EN

Case No COMP/M.5190 - NORDIC CAPITAL / CONVATEC

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Article 6(2) NON-OPPOSITION
Date: 15/07/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.7.2008
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.5190 - Nordic Capital / ConvaTec
Notification of 27 May 2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 27.05.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertaking Nordic Capital ("Nordic Capital", Jersey) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking ConvaTec ("ConvaTec", United States), a wholly owned business unit of Bristol-Myers Squibb Co ("BMS", United States), by way of purchase of shares and assets.

I. THE PARTIES

2. ConvaTec is active in advanced wound care products, ostomy products and products for acute faecal incontinence.

3. Nordic Capital controls, amongst others, Unomedical active in advanced wound care products and urinary incontinence products. Nordic Capital jointly controls (together with APAX) Capio, a European private healthcare provider active in several Member States.

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

II. THE OPERATION

4. The acquisition will be made by means of a negotiated share and asset purchase agreement between ConvaTec's owner, BMS, and Nordic Capital Fund VII. Nordic Capital Fund VII will make the acquisition through a Jersey limited liability company called Cidron Healthcare Limited ("Cidron"), which is indirectly owned by Nordic Capital Fund VII. Cidron is a newly established company and has had no prior business activities.

5. In addition, Avista will be a minority co-investor in the transaction by acquiring approximately […]% of Cidron prior to the closing of the main transaction.

III. CONCENTRATION

6. The notified concentration concerns Nordic Capital's acquisition of sole control over ConvaTec by way of purchase of all issued and outstanding shares and stock options.

7. Avista Capital Partners ("Avista") will be a co-investor in the transaction but will not exercise joint control over ConvaTec or hold any rights beyond those normally granted to a minority shareholder. […]

8. Thus, the transaction constitutes a concentration within in the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The transaction has a Community dimension pursuant to article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of € 5 bn (Nordic Capital € […] million, ConvaTec € […] million) and a Community-wide turnover in excess of € 250 million (Nordic Capital € […] million, ConvaTec € […] million). Neither of the parties realises more than two-thirds of its Community-wide turnover in any one Member State.

10. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

V. RELEVANT MARKETS

A. Relevant Product markets – Wound care products

11. Both parties are active in the supply of moist advanced wound care products. The Parties' activities mainly overlap in the alginate segment of moist wound care products[2], where Unomedical achieves most of its EEA turnover.

12. In previous investigations the Commission has subdivided wound care products into two categories i.e. traditional wound care products and advanced wound care products. The Commission considered that the latter could be further subdivided

[2] The only other type of moist wound care product, where the turnover of the parties are comparable and the overlap is of any significance (>1%) is in hydrogels, but the proposed transaction does not give rise to any affected markets in this segment.

into i) moist wound care products, ii) active wound care products and iii) biological active wound care products[3]. Advanced wound care products are designed to create a special healing environment by interacting and controlling certain aspects of the physical environment of the wound. They have been developed to treat hard-to-heal wounds. The common functionality of moist advanced wound care products that differentiates them from other advanced wound care products is that they provide a moist environment that can be beneficial for healing.

13. Within the segment of moist advanced wound care products the following sub-segments were identified in previous Commission decisions: alginates, foams, hydrocolloids, hydrogel, films, contact layers and scar care dressings[4].

14. In addition, the Notifying Party introduces a new sub-segment of moist wound care products not previously considered by the Commission. Silver antimicrobial dressings incorporate silver for the treatment and prevention of infection. They avoid bacterial contamination and proliferation, which constitutes the major risk in creating a moist wound healing environment. Furthermore, the Notifying Party makes reference to hydrofibres, another type of moist advanced wound care product not previously identified as a sub-segment by the Commission. A hydrofibre is a non-woven sheet or ribbon dressing composed of sodium carboxymethylcellulose, which, according to the Notifying Party, is a synthetic version of calcium alginate fibres and can therefore be included in the alginate product family.

15. In previous decisions, the Commission has left open the question of whether the existing families/segments of moist advanced wound care products form a single product market or constitute several distinct product markets[5].

16. In the present case, the Notifying Party submits that all segments of moist advanced wound care products, inter alia hydrogels, hydrocolloids, alginates (inter alia hydrofibers), foams, films, contact layers and silver antimicrobials form a single product market based on both demand and supply-side substitutability.

17. Alternatively, the Notifying Party submits that the moist advanced wound care product market may be subdivided into (i) a market segment for moisture-absorption advanced wound care products that includes alginates, foams and hydrofibres, (ii) a market segment for moisture-donation advanced wound care products that includes hydrogels and hydrocolloids, (iii) a market segment for secondary dressings that includes films and contact layers and (iv) a market segment for silver antimicrobials and other antimicrobials (which include all wound care products in other categories in which silver is incorporated). There might be some unclassified "other" products.

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[3] Case COMP/M.4367, *APW/Nordic Capital/APSA/Capio,* Commission decision of 16.03.2007*;* Case COMP/M.4229, *APHL/L&R/Netcare/General Healthcare Group,* Commission decision of 25.07.2006 and Case COMP/M.3816, *Apax/Mölnlycke,* Commission decision of 15.06.2005.

[4] Case COMP/M.3816, *Apax/Mölnlycke*.

[5] Case COMP/M.4367, *APW/Nordic Capital/APSA/Capio;* Case COMP/M.4229, *APHL/L&R/Netcare/General Healthcare Group* and Case COMP/M.3816, *Apax/Mölnlycke*.

18. This definition is based on the fact that considering the wound healing continuum, the therapeutic objective in wound management is first to remove dead tissue from the wound bed ("debridement") and then to help the development of new tissue ("granulation" and "epithelialisation"). The common aim of all moist advanced wound care products is thus to create a moist environment to facilitate the healing process of the wound. Depending on the nature of the wound and its stage in the healing process, this purpose is achieved either by adding moisture to dry wounds or by removing the excessive moist from the wound ("exudate") while ensuring that the necrotic tissue does not dry out. It is therefore possible to distinguish between moisture-absorption products and moisture-donation products.

Alginates, hydrofibres and foams

19. It appears from the segmentation of the Notifying Party that the closest substitutes to alginates are hydrofibres and foams. The market investigation did not indicate that substitutability between alginates and wound care products other than hydrofibres or foams would merit further investigation for the purposes of this case. On a hypothetical product market for moisture-absorption products or all moist advanced wound care products the transaction would not raise competition concerns on either of these wider market definitions.

20. There is however a significant overlap between the parties in alginates. For the purpose of this case it was important to assess to what extent alginates (or alternatively alginates and hydrofibres – see further below) form a distinct product market or whether they, together with foam, belong to a wider relevant product market of moisture-absorption wound care products, as proposed by the Notifying Party, as this would materially affect the competitive assessment of the proposed transaction.

21. The Notifying Party describes foam dressings as usually polyurethane, film or silicone coated. Some have a film outer surface to resist water and bacteria and allow for moisture vapour permeability. Some foams are adhesive, some non-adhesive. They absorb wound exudates and maintain a moist wound healing environment. They are, according to the parties, mainly used for moderately to highly exudative wounds. Foams have been considered as a possible separate market in APW/Nordic *Capital/APSA/Capio*[6]*,* but the question was left open due to the lack of competition concerns in all alternative market definitions.

22. The Notifying Party submits that alginates, foams and hydrofibres are all substitutable from a demand-side as their common function is to absorb the excessive moisture from the wound with a view to reaching the appropriate moisture level[7]. As regards exudate management, both alginates and foams may be used to deal with all types of exudate, from high volume and high viscosity exudate to low volume and low viscosity exudate. Historically, alginates tended to have higher absorption capabilities than foams, and were thus preferred to

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[6] Case No. COMP/M.4367.

[7] According to the Notifying Party, hydrofibres are a synthetic version of calcium alginate fibres and can therefore be included in the alginate product family.

foams for the very limited number of wounds with extremely high exudate volume: this factor may be said to have limited the demand-side substitutability between foams and alginates. However, new generation foams incorporate a thicker core which increases their absorption capability to the level of alginates.

23. The market investigation largely confirmed that alginates, hydrofibres and foams have an overall functionality of absorbing excessive moisture from wounds. It also appears that they may have overlapping uses indicating a degree of substitutability. However, the market investigation has shown substitutability to be limited: as a majority of respondents considered that alginates can only rarely be effectively substituted by foams. Rather hydrofibres are considered to be a more effective substitutes to alginates than foams.

24. The market investigation identified certain additional functionalities of alginates that differentiate them from foams and, to a lesser extent, from hydrofibres. In particular, respondents indicated that alginates are noted for their haemostatic properties, which help blood-clotting. Furthermore, alginates may dissolve in the wound, which may be useful for the treatment of certain wounds. Alginates are effective in removing the slough which foams cannot. As regards the substitutability of alginates and hydrofibres versus foams, it was noted that both alginates and hydrofibres – due to their gelling property – are well suited to be placed inside wound cavities, in particular narrow and deep and/or undermined wounds. Another main distinction is that alginates and hydrofibres, unlike foams, need a second dressing which can be a foam when there is a need for additional absorption but also other types of (less expensive) secondary dressings.

25. The fact that customers consider the differentiating functionalities important is also indicated by the fact that only a few of the respondents would switch from alginates to foams in the case of a 10% price increase in the former. There seems to be more willingness to switch from alginates to hydrofibres. The market investigation also identified some barriers to switching at the end-user level. It appears that switching from one product to another – even if from one alginate to another alginate – would result in significant costs. It was also indicated to the Commission that there would be a need for additional teaching/learning of/by nurses as well as administrative burdens, such as changes to formularies, ordering processes etc. Furthermore, the Commission received indications from the market investigation that end users (for example clinicians) consider non-price factors (effectiveness of treatment, patient care) as primary factors in their decision rather than price of the individual product used as the overall cost of a treatment would be higher if not the most effective treatment was used.

26. Overall, the majority of respondents considered foams to be a distinct market from alginates. The market investigation was more positive about the substitutability between alginates and hydrofibres than the substitutability between alginates and foams. However, whether hydrofibres and alginates belong to the same relevant market can be left open as competition concerns would arise in a market for alginates as well as in a combined market of alginates and hydrofibres.

27. In addition to the market investigation, the Commission has also carried out a detailed empirical analysis of the alginate and foam prices in order to determine whether foam products form part of the same product market as alginates. The

empirical analysis focused on the UK and used Convatec's monthly price data for the last five years. Since the price level of different products can not be easily compared due to the different products' specific package size, the analysis studied the evolution of prices over time by measuring price correlations and testing whether relative prices are stationary. The main results of this analysis are detailed below.[8]

28. First, the Commission found a lack of any meaningful correlation between alginate and foam prices. Indeed, and although the benchmark based on correlations within alginates products is not particularly high (0.6 on average), the correlation between alginate and foam prices is only 0.3 on average, which is consistent with foam and alginates not being in the same market.

29. Second, in order to investigate whether this lack of correlation between alginate and foam prices may be due to a delayed price reaction, the Commission carried out a stationarity analysis to allow for a possible lagged co-movement of prices. The Commission found that, although the relative prices of different alginate products are stationary (as expected), this is not the case for the relative price of alginate compared to foam. This indicates that foam and alginate prices do not tend to move together over time, which is also consistent with foam and alginates not being part of the same market.

30. The parties argue that studying the evolution of alginate and foam prices is not relevant for the purpose of market definition because these products are subject to reimbursement[9]. Rather, the parties argue that the Commission should base its conclusion based on an alleged substitutability of alginates and foams. While it is in principle true that a change in a product's reimbursement scheme may affect its relative price with respect to other products not subject to such a change, the parties have not provided any evidence showing that the lack of price correlation between alginate and foam prices or the non-stationary nature of their relative price is due to such a change. As far the substitution of foam and alginates is concerned, the results of the market investigation indicate that it is rather limited, that alginates are most likely to only rarely be effectively substituted by foams. The Commission therefore concludes that the results of the empirical analysis are consistent with the qualitative information gathered during the market investigation which indicates that alginates and foam are not part of the same product market.

Silver antimicrobials

31. The Commission's investigation has been inconclusive as regards a possible separate market for silver antimicrobials although there are some indications that such products are more chosen on the basis of their antimicrobial properties rather than if they are an alginate, hydrofibre or foam. If silver antimicrobials were to be considered a separate market, a further question arises whether they

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8 The analysis described here compares foam and alginate prices; similar results are obtained if hydrofibre products are considered together with alginates.

9 Memorandum of June 20, 2008.

should be segmented along the same lines as non-silver treated moist wound care products (for example a separate market for silver treated alginates).

32. The exact delineation of silver antimicrobial products, however, can be left open as the Commitments proposed to address concerns on the alginate market solve any concerns relating to the silver antimicrobial market.

Conclusion on product markets

33. For the purposes of this case, foams are considered to be a distinct market from alginates. Whether hydrofibres are in the same market as alginates and whether silver antimicrobial alginates and/or hydrofibres are included in the respective markets can be left open as this does not affect the competitive assessment.

34. Whether the market is wider than moisture absorption products (i.e. alginates, hydrofibres and foams), i.e. whether it includes all moist advanced wound care products, can be left open as the proposed transaction would not raise competition concerns on this wider market.

A. Relevant Geographic Markets – Wound care products

35. The Notifying Party submits that the geographic market for advanced wound care products is EEA-wide or, alternatively, national.

36. The Notifying Party submits that the geographic market should be considered to be EEA-wide because the regulatory framework for advanced wound care products is similar across the EEA and the same products are marketed all over the EEA. The Notifying Party recognises that sales patterns may vary between countries due to different degrees of awareness, penetration of advanced wound care techniques and reimbursement.

37. In previous decisions, the Commission has considered the market for traditional wound care products to be national in scope but has so far left open the scope of the market for advanced wound care products.[10]

38. The market investigation in the current case provided strong indications that the relevant geographic market was national. Respondents mentioned different reimbursement schemes, formularies, different customer preferences, different prices as factors still specific to national markets. Most non-hospital customers and all hospital respondents indicated that they purchase from within their own country. Local sales forces seem also to play an important role in the dissemination of information/training related to certain products.

39. In the UK market for alginates specifically, there seems to be strong brand loyalty, which would explain why Sorbsan has the leading position in the alginate segment especially compared to other EEA Member States where its respective position tends to be insignificant.

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[10] See Commission decision in Case No COMP/M.4579, *Investor/Morgan Stanley/Mölnlycke*, Commission decision of 27 March 2007, para. 12.

40. Based on the above the geographic market for the purposes of the present case is defined as UK-wide.

VI. COMPETITIVE ASSESSMENT

41. As shown below the Parties have high market shares in the UK, Ireland and Spain in the alginates and alginates/hydrofibre segment. Other affected markets are Denmark, Finland, France and Greece but it should be noted that Unomedical's position in these countries is very weak, which results in an increment of around 1 % or less. Based on the marginal increment and the presence of other more significant competitors, the transaction is unlikely to raise competition concerns in any other markets than those assessed below.

Ireland

42. In Ireland, on the basis of ConvaTec's best estimates, the parties would have a combined market share of [20-30]% in the alginates market excluding silver products and hydrofibre products (ConvaTec [20-30]%, Unomedical [0-10]%). There would be other competitors with significant market shares. Most important are Smith and Nephew with an estimated market share of [10-20]%, and Coloplast and Mölnlycke with around [0-10]% each. The parties were not able to provide detailed market share estimates for [20-30]% of the market, which they submit is supplied by other competitors. If silver antimicrobial alginates were to be included, parties would have a combined market share of around [10-20]% with a [0-5]% increment added by Unomedical. Smith and Nephew[11] would be a market leader with [30-40]%, while Mölnlycke and Coloplast would have [0-10]% and [0-10]% respectively. These market positions do not suggest that the proposed concentration would lead to anticompetitive effects.

43. However, the parties would have a more significant market share in a combined alginate/hydrofibre market excluding silver antimicrobial alginates and hydrofibres due to ConvaTec's hydrofibres sales (ConvaTec has [90-100]% of the hydrofibre market, Unomedical, controlled by Nordic Capital, is not active in this segment). The combined market share would be [50-60]% with Unomedical adding only a [0-5]% increment. There are other competitors more significant than Unomedical, including Smith and Nephew ([10-20]%), Coloplast ([0-10]%) and Mölnlycke ([0-10]%). The parties did not provide detailed data for [10-20]% of the market, which they submit is supplied by other competitors.

44. If silver antimicrobial alginates and hydrofibres were included in the market for alginates and hydrofibres, parties would have a combined market share of [70-80]% with a [0-5]% increment (only non-silver alginates) added by Unomedical. Other competitors with a market share comparable or higher than that of

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[11] It should be noted that it emerged from the market investigation at a late stage of the procedure that […]. According to the results of the market test a number of competitors have production capacity for alginates and foam. Further it has to be taken into account that Unomedical is not active in the chemical production of alginates. Its production activity in the site in Redditch is limited to cutting and packing. Notwithstanding that given the late stage of the procedure, this vertical link could not be investigated in detail, the proposed remedies would address any potential concerns to this effect.

Unomedical include Smith and Nephew ([20-30]%), Mölnlycke ([0-10]%) and Coloplast ([0-5]%).

45. On the hypothetical moisture-absorption market proposed by the Notifying Party, the combined market share of the parties would be [40-50]%, but with an increment of only [0-5]% added by Unomedical. There would be a number of competitors more significant than Unomedical remaining in the market (Smith and Nephew with [0-10]%, Mölnlycke with [0-10]% and Coloplast with [0-5]%). If silver antimicrobial moisture absorption products were included, parties would have a combined market share of [50-60]% with a small increment of [0-5]%. Three other competitors identified by the parties would have a market share of around [0-5]% each. Unomedical does not sell silver antimicrobials in Ireland, therefore there is no overlap between the parties activities on this hypothetical market. [12].

46. Unomedical is only active on the Irish market through a wholesale distributor and does not have its own sales force. It is also perceived as a marginal player in alginates in Ireland, as opposed to ConvaTec that appears to have a strong brand recognition in alginates and hydrofibre.

47. The fact that Unomedical does not have a direct presence in the Irish market is indicative that they are not a major contender in this market. This is also evidenced by the small increment added by Unomedical. In addition, in Ireland a number of more significant competitors are active. Overall, the market investigation has provided no indication that the proposed transaction would lead to competition concerns in Ireland, either in a market for alginates or in a market for alginates/hydrofibres.

48. Based on the market share figures provided by the parties and due to the limited, indirect presence of Unomedical in Ireland and the presence of other, more significant competitors the proposed transaction is unlikely to raise serious doubts as to its compatibility with the common market on the hypothetical market for alginates and/or alginates/hydrofibres in Ireland irrespective of whether silver antimicrobial alginates and/or hydrofibres are included.

49. However, it should be noted, that the parties have had difficulties to provide market estimate figures for Ireland given the lack of reliable sources, and especially regarding the estimations of smaller competitors' market presence. A large part of the market in the parties' estimations is therefore unaccounted for. Even if due to the uncertainties of the estimates, Unomedical had a significantly stronger position in Ireland and if this raised serious doubts as to the proposed transaction's compatibility with the common market on the hypothetical market for alginates and/or alginates/hydrofibres in Ireland any concerns would be solved by the proposed Commitments (see further below).

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12 On the overall moist advanced wound care market the parties would have only a [20-30]% market share with a marginal [0-5]% increment added by Unomedical.

Spain

50. In Spain, the parties' activities would only overlap in a combined market of alginates and hydrofibres as ConvaTec is not present in the alginate market. The combined market share would be around [40-50]% with an increment of [0-5]% added by Unomedical. There are a number of other competitors significantly larger than Unomedical active in Spain. This includes Coloplast, Smith&Nephew, and B Braun Medical, all with market shares above [0-10]% each. If silver antimicrobial alginates and hydrofibres were included, the parties would have a combined market share of [60-70]%, but the increment added by Unomedical would be very small ([0-5]%). Other competitors with a market share more significant than that of Unomedical include Coloplast ([0-5]%), Smith and Nephew ([0-10]%), B Braun Medical ([0-5]%) and Johnson and Johnson ([0-5]%).[13]

51. Just as in Ireland, Unomedical is only present through distributors and does not have its own sales force. The market investigation did not show Unomedical to be a significant player in Spain. Spanish customers have also listed a number of suppliers as credible competitors in alginates (inter alia Coloplast, Smith and Nephew, B Braun, Mölnlycke, Johnson and Johnson) and there is no indication that Convatec is particularly constrained by Unomedical.

52. Based on the above the proposed transaction is unlikely to lead to serious doubts on the hypothetical market for alginates and alginates/hydrofibres irrespective of whether silver antimicrobial alginates and/or hydrofibres are included. In any event, it should be noted that the proposed Commitments remove the entire overlap in Spain.

United Kingdom

53. On the overall moist advanced wound care market the parties would have only a [20-30]% market share with a [0-5]% increment added by Unomedical. There would be other competitors with a market share comparable to the merged entity (Mölnlycke, [20-30]%, Smith and Nephew, [20-30]%) and further competitors with market shares higher than Unomedical (Coloplast, [0-10]% and Johnson and Johnson, [0-10]%).

54. On a hypothetical market for "moisture absorption products" as proposed by the parties, the merged entity would have a market share of [20-30]% (ConvaTec [10-20]%, Unomedical [0-5]%). The market leader would be Mölnycke with [30-40]%, followed by Smith and Nephew with [20-30]%. Coloplast and Johnson & Johnson would have market shares comparable to that of Unomedical. However, the situation would differ significantly on a market for alginates or alginates/hydrofibre.

[13] On the overall moist advanced wound care market the parties would have only a [10-20]% market share with a marginal [0-5]% increment added by Unomedical

Alginates and alginates/hydrofibre

55. The proposed transaction would lead to a very high combined market share in the United Kingdom on a market for alginates (combined [70-80]% - Unomedical [50-60]%, ConvaTec [20-30]%). The closest competitor is Smith & Nephew with a market share of around [0-10]%. All other competitors have estimated market shares of less than [0-5]%.

56. On a market combining alginates and hydrofibres the parties' market share would be even more important as ConvaTec is the only supplier of hydrofibre (100% market share, Unomedical is not active in this segment). The parties would have a combined market share of around [90-100]% (ConvaTec [70-80]%, Unomedical [10-20]%). The parties' have not identified any competitors with a market share of above 5%.

57. Overall, the Commission's investigation has shown that no other competitors have been able to reach any significant presence in the UK in these segments apart from the parties.

Silver antimicrobials

58. On the possible market for silver antimicrobials (including all types of silver treated moist advanced wound care products), the parties would have a combined market share of [40-50]% with Unomedical adding only a [0-5]% increment. There would remain other more significant players, including Smith and Nephew ([10-20]%), Johnson and Johnson ([10-20]%) and Coloplast ([0-10]%). Thus, on this possible market, no competition concerns arise.

59. If silver-treated products were included in the parties' market shares on the hypothetical alginate market excluding hydrofibre, this would reduce the parties' combined market shares. The parties' combined market share would still be significant ([40-50]%) and the overlap would also be significant (ConvaTec [10-20]% and Unomedical [30-40]%). There would be another competitor, Smith and Nephew with a [40-50]% market share[14]. Further competitors identified by the parties would have [0-5]% market shares. The merger would therefore reduce the number of competitors in the UK market from 3 to 2.

60. On a market including both alginate and hydrofibre products, market shares would remain very high if silver antimicrobial alginates and silver antimicrobial hydrofibres were included (combined [80-90]%, ConvaTec [70-80]%, Unomedical [0-10]%). The only other significant competitor would be Smith and Nephew with [10-20]%. Further competitors identified by the parties would have [0-5]% market shares.

Barriers to entry

61. Unomedical has its entire wound care sales force located in the UK. It does not have a dedicated sales force outside the UK and exports to other countries are managed by one international sales manager only. This confirms Unomedical's

[14] *See footnote 12*

focus and market position in the UK market and their comparatively marginal presence in other national markets. Overall, the market investigation has show that Unomedical is a company with a strong position in the UK but not in other countries. ConvaTec on the other hand is considered a strong player across the EEA and it also has its own sales force both in the UK and in other Member States.

62. According to the parties there are no significant barriers to entry into the moist advanced wound care market (alginates and foam) and there are a number of significant international players active across the EEA that are already active in the UK. They acknowledge that for hydrofibres there is no other significant player active in this segment due to the patents held by ConvaTec. As regards alginates, they also state that there are a number of OEMs that could produce the alginates.

63. The Commission's investigation has indicated that the main barriers to the national markets are the costs of development, production facilities, the need for a national/local sales and marketing team. In particular the sales teams seem to play an essential part as they not only market the products but also act as support and training to nurses and other customers using the products. Further, national reimbursement systems are important. We have also indication from the UK market that both ConvaTec and Unomedical have a strong brand recognition among the users (nurses). Brand loyalty is also evidenced by the fact that although there are a number of alginates producers approved by the NHS, these have not been able to reach any significant market shares in the last years.

64. Some competitors also argue that market entry for alginates is not as easy as stated by the parties, and that production flexibility is not very high. The separate products need different production facilities and it would be both costly and time consuming to start production (up to 36 months). According to most competitors adding silver to their products would need special production lines. This expenditure could raise the production costs by about 15%. Problems with contamination for production and packing might occur. Some have however indicated that the main barrier is not the production as such as production can to some extent by outsourced to OEM producers.

65. There have been separate market entries within alginates and foams by the major players in the past (Smith and Nephew, Convatec, Coloplast, Johnson & Johnson) and some competitors have signalled further expansion within their product segments. However, no significant new entry in the near future is expected by market players and despite such entry in the past, none of the entrants (although they are strong in neighbouring products and countries) have been able to reach any significant market positions in the UK alginate segment.

Conclusion UK – market for alginates and combined market for alginates and hydrofibres

66. The proposed concentration would combine two important competitors on the markets for alginates (and hydrofibres, with or without silver antimicrobial sales) and the market power of the new entity would unlikely be defeated by a timely entry that would be sufficient in scale. Based on the above, the proposed concentration would raise serious doubts as to its compatibility with the common market on the market for alginates and alginates/hydrofibres irrespective of

whether silver antimicrobial alginates and/or hydrofibres are included in the market in the UK. The proposed Commitments remove these serious doubts.

VII. COMMITMENTS

1. ASSESSMENT OF THE COMMITMENTS

67. In order to address the concerns identified in the UK, Nordic Capital submitted commitments on 24 June 2008.

68. The Commitments were submitted to address the concerns include the divestiture of the entire wound care business and – the not affected – ophthalmic business ("Divestment Business"), which are both currently part of Nordic Capital's portfolio company Unomedical.

a) Description of the Commitments

69. The Commitments submitted on 24 June 2008 included:

- The divestiture of Unomedical's entire Redditch site in the UK.
- All related tangible and intangible assets including intellectual property rights, and including, but not limited to the Sorbsan brand and all its variations, which contribute to a material extent to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.
- The dedicated wound care sales force, key management and personnel.
- All licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Business.
- All contracts, leases, commitments and customer orders of the Divestment Business.
- All customer credit and other records of the Divestment Business.

70. Unomedical has other significant hospital-related activities, where the transaction does not lead to competition concerns. The reason for including the ophthalmic business was in particular that the entire manufacturing and sales/distribution is located in the same building on the Redditch site, where Unomedical's wound care business is located.

71. As such, Unomedical's site in Redditch is not exclusively dedicated to wound care. Production activities relating to wound care are limited to the last stages of production, i.e. cutting and packaging. The more substantial parts of production, i.e. chemical production, are outsourced to third party producers.

72. In addition to wound care products, the Redditch site hosts the entire manufacturing process for ophthalmic needles. This is undertaken in the same building as the wound care business.

73. Furthermore, all sales, distribution and administration activities as well as all warehousing relating to the entire portfolio of Unomedical are located in Redditch. This portfolio includes in addition to wound care and ophthalmic

needles a wide range of products, including single use medical devices for operating rooms, intensive care units as well as urology products and electrodes. A separate salesforce is devoted to these latter products and all the activities relating to them will be relocated to a ConvaTec site in the UK and are not part of the Divestment Business.

74. The Divestment Business includes the respective brands of Unomedical, most importantly the Sorbsan alginate brand (in all its variations, including silver-treated variations) that accounts for a majority of Unomedical wound care sales. The ophthalmic needles business represents one third of total Divestiture Business sales.

75. The Divestment Business also includes the sales and distribution (including managers), customer service/contracts and R&D personnel currently dedicated to woundcare (the latter mostly to the Sorbsan brand). In addition, some administration and warehousing staff will also be transferred, the number of people chosen in proportion to the size of the Divestment Business. There are some shared posts (HR, Finance, IT manager and company secretary), where the current employees filling the post will not be transferred, according to the parties these posts do not require specialization in wound care and will be filled through internal recruitment.

b) Assessment of the Commitments

76. The Commitments aim to maintain competition in the UK wound care segment for alginates by selling Unomedical's entire wound care business to a third party. The wound care business is focussed on the UK, but also contains all exports. The ophthalmic business is added for viability reasons as it shares a production site with the wound care business.

77. The Commitments would remove the entire overlap between ConvaTec's and Unomedical's wound care activities in the EEA including the UK, Ireland and Spain. The divestment package is a profitable stand-alone business and there is therefore no doubt about its viability. Furthermore, the market test has confirmed that this clear cut remedy would restore competition. As such, the Commitments removes the serious doubts.

78. As regards potential buyers, the Commission notes that some competitors of the parties have expressed the view that they do not a priori identify synergies between the wound care and ophthalmic businesses and that, if they were to express interest in the divested business, they would rather buy only the wound care business of the Redditch site. In this respect, it should be noted, pursuant to paragraph 14 of the Commitments, the Commission may approve the sale of the Divestment Business without one or more assets (such as the ophthalmic business) if, taking into account the proposed purchaser, this does not affect the viability and competitiveness of the Divestment Business after the sale. Therefore, in the present case, the Commission may approve, following a proposal by Nordic Capital, the divestiture of the wound care business part of the divested business to a purchaser already active in advanced moist wound care to the extent that the viability and competitiveness of the divested business would thus be ensured.

c) Conclusion on the Commitments

79. In light of the above, it is concluded that the Commitments submitted on 24 June 2008 remove the serious doubts as to the compatibility of the proposed transaction with the common market.

2. CONDITIONS AND OBLIGATIONS

80. 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.

81. The decision in this case is conditioned on the full compliance with Section B of the Commitments submitted by the Notifying Party on 24 June 2008.

82. The remaining requirements set out in the other Sections of the Commitments submitted by the Notifying Party on 24 June 2008 are considered to constitute obligations.

VIII. CONCLUSION

83. 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.

84. 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]
Neelie KROES
Member of the Commission

Case M. 5190 – Nordic Capital / ConvaTec

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 as amended (the ***"Merger Regulation"),*** *Nordic Capital* hereby provides the following Commitments (the ***"Commitments")*** in order to enable the European Commission (the ***"Commission")*** to declare acquisition of ConvaTec by Nordic Capital (together with ConvaTec the ***"Parties"***) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the ***"Decision"***).

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

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

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

Divestment Business: the business 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 Nordic Capital and who has received from Nordic Capital the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

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

Hold Separate Manager: the person appointed by Nordic Capital for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: the Management team of a total headcount of 8 listed in Schedule 1.

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

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in Schedule 1.

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

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

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

ConvaTec: ConvaTec, 200 Headquarters Park Dr, Skillman, New Jersey 08558-2624, United States of America.

Nordic Capital : the terms "Nordic Capital" will refer collectively to all the Funds bearing the Nordic Capital name.

Unomedical: the terms "Unomedical" will refer collectively to Unomedical a/s, Birkerød Kongevej 2, 3460 Birkerød, Denmark and all its subsidiaries

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Nordic Capital commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14. To carry out the divestiture, Nordic Capital 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 Nordic Capital has not entered into such an agreement at the end of the First Divestiture Period, Nordic Capital shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.

2. Nordic Capital shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Nordic Capital has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

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

Structure and definition of the Divestment Business

4. The Divestment Business consists of Unomedical's wound care business and ophthalmic business, including its

production facility in Redditch, United Kingdom. The Divestment Business operates in all material respects as a stand-alone entity, and will be divested through a sale of all Assets (as defined below) relating to the wound care business and the ophthalmics business, including but not limited to the Redditch production facilities, as well as a transfer of the dedicated sales force and necessary management and personnel. The present legal and functional structure of the Divestment Business as operated to date is described in Schedule 1. The Divestment Business, described in more detail in Schedule 1, includes:

(a) all tangible and intangible assets (including intellectual property rights), which contribute to a material extent 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 (items referred to under (a)-(c) hereinafter collectively referred to as "***Assets"***); and

(d) the Personnel.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Nordic Capital and Unomedical 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 Nordic Capital and Unomedical undertake:

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

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

   (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

6. Nordic Capital and Unomedical commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are 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. Nordic Capital and Unomedical shall also ensure that the Personnel does not report to any individual outside the Divestment Business.

7. Until Closing, Nordic Capital and Unomedical 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. Nordic Capital 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.

8. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Nordic Capital's rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Nordic Capital's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Nordic Capital. Upon request of the Monitory Trustee, Nordic Capital shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

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

Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 2 year after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Nordic Capital and Unomedical shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

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

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

Reporting

12. Nordic Capital shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

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

Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

(a) be independent of and unconnected to the Parties;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "Purchaser Requirements").

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

Section E. Trustee

I. Appointment Procedure

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

16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Nordic Capital

17. No later than one week after the Effective Date, Nordic Capital shall submit a list of one or more persons whom Nordic Capital 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, Nordic Capital shall submit a list of one or more persons whom Nordic Capital proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:

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

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

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

Approval or rejection by the Commission

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

New proposal by the Parties

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

Trustee nominated by the Commission

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

II. <u>Functions of the Trustee</u>

21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Nordic Capital, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Nordic Capital and Unomedical with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;

(c) (i) in consultation with Nordic Capital and Unomedical, determine all necessary measures to ensure that Nordic Capital and Unomedical does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Nordic Capital and Unomedical as the disclosure is reasonably necessary to allow Nordic Capital and Unomedical to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Nordic Capital and Unomedical 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 Nordic Capital and Unomedical such measures as the Monitoring Trustee considers necessary to ensure Nordic Capital's and Unomedical'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 Nordic Capital 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 Nordic Capital a non-confidential copy at the same time, if it concludes on reasonable grounds that Nordic Capital and Unomedical is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

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

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

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

III. Duties and obligations of the Parties

25. Nordic Capital and Unomedical 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 Nordic Capital's and Unomedical'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 Nordic Capital and Unomedical and the Divestment Business shall provide the Trustee upon request with copies of any document. Nordic Capital and Unomedical and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

26. Nordic Capital and Unomedical 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. Nordic Capital and Unomedical 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. Nordic Capital shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

27. Nordic Capital 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, Nordic Capital shall cause the documents required for effecting the sale and the Closing to be duly executed.

28. Nordic Capital 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 Nordic Capital for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

29. At the expense of Nordic Capital, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Nordic Capital'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 Nordic Capital refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Nordic Capital. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Nordic Capital during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

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

(a) the Commission may, after hearing the Trustee, require Nordic Capital to replace the Trustee; or

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

31. If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-20.

32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

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

_____ _____

Pontus Lindfelt

White & Case LLP

duly authorised for and on behalf of Nordic Capital.

SCHEDULE 1

Description of the Divestment Business

The Divestment Business comprises Unomedical's Wound Care / Ophthalmics business situated at Thornhill Road, North Moons Moat, Redditch B98 9NL, England, and the related tangible and intangible assets as defined in this Schedule.

The Divestment Business is a commercial activity belonging to Unomedical Ltd, wholly owned by Unomedical Holding Ltd, wholly owned by Unomedical a/s. Unomedical Ltd has two statutory representatives that can act on behalf of the company: […] CFO and […] Company Secretary, neither of whom can act independently.

The Divestment Business is physically based on leased premises of 1.15 acres whereof real estate of approximately 4,650 square meters with production facilities, four class 8 clean rooms, laboratory and administrative buildings and parking lot. The term of the lease is […] years […].

The assets of the Divestment Business include, but are not limited to:

1. Tangible assets

1.1. The entire Redditch site, ie all buildings located there, will be divested. Any operation currently not linked to the Divested Business will be relocated elsewhere.

1.2. Production equipment comprising capacity of approximately [15-25] million units per year, consisting of 4 main production lines:

1.2.1. Samco cutting machine for Sorbsan roll stock;

1.2.2. Multi-Vac for Sorbsan cavity packing;

1.2.3. Doyen machine for Sorbsan and Trufoam flat dressings packing;

1.2.4. Cartoner machines for boxing Sorbsan and Trufoam;

1.2.5. Various milling, grinding, mopping, swaging, soldering and cleaning machines for cannula preparation;

1.2.6. Jigging, micro-jigs and UV gluing equipment and needle bending machine for ophthalmics finishing; and

1.2.7. Multi-Vac for ophthalmics packaging, plus boxing area.

1.3. Warehousing of 508 sqm (part of the leased premises noted above) for raw material storage, and finished goods;

1.4. Micro-biology laboratory for pre and post-sterilisation testing and validation;

1.5. Maintenance area for tools, dies and machines; and

1.6. Software for manufacturing.

2. Intangible assets:

2.1. Device Master Records, Design History Files and other Technical files relating to regulatory compliance of all products marketed by the Divestment Business.

2.2. Existing Intellectual Property Rights owned by the Divestment Business, including the following brands:

2.2.1. Sorbsan and all its variations;

2.2.2. Trufoam;

2.2.3. C-view;

2.2.4. Aquaform;

2.2.5. Arglaes; and

2.2.6. Steriseal.

3. **Main licenses, permits and authorizations:**

3.1. Necessary regulatory permits and certificates to operate the production site, including:

3.1.1. ISO 14385; and

3.1.2. Clean Room class 8 compliance.

4. **Main contracts, agreements, leases, commitments and understandings:**

4.1. Existing material supply agreements including agreements for the supply of key materials:

4.1.1. Existing supply agreement with […] (previously […]), Coventry, England […]: supply of alginates and silver alginates sheets;

4.1.2. Existing supply agreement with […]: supply of Polymem products (subject to a change of control approval);

4.1.3. Existing supply agreement with […]: supply of Mesitran (dressings); and

4.1.4. Existing supply agreement with […]: supply of Mesitran (oilments) ;

4.1.5. A new supply agreement for raw needle materials with […].

4.2. Distribution Licence Agreement, […].

4.3. Existing lease agreement with Truslove for 4,650 square meters of production and office space valid for a further […].

4.3.1. The previous lease agreement for this site was of shorter duration.

5. **Customer, credit and other records:**

5.1. A complete list of customers and distributors and related commercial information for both ophthalmics and wound care sales distribution, including:

5.1.1. […] (wound care);

5.1.2. […] (wound care);

5.1.3. […] (wound care);

5.1.4. […] (wound care);

5.1.5. […] (wound care);

5.1.6. […] OEM account. The contract is dated of […].

5.1.7. […] (ophthalmics);

5.1.8. […]; and

5.1.9. […] (ophthalmics).

5.2. The Divestment Business does not generally enter into signed agreements with its direct customers. Instead the parties have a price list including a summary of the main business terms.

5.2.1. It must be noted that with regard to the UK, the products are listed in the NHS catalogue (for hospital customers) or in the Drug tariff (for community customers). This explains why no customers are listed here. A list of the major customers is attached.

6. **Personnel:**

6.1. Headcount of approximately [50-100] personnel, [50-100] currently located at Redditch, and […] field based sales personnel throughout the UK. Key positions are:

6.1.1. General Manager, […], responsible for the running of the Divestiture Business

6.1.1.1. International Sales Manager, […], located in Redditch, in charge of distributor sales outside the UK;

6.1.1.2. Sales and Marketing Manager, […], located in Redditch, in charge of direct sales in the UK, and marketing for the wound care portfolio:

6.1.1.2.1. [1-5] Regional Sales managers each with a team of [1-5] territory sales personnel currently located in the field around the UK: the […];

6.1.1.2.2. [1-5] sales administration responsible for daily contacts with customers, order intake and shipping outside the UK;

6.1.1.2.3. [1-5] product manager, […], located in Redditch.

6.1.1.3. Business Development Manager for the ophthalmics business, […], located in Redditch, in charge of sales of needles with the International Sales Manager.

6.1.1.4. Manufacturing Manager, […], located in Redditch, in charge of complete Supply Chain (including maintenance) including the following main functions, all located in Redditch:

6.1.1.4.1. Production Manager, […], with [1-5] supervisors, [1-5] engineers, [1-5] machine setters and [20-30] operators;

6.1.1.4.2. Process Development Manager, […] with [1-5] member of staff;

6.1.1.4.3. Logistics Manager, […], with [5-10] staff for purchasing, demand and capacity planning and warehouse goods reception and dispatch;

6.1.1.4.4. Quality Assurance Manager, […], with [5-10] staff for quality control, regulatory affairs and laboratory testing;

6.1.1.4.5. Graphics Design Manager, […], with [1-5] member of staff;

6.1.1.4.6. Health & Safety Manager.

6.1.1.5. Administrative Functions

6.1.1.5.1. Finance Manager with staff of [1-5] people.

6.1.1.5.2. HR Manager.

6.1.1.5.3. IT Manager.

7. **Transitional Service Agreements until Closing, and if necessary for an additional transitional period of up to […] after Closing:**

7.1. IT services including E-mail system and internet access.

7.2. The corporate insurance programs.