

9 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:

(a) provide to potential purchasers sufficient information as regards the Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

10 Manitowoc 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).

11 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

12 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;

(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**").

13 The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Manitowoc 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. Manitowoc 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

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

15 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

16 No later than one week after the Effective Date, Manitowoc shall submit a list of one or more persons whom Manitowoc 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, Manitowoc shall submit a list of one or more persons whom Manitowoc 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 15 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

17 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, Manitowoc 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, Manitowoc 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

18 If all the proposed Trustees are rejected, Manitowoc 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 13 and 16.

Trustee nominated by the Commission

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

II. Functions of the Trustee

20 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 Manitowoc, 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

21 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 Manitowoc 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 4 and 5 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 6 of the Commitments;

(c) (i) in consultation with Manitowoc, determine all necessary measures to ensure that Manitowoc does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the 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 Manitowoc as the disclosure is reasonably necessary to allow Manitowoc 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 Manitowoc 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 Manitowoc such measures as the Monitoring Trustee considers necessary to ensure Manitowoc'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 Manitowoc 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 Manitowoc a non-confidential copy at the same time, if it concludes on reasonable grounds that Manitowoc is failing to comply with these Commitments; and

(vii) within one week after receipt of the documented proposal referred to in paragraph 13, 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.

<u>Duties and obligations of the Divestiture Trustee</u>

22 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 13. 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 Manitowoc, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

23 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.

<u>III. Duties and obligations of the Parties</u>

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

25 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. The Parties 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. Manitowoc 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.

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

27 Manitowoc 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 Manitowoc 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.

28 At the expense of Manitowoc, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Manitowoc'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 Manitowoc refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Manitowoc. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 27 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Manitowoc 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

29 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 Manitowoc to replace the Trustee; or

(b) Manitowoc, with the prior approval of the Commission, may replace the Trustee.

30 If the Trustee is removed according to paragraph 29, 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 14-19.

31 Beside the removal according to paragraph 29, 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

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

33 The Parties will no longer be bound by the terms of these Commitments in the event of the proposed Transaction being abandoned in the sense of Article 6(1)(c) of Regulation 139/2004 as a result of the scheme of arrangement (as explained in Section 3 of the Form CO in case COMP/M.5180) 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).

…………………………………….

duly authorised for and on behalf of

The Manitowoc Company Inc

Date ……………………………….

…………………………………….

duly authorised for and on behalf of

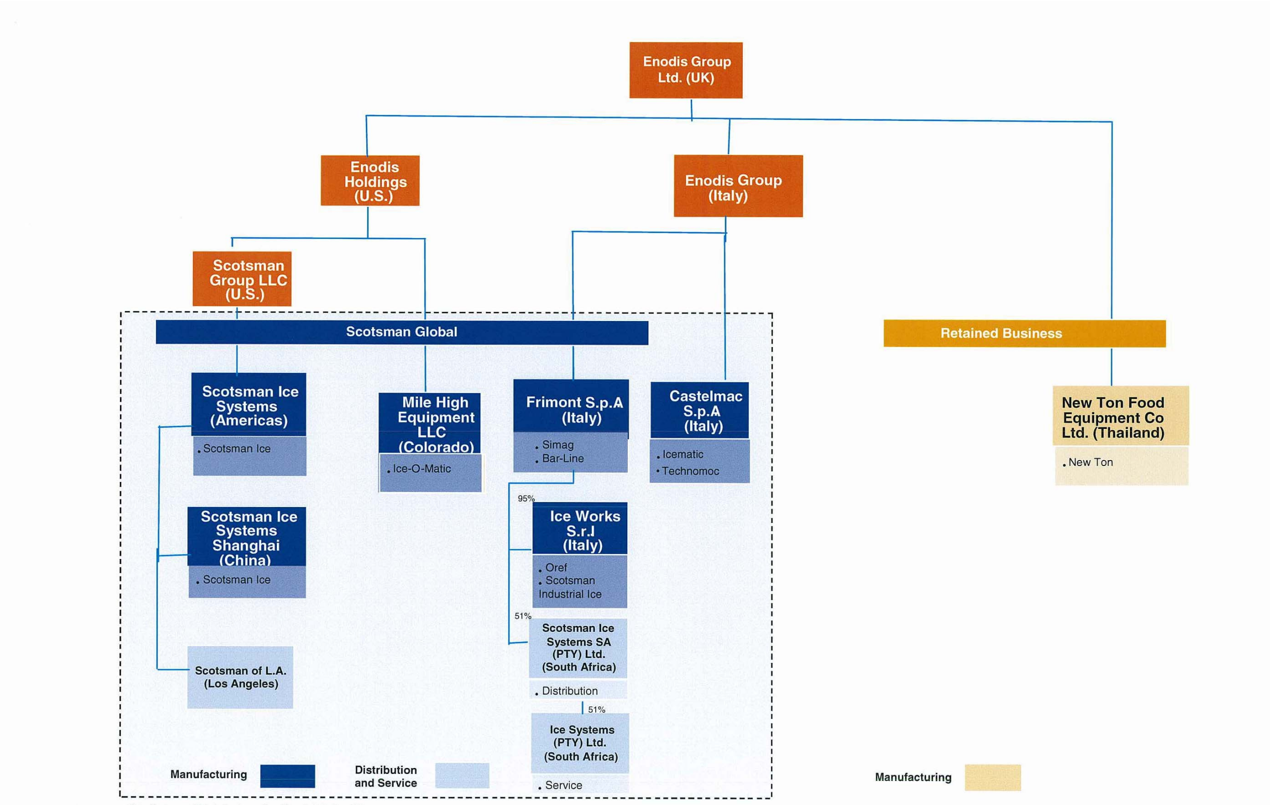
Enodis Plc

Date ……………………………….

SCHEDULE

34 The Divestment Business comprises Enodis' global ice machine business. More specifically, the Divestment Business comprises the Scotsman and Ice-O-Matic ice businesses (together with the business attributed to (i) the other Enodis ice brands and non-ice brands produced at the Frimont and Castel MAC facilities, namely Icematic, Simag, Barline and Tecnomac[11]; and (ii) Enodis' industrial ice brands produced at the Frimont and Ice Works facilities, namely Scotsman and Oref ("**the Divestment Business**").

The companies which hold the relevant interests comprising the Divestment Business are[12] Mile High Equipment LLC, Scotsman Ice Systems Shanghai Co Ltd (if required by the purchaser), Frimont S.p.A and its three subsidiaries, Ice Works Srl, Scotsman Ice Systems SA (PTY) Ltd and Ice Systems (PTY) Ltd and Castel MAC S.p.A. A simplified chart is set out below:



In 2007, the EEA turnover of the Divestment Business amounted to €[...] million. The global turnover was €[...] million.

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

35.1 the following main tangible assets:

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[11] The products produced under Enodis' non-ice brand, Tecnomac, are manufactured at Castel MAC and comprise primarily commercial refrigeration products and blast chillers.

[12] Scotsman Group LLC holds Scotsman US and a number of non-ice Enodis businesses. The US ice assets of Scotsman Group LLC which form part of the Divestment Business will be transferred by way of an asset sale.

35.1.1 the Scotsman ice machine production facility located in Fairfax, South Carolina, US;

35.1.2 the ice machine production facility, warehouse, Simag sales office and Frimont office and the five leases of the land on which each of these is situated, located in Frimont, Italy;

35.1.3 the Castel MAC production facility located in Castelfranco Veneto, Italy;

35.1.4 the Ice Works production facility and the lease of the land on which it is situated, located in Pietro Santa, Italy;

35.1.5 the ice production facility and the lease of the land on which it is situated, located in Shanghai, China (if required by the purchaser);

35.1.6 the Ice-O-Matic manufacturing facilities and offices located in Colorado, USA;

35.1.7 the plant, machinery, tools, jigs, furniture, vehicles, and IT equipment at the ice production facilities in South Carolina, Denver, Frimont, Castelfranco, Pietro Santa, and Shanghai (if required by the purchaser), which are necessary for the Divestment Business;

35.1.8 the Frimont S.p.A. Dubai branch office and the lease of the land on which it is situated, located in Dubai, United Arab Emirates;

35.1.9 the Frimont S.p.A. Singapore representative office and the lease of the land on which it is situated, located in Singapore;

35.1.10 the Scotsman Ice Systems SA (Pty) Ltd office and the lease of the land on which it is situated, located in Johannesburg, South Africa;

35.1.11 the Ice Systems (Pty) Ltd office and the lease of the land on which it is situated, located in Johannesburg, South Africa;

35.1.12 the inventory of finished Scotsman, Ice-O-Matic, Simag, Barline, Icematic, Oref and Tecnomac products (as well as semi-completed Scotsman, Ice-O-Matic, Simag, Barline, Icematic, Oref and Tecnomac products, related raw materials and components) held at the respective production facilities at the date of completion of the sale of the Divestment Business to the purchaser;

35.1.13 the warehousing facilities currently utilised by and necessary for the Divestment Business located in:

(i) Frimont;

(ii) Castelfranco; and

(iii) Shanghai (if required by the purchaser).

35.1.14 the internal distribution function called Scotsman of Los Angeles based near Los Angeles, California (“SOLA”);

35.1.15 the administrative office located in Vernon Hills, Illinois, USA, which has various sales, finance and administrative functions; and

35.1.16 the other relevant tangible assets currently owned by Scotsman Group LLC and necessary for the Divestment Business.

35.2 the following main intangible assets:

35.2.1 all the intellectual property and technology rights to the Scotsman, Ice-O-Matic, Simag, Barline, Icematic, Tecnomac and Oref brands on a global basis, including but not limited to the relevant patents, trademarks, logos, copyright, knowhow and confidential information necessary for the Divestment Business, (please see **Annex 1** for a list of the relevant trademarks to be divested and **Annex 2** for a list of the relevant patents to be divested), though note Manitowoc would require a sole and exclusive perpetual royalty-free global licence to use the Scotsman Beverage Systems name and trademark in connection with Enodis' beverage dispense products currently sold under the Scotsman Beverage Systems name[13] and perpetual, royalty-free global rights to the design and technology underlying the ice making component used in the Scotsman Beverage Systems ice bell product (please see section 36.1 below).

35.3 the following main licences, permits and authorisations:

35.3.1 all licences, permits and authorisation issued by any governmental organisation for the exclusive benefit of the Divestment Business;

35.4 the following main contracts, agreements, leases, commitments and understandings (where such contracts need to be assigned to the extent such contracts are assignable);

35.4.1 all (or the part which relates to the Divestment Business) existing customer contracts, leases commitments and customer orders of the Divestment Business, notably the benefit of any existing contracts with key accounts[14], private label customers and Scotsman, Ice-O-Matic, Simag, Oref, Icematic and Barline distributors in the EEA[15];

35.4.2 all (or the part which relates to the Divestment Business) existing supply contracts with the suppliers to the ice production facilities in South Carolina, Colorado, Frimont, Castelfranco, Pietro Santa and Shanghai; and

35.4.3 all (or the part which relates to the Divestment Business) logistics contracts, including transportation and warehousing.

Details of the main EEA distribution contracts of the Divestment Business, which are in writing, are included in **Annex 3**.

35.5 all books and records required for ongoing supplies from the South Carolina, Colorado, Frimont, Castelfranco, Pietro Santa and Shanghai plants, including all customer, credit and other records related to supplies that have been made by Enodis in the course of the Divestment Business in the last three years shall be made available to the purchaser.

35.6 subject to applicable employment laws and other relevant legislation, all the Personnel, of the companies listed who currently number as follows:

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[13] Though note that, in line with a request made by the Department of Justice, Manitowoc would not be permitted to use the Scotsman brand name on any product sold in the US.

[14] The contracting entity is Scotsman Group LLC in the US, which does not form part of the Divestment Business. However, the benefit of these contracts will form part of the Divestment Business.

[15] Note that there are no written contracts in place with regard to Barline. As regards private label, contracts have not been formalised, rather standard commercial terms and conditions apply.

Clause 35.4.1 does not apply to Italy and Austria where Frimont S.p.A. sells direct to dealers. In Spain and Germany Enodis currently sells through in-house distribution subsidiaries, as well as through third party distributors. Please see clause 2.8 and 3.3 below in relation to these subsidiaries.

35.6.1 EEA

Function	Frimont	Ice Works	Castel MAC
Manufacturing	[...]	[...]	[...]
Sales & marketing	[...]	[...]	[...]
Admin (HR, finance)	[...]	[...]	[...]
Warehousing and logistics	[...]	[...]	[...]
R&D	[...]	[...]	[...]
IT	[...]	[...]	[...]
Total	[...]	[...]	[...]

35.6.2 US

Function	South Carolina	Colorado	Vernon Hills	SOLA
Manufacturing	[...]	[...]	[...]	[...]
Sales & marketing	[...]	[...]	[...]	[...]
Admin (HR, finance)	[...]	[...]	[...]	[...]
Warehousing and logistics	[...]	[...]	[...]	[...]
R&D	[...]	[...]	[...]	[...]
IT	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]

35.6.3 Rest of World

Those Personnel in Rest of World locations who are currently employed by Frimont S.p.A., Castel Mac S.p.A., Scotsman Ice Systems Shanghai Co Ltd, Ice Works Srl, Scotsman Ice Systems SA (PTY) Ltd, and Ice Systems (PTY) Ltd and who work primarily in the ice machine sector.

35.7 the following Key Personnel:

35.7.1 In respect of Frimont:

- [...]

35.7.2 In respect of Ice Works:

- [...].

35.7.3 In respect of Castel MAC:

- [...].

35.7.4 In respect of the US:

- [...].

35.7.5 In respect of Rest of World:

35.7.6 [...]

35.8 either the benefit of contracts for the acquisition of distribution services relating to the products of the Divestment Business in Germany and Spain from Manitowoc or Affiliated Undertakings for a period of 12 months after Closing, if required by the Purchaser (such contracts to reflect the principles set out in **Annex 4**), or, if required by the Purchaser, the transfer to the Purchaser or to a distributor of the Purchaser's choice, of the key sales and marketing personnel primarily associated with the ice machine side of the German and Spanish distribution subsidiaries to be retained by Manitowoc, together with the following assets in Spain and Germany which relate exclusively or primarily to the products of the Divestment Business: all dealer contracts which transfer with the Divestment Business by operation of law; the assignment of such other dealer contracts to the extent not so transferred (where such contracts are assignable); all lists of actual dealer customers of the Divestment Business (including previous and current order information and records); and all relevant documents and records which relate to servicing or marketing and promotion of the relevant products including relevant service, training and installation manuals, spare parts lists, specification sheets, catalogues, exploded drawings, maintenance and engineering reports and descriptions of sales visits.

36 The Divestment Business shall not include:

36.1 The business attributable to Enodis' Scotsman Beverage Systems brand and global rights to the design and technology underlying the products sold under this brand[16] (as well as perpetual, royalty-free global rights to the design and technology underlying the ice making component of the SBS "ice bell" product), including but not limited to relevant patents, trade marks, logos, copyright, know-how and confidential information;

36.2 Enodis' non-ice brands and businesses and rights relating to such businesses, excluding Tecnomac, (namely cooking and commercial refrigeration and related products (the "**Non-Divested Brands**"));

36.3 Enodis' German and Spanish distribution subsidiaries (known as Enodis Deutschland in Germany and Frau in Spain), as well as Frau's subsidiary, Teuros SAU which provides installation and after sales services (and China), all of which are engaged primarily in relation to hot products (though note that, as set out in Clause 2.8 above, if required by the Purchaser, Manitowoc would also transfer to the Purchaser or to a distributor of the Purchaser's choice the key personnel exclusively or primarily associated with the ice machine side of the distribution subsidiaries and various other assets such as dealer customer lists and records, as part of the Divestment Business); and

36.4 All other assets, facilities and support services provided or used primarily in respect of Enodis' Non-Divested Brands and businesses (including but not limited to Enodis Italia

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[16] Though note that, in line with a request made by the Department of Justice, Manitowoc would not be permitted to use the Scotsman brand name on any product sold in the US.

Distribution which essentially provides distribution services in respect of the hot side business in Italy).

37 To the extent the Divestment Business currently supplies items or provides administrative or support services to the part of Enodis not included in the Divestment Business (or vice versa) the Purchaser and Manitowoc shall enter into transitional service arrangements on fair and reasonable terms for their continuation for no longer than [...] months from completion.

Annex 1

List of Trademarks to be Divested

[...]

Annex 2

List of Patents to be Divested

Frimont patents

[...]

Castel MAC patents

[...]

Annex 3

Details of EEA Distribution Contracts to be Divested

[...]

Annex 4

Principles underlying the transitional distribution agreements

The transitional contracts for the supply of distribution services shall provide that:

- the Distribution services in Germany and Spain shall be provided on the basis that Manitowoc branded ice machines products shall not be distributed through or by the same subsidiaries but through its existing (or alternative) third party distributors until the end of the transitional supply contract period;
- confidential information relating to customers of the Divestment Business shall not be disclosed to any employees of Manitowoc who have responsibilities for its ice machine businesses;
- specified named individuals of the relevant German and Spanish distribution subsidiaries whose principal responsibilities are the distribution of ice machines shall be free to transfer to the Purchaser of the Divestment Business or to a distributor of the Purchaser’s choice;
- other contractual terms (including but not limited to prices and payments) shall be in accordance with standard industry practice for food service equipment.