EN

Case No COMP/M.5611 - AGILENT/ VARIAN

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
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PUBLIC VERSION

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

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.5611 – Agilent/ Varian**

Notification of 23/11/2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

Publication in the Official Journal of the European Union No. C 289, 28.11.09, p. 26

1. On 23 November 2009 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which the undertaking Agilent technologies Inc ('Agilent', United States of America, hereinafter the 'notifying party') acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the whole of Varian Inc ('Varian', United States of America) by way of purchase of shares.

I. THE PARTIES

2. Agilent is active in the field of design, development, manufacture and sale of bio-analytical measurement products (including analytical and life science instruments as well as associated services, consumables and software) and electronic measurement products.

[1] OJ L 24, 29.1.2004 page 1.

3. Varian is active in the design, development, manufacture and sale of bio-analytical measurement products (including analytical and life science instruments as well as associated services, consumables and software) and vacuum products.

II. THE OPERATION AND THE CONCENTRATION

4. On 26 July 2009, Agilent, Varian and Cobalt Acquisition Corp ('Cobalt') (a special purpose vehicle newly established by Agilent) entered into an Agreement and Plan of Merger whereby Cobalt will merge with and into Varian. As a result, Varian will, following the proposed transaction, exist as a wholly-owned subsidiary of Agilent.

5. Agilent will therefore acquire sole control of Varian. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million[2] (Agilent: EUR 3 859 million, Varian: EUR 673 million). The combined aggregate turnover of the undertakings concerned is more than EUR 100 million in each of at least three Member States (in the United Kingdom the turnover of Agilent and Varian respectively is […] and […]; in Germany the turnover of Agilent and Varian respectively is […] and […]; in France the turnover of Agilent and Varian respectively is […] and […]). In each of these three Member States, the aggregate turnover of each undertaking concerned is more than EUR 25 million. The aggregate Community-wide turnover of each undertaking concerned is more than EUR 100 million. Neither of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

7. The notified concentration therefore has a Community dimension pursuant to Article 1(3) of the EC Merger Regulation.

IV. RELEVANT MARKETS

A. General introduction to markets and overlaps/links

8. Agilent and Varian are both active in the analytical and life sciences instrumentation field. This field encompasses the manufacture and sale of instruments as well as associated services, software and consumables used for the analysis of chemicals by customers in a wide variety of applications.

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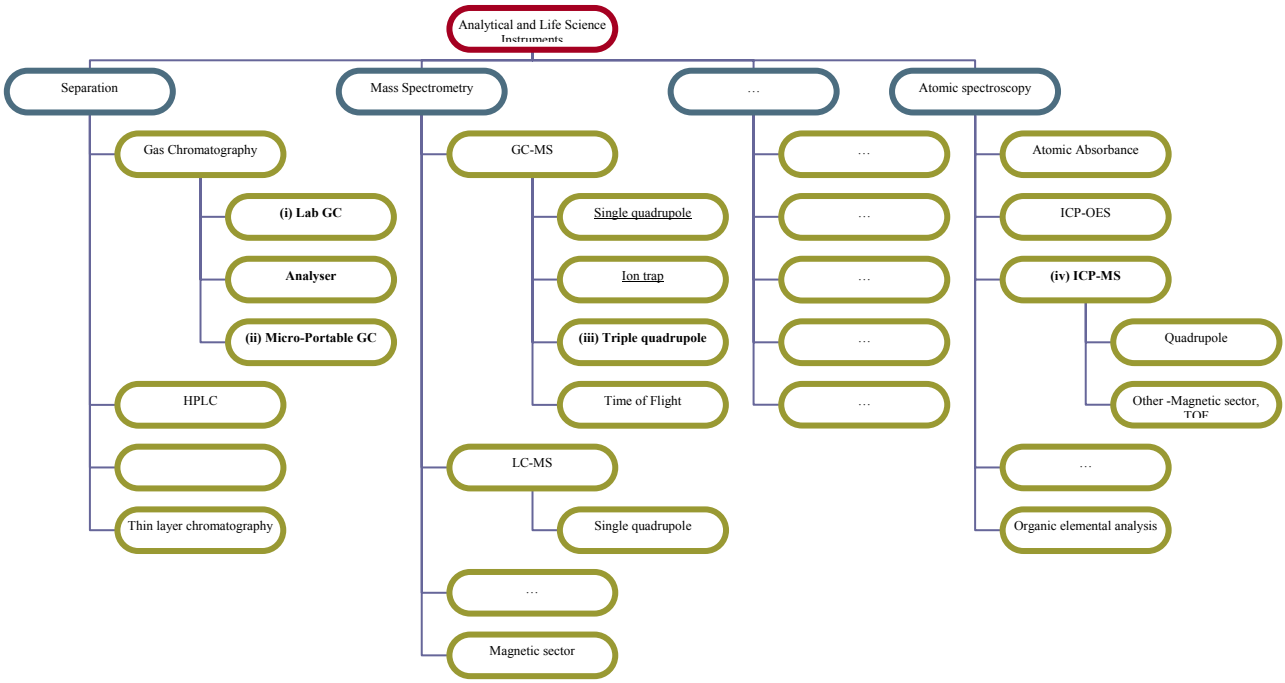
2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

9. From the information submitted by the notifying party and in terms of a report drawn up by the market research analyst, Strategic Developments Inc ('SDI'),[3] it appears possible to identify different sectors within the analytical and life science instrumentation field according to the following nine techniques used for analysis: (i) separations; (ii) life sciences; (iii) mass spectrometry; (iv) molecular spectroscopy; (v) atomic spectroscopy; (vi) surface science; (vi) materials characterisation; (vii) laboratory automation; and (ix) general analytical.

10. Each of these nine sectors may in turn be further segmented on the basis of the respective analytical technique. For example, within the separations sector it is possible to identify sub-segments for instruments based on the gas chromatography ('GC') technique and on the high performance liquid chromatography ('HPLC') technique. Similarly, within the mass spectrometry ('MS') sector it is possible to identify a sub-segment for instruments based on the gas chromatography-mass spectrometry ('GC-MS') technique and on the liquid chromatography-mass spectrometry technique ('LC-MS'). Within the atomic spectroscopy sector it is possible to identify a sub-segment for instruments based on the inductively coupled plasma-mass spectrometry ('ICP-MS') technique.

11. For illustration purposes, a summary chart of the analytical industry segmentation, highlighting the significant horizontal overlaps resulting from the proposed transaction is provided in Graph 1 below.

Graph 1: Analytical Industry Map



12. The proposed transaction will result in significant horizontal overlaps and affected markets between Agilent and Varian's activities in the following areas: (i) laboratory GC instruments ('Lab GCs'); (ii) micro/portable gas chromatography instruments ('micro/portable GCs'); (iii) triple quadrupole GC-MS instruments ('triple quad GC-MS instruments'); and (iv) quadrupole

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3 SDI's *Global Assessment Report 10.5: The Laboratory Analytical and Life Science Instrumentation Industry, 2007-2012,* August 2009 (*'SDI Report'*).

ICP-MS instruments ('quadrupole ICP-MS instruments'). Horizontal overlaps will also arise in relation to certain consumables for each of the GC, Micro-portable, triple quadrupole GC-MS instruments and ICP-MS instruments

13. Furthermore, the proposed transaction will give rise to a number of other minor overlaps, which technically constitute affected markets, but in which one or other of the merging parties has a minor presence. These technically affected markets are: (i) high performance liquid chromatography ('HPLC') instruments; (ii) single quadrupole LC-MS ('single quad LC-MS') instruments; and (iii) single quadrupole GC-MS ('single quad GC-MS') instruments.

14. The proposed transaction will also give rise to a vertical relationship between the merged entity's activities in relation to Lab GC sub-segment and its activities in the GC analyser ('analyser') sub-segment of the GC segment.

B. Relevant product markets

(a) Gas Chromatography (GC)

15. Instruments based on the GC technique are used to separate a complex sample of a thermally stable, volatile substance (that is, a substance which does not disintegrate when heated and which can be vaporised) into its individual components. GC instruments use an inert gas to transport the sample through a chromatographic column which separates the mixture into its individual components prior to detection and quantification. A GC is suitable for use only with known compounds (that is for compounds where the user knows what is being analysed) rather than unknown compounds.

Instruments

16. The notifying party submits that the GC segment can be sub-segmented into three different types of instruments: (i) analysers, that is, highly customised GC instruments which are specially configured to customers' specifications for specialized applications[4]; (ii) Micro/portable GC instruments which are smaller, portable instruments which can be used on-site and are based on micro-electromechanical technologies which enable miniaturisation and high speed analysis; and (iii) Lab GCs which are in essence GC instruments not falling within one of the other two categories.[5]

17. In that regard and with respect to the products manufactured by Agilent and Varian, these instruments have very different price points: a Lab GC instrument typically costs in the region of EUR 12,000 to EUR 22,000, whereas an analyser costs in the region from EUR 25,000 to EUR 50,000 or more, and Micro/Portable GC are in the region of EUR 20,000 to EUR 25,000. Moreover, analysers are technologically distinct from Lab GCs insofar as although having a Lab GC as a foundation they are configured to customer specifications for specialised applications, predominantly in the petroleum industry, and tested against those

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4 Analysers begin with a standard Lab GC as a foundation. According to the parties, analysers represent approximately [0-20]% of overall GC sales. Average price range in the region of EUR 25,000 to EUR 35,000 but could go up to EUR 50,000 or more. Analysers are mostly sold to petro-chemical companies.

5 According to the parties, Lab GCs represent approximately [60-80]% of overall GC sales. Average price range of a Lab GC is in the region of EUR 12,000 to EUR 22,000.

specifications at the manufacturing facility before shipment. An analyser incorporates significant added value to a standard Lab GC, it is estimated that about […] of the additional costs in an analyser are attributable to customisation services performed by the vendor.

18. In contrast to Lab GC, Micro/portable GC (i) can only analyse samples at room temperature, (ii) are generally pre-configured for specific chemical analyses; and (iii) are normally based on specific microelectromechanical technologies which enable miniaturisation and high-speed analysis. Micro/portable GC due to their specific characteristics and design are primarily used in a range of energy sector applications (including, natural gas, fixed gases and refinery gas) where on-site use is critical, as well as in mining, industrial hygiene, landfill gas analysis, selected military uses and fuel cell development.

19. The market investigation has confirmed that given the differences in capabilities, product requirements and the reduced overlap in the areas of analytical application of these GC instruments, customers do not view Lab GC, analysers and Micro/portable GC as interchangeable. In addition, the market investigation has signalled that Micro/portable GCs require a specialised sale force and an alternate distribution channel given the specificity of the product.

20. The market investigation also confirmed that the Lab GC market should not be further segmented according to customer groups into (i) sales to end customers and to value added resellers who lightly customise Lab GCs and (ii) sales to third parties purchasing Lab GCs as inputs for analysers[6]. According to the results of the market investigation, pricing and other sales' conditions are similar for both customer groups.

21. Therefore, in light of the above, separate markets are defined for: (i) Lab GCs; (ii) analysers; and (iii) Micro/portable GC instruments.

Software

22. The output of an analytical instrument generally reaches the user through an attached computer data system which allows the user to view and manage the output. In many cases is also important that the user is able to retain and archive that output.

23. The notifying party submits that GC software is commonly sold separately from the instrument itself [5-10]%. Both instrument manufacturers and third party vendors provide similar software systems. Customers can choose between two major types of software to operate their instrument, namely: single instrument, single user GC systems (which are optimised for a single user operating a single GC)[7]; and multiple instrument, multiple user software (which allows simultaneous operation of multiple GCs by multiple operators)[8].

24. During the Commission's market investigation, the vast majority of the respondents have confirmed that software is generally integrated and supplied by the same manufacturer of the GC instrument. The vast majority of respondents have also confirmed that they usually purchase the software together with the instrument. Therefore, it is not appropriate to distinguish a product market for GC software which is distinct from the instrument market.

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6 […].

7 Typical cost of single user software is […].

8 Typical cost of a GC multi-system license for 5 users and 5 instruments is […].

Even assuming that such distinct market existed, the GC instrument supplier share in relation to software would not deviate significantly from the GC instrument share.

Consumables

25. Consumables are products which are necessary to operate analytical instruments, which have a limited lifetime (generally less than one year) and are user-replaceable. Both Agilent and Varian are active in the manufacture and sale of consumables for GC instruments.

26. The notifying party submits that consumables used in relation to GC instruments including Lab GC, Analysers and Micro/portable GC fall into the following main categories: (i) gas management supplies (these supplies allow flow control, pressure regulation and purification of gases supplied to the instrument); (ii) columns and related products (GC columns are used to separate the mixture introduced into the GC system into its individual components prior to detection and quantification); (iii) samples introduction supplies (used to introduce and volatilise a sample); (iv) detector supplies (used to identify and quantify the sample); (v) samples vials/containers (used to contain the sample and solvent prior to introduction into the instrument); and (vi) chemical standard supplies (used for calibration of the instrument).

27. According to the notifying party, customers normally source their consumables from third party suppliers, as well as, or in the alternative, to the instrument manufacturer. Besides manufacturing the product, in many cases, the instrument manufacturer sources it from a third party supplier to re-sell it. The market investigation has confirmed that GC Lab instruments and consumables constitute separate markets as well as the segmentation of consumables submitted by the notifying party. However, for the purposes of this decision, the product market definition as regards consumables used in relation to GC instruments may be left open as the proposed transaction will not give rise to any serious doubts even on the narrow market segmentations used specifically with GC instruments.

(b) High Performance Liquid Chromatography (HPLC)

28. Liquid Chromatography (LC) is a technique involving the separation of soluble chemical compounds in a liquid stream. It differs from GC insofar as it is able to handle non-volatile compounds and thermally unstable molecules.

29. LC technology comes in two forms, which are mainly characterized by the pressure applied to force the liquid stream through the separation device, the chromatographic column. HPLC (High Performance Liquid Chromatography) uses high pressure (several hundred bars), generates very efficient separations and therefore has developed into a standard tool in most analytical laboratories for a variety of different applications. On the other hand LPLC (low pressure liquid chromatography) constitutes a simple methodology, applying only limited pressure to achieve rough separations of chemical and biochemical compounds. It is often used to separate compounds from unwanted sample constituents, for example after a compound has been synthesized or for the analysis of pressure-sensitive biomolecules. The parties' activities do not overlap regarding the LPLC market.

30. It may be possible to sub-segment the HPLC space on the basis of the specific analytical technique of the instruments populating this segment (including, for instance: analytical HPLC, gel permeation/size exclusion HPLC and preparation HPLC). However, the product market definition as regards HPLC instruments may be left open as the proposed transaction will not give rise to any serious doubts in this regard.

(c) Gas Chromatography – Mass Spectrometry (GC-MS)

31. MS is used to identify the chemical composition of a sample on the basis of the mass-to-charge ratio of charged particles. GC-MS instruments combine a GC system with an MS system and are used for the separation and identification of volatile compounds. The critical difference between a GC instrument and a GC-MS instrument is that whereas the former is only suitable for use with known compounds, a GC-MS instrument may be used to identify also unknown compounds. [9]

Instruments

32. There are four existing GC-MS technologies, namely: (i) single quadrupole GC-MS ('single quad GC-MS'); (ii) triple quadrupole ('triple quad GC-MS'); (iii) ion trap GC-MS; and (iv) time of flight ('TOF'). Agilent manufactures and sells single quad and triple quad GC-MS instruments. Varian manufactures and sells single quad, triple quad and ion trap GC-MS instruments. Neither Agilent nor Varian is active in TOF GC-MS instrument space. Therefore, TOF GC-MS instruments are not discussed further in this decision.

33. Single quad GC-MS technology is the most widely used GC-MS technology. It involves passing ions through four rods ('the quadrupole'). By changing the electric field applied, ions of various sizes are permitted to pass through the quadrupole of the detector for detection. Triple quad GC-MS technology also uses the four rod technology described above. However, following passage through the first quadrupole, the ions pass through a collision cell, which breaks them into pieces. These pieces then pass through a further quadrupole. Ion trap GC-MS technology involves the use of a three dimensional electrical field to trap ions which are then ejected selectively for detection. TOF GC-MS technology uses pulses of kinetic energy to push ions towards the detector. The time taken for a particular ion to reach the detector (the time of flight) enables the identification of a particular ion's mass and hence its identity.

34. The notifying party submits that each of these GC-MS technologies is competitively distinct from both a demand side and a supply side perspective and that separate product markets therefore exist for single quad, triple quad, ion trap and TOF GC-MS instruments. The notifying party refers to several factors as the points of distinction between these instruments.

35. In that regard and with respect to the products manufactured by Agilent and Varian, these instruments have very different price points: a single quad GC-MS instrument typically costs EUR 35,000-50,000 whereas an ion trap GC-MS instrument costs EUR 50,000-70,000 and triple quad prices are in the region of EUR 95,000-200,000. Moreover, single quad GC-MS instruments have limited sensitivity in terms of dealing with complex samples (containing a lot of extraneous material) compared to ion trap and especially triple quad instruments. Consequently, they are considered as more robust and reliable for simple matrix-analysis than ion trap or triple quad GC-MS instruments. On the other hand, ion trap and triple quad GC-MS instruments have the ability to undertake multiple iterations of the mass spectrometry testing on a single sample in the same process (MS-MS capability), which greatly enhances identification capabilities. Triple quad GC-MS instruments are mainly used for analysing complex samples containing a lot of constituent parts whereas ion trap GC-MS instruments are mostly used for analysing "cleaner" samples.

36. The market investigation has confirmed that, given these differences in capabilities (and hence end use) of single quad, triple quad, ion trap GC-MS instruments, customers do not

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9 *COMP/M.5264 – Invitrogen/Applied Biosystems*, 11 November 2008, paragraph 61.

view these three types of GC-MS instruments as interchangeable. Moreover, the market investigation has confirmed a lack of supply side substitutability between single quad, triple quad and ion trap GC-MS instruments.

37. Therefore, in light of the above, separate markets are defined for: (i) single quad; (ii) ion trap; (iii) and triple quad GC-MS instruments.

Software

38. As regards software, the notifying party submits that GC-MS instruments use proprietary, closed access system software which is purchased with the instrument (rather than supplied separately).

39. The market investigation has confirmed that the majority of software used for GC-MS instruments is proprietary and is usually integrated in the instrument and supplied by the instrument manufacturer. For the purposes of this decision, it is therefore concluded that no separate market for software for GC-MS instruments has to be identified.

Consumables

40. As regards consumables, the notifying party submits that consumables used specifically with GC-MS instruments[10] fall into the following main categories: (i) tuning samples (used for calibration of the instrument); (ii) ion source supplies (these are parts of the ion source[11] part of a GC-MS instrument); (iii) detector supplies (used to identify and quantify the sample once separated); and (iv) vacuum consumables (these consumables are parts of the vacuum pump part of a GC-MS instrument). The market investigation has confirmed the segmentation of consumables used specifically with GC-MS instruments in the manner proposed by the notifying party. However, for the purposes of this decision, the product market definition as regards consumables used in relation to GC-MS instruments may be left open, since the proposed transaction will not give rise to any serious doubts even on the narrow market segmentations of consumables used specifically with GC-MS instruments.

(d) Liquid Chromatography – Mass Spectrometry (LC-MS)

41. LC-MS instruments combine an LC system with an MS system in order to perform detailed qualitative analysis on non-volatile compounds and thermally unstable molecules.

42. It may be possible to sub-segment the LC-MS space on the basis of the specific analytical technique of the instruments populating this segment, including, single quad, tandem (Triple quad and ion trap) and time of flight LC-MS instruments. From the information submitted by the notifying party it appears that the proposed transaction will give rise to an affected market only in relation to the parties' single quad LC-MS instrument activities. However, the product market definition as regards LC-MS instruments may be left open as the proposed transaction will not give rise to any serious doubts in this regard.

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10 The majority of consumables used in relation to GC-MS instruments are related to the GC part of the system.

11 The ion source is the part of the GC-MS instrument where samples are ionized into a form that can be analysed by the MS filter/detector.

(e) Inductively Coupled Plasma - Mass Spectrometry (ICP-MS)

43. ICP-MS form part of the Atomic Spectroscopy segment. Atomic spectroscopy allows the user to determine the *atomic* composition of a sample, i.e. to determine which elements from the periodic table[12] are present in the substance to be analysed. This differs from MS which permits the user to determine which *molecular* compounds are present in a sample. Within the atomic spectroscopy sector, it is possible to identify the following different sub-segments for instruments which are based on different technologies: (i) the inductively coupled plasma-mass spectrometry ('ICP-MS') technique, (ii) atomic absorbance ('AA'), and (iii) inductively coupled plasma-organic elemental analysis ('ICP-OES'). While Agilent has no presence in the AA and ICP-OES segments, there is a significant horizontal overlap of the parties' activities in the ICP-MS segment.

Instruments

44. ICP-MS instruments combine two technologies, namely inductively coupled plasma technology and mass spectrometry technology[13]. These instruments are used for the analysis of *inorganic* materials. While all instruments based on the three above-mentioned techniques are capable of analysing most elements on the periodic table, the notifying party submits that ICP-MS instruments would fall into a separate segment from AA and ICP-OES instruments.

45. Respondents to the Commission's market investigation have unanimously confirmed that ICP-MS is not substitutable with the instruments based on AA and ICP-OES. Main factors of distinction are sensitivity, capabilities and price, ICP-MS being the most sensitive and the most expensive of these three techniques.

46. Within the ICP-MS segment, there are instruments outside the mainstream space which are non-quadrupole products. These high-end instruments use high resolution magnetic sector technology or time of flight technology. The market investigation has shown that these high-end non-quadrupole instruments are not substitutable with quadrupole ICP-MS products, since they are significantly more sensitive and hence used in particular in research and not in routine applications and since their price is significantly higher. Neither Agilent nor Varian is active in this non-quadrupole ICP-MS instrument space. Therefore, non-quadrupole ICP-MS instruments are not discussed further in this decision.

47. In light of the above, a separate market is defined for quadrupole ICP-MS instruments.

Software

48. With regard to ICP-MS system software, the notifying party submits that suppliers' market shares in relation to software follow their ICP-MS instruments shares given that ICP-MS software are usually purchased with the instruments. The market investigation has confirmed that ICP-MS instruments use proprietary, integrated system software which is purchased together

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[12] The periodic table of the chemical elements (or Mendeleev's table) is a tabular display of the chemical elements. A chemical element is a chemical substance consisting of one type of atom with a number of protons in its nucleus.

[13] The mass spectrometer used in an ICP-MS system is not the same as that used in a GC-MS system.

with the instrument. For the purposes of this decision, it is therefore concluded that no separate market for software for ICP-MS instruments may be identified.

Consumables

49. As regards consumables, the notifying party submits that ICP-MS consumables fall within the following maim categories: (i) gas management supplies (these supplies allow flow control, pressure regulation and purification of gases supplied to the instrument); (ii) detector supplies (used to identify and quantify the sample once ionised and separated); (iii) samples introduction supplies (used to introduce a sample for analysis); (iv) samples vials/containers (used to contain the sample and solvent prior to introduction into the instrument); and (v) chemical standard supplies (used for calibration of the instrument).

50. The market investigation has confirmed the segmentation of consumables used specifically with ICP-MS instruments in the manner proposed by the notifying party. However, for the purposes of this decision, the further product market definition as regards consumables used in relation to ICP-MS instruments may be left open, since the proposed transaction will not give rise to any serious doubts even on the basis of the narrow market segmentations of consumables used specifically with ICP-MS instruments.

C. Relevant geographic markets

51. The notifying party submits that the geographic scope in respect of the product markets mentioned above is global, or at least EEA-wide since: (i) the parties both manufacture all relevant products from a single site (save in rare cases), and ship from those sites to regional distribution hubs around the world; (ii) transport costs are low as a proportion of total cost of the instrument (up to […] of the cost of the instrument); (iii) limited regulatory differences apply with respect to the sale of these products between regions of the world; (iv) no technical differences exist between products shipped anywhere in the world; (v) all major manufacturers are present in every geography. In addition, the parties submit to support an EEA-wide market definition that: (i) market positions of competitors are similar throughout the EEA; (ii) prices do not vary significantly between Member States; and (iii) there do not seem to be any barriers to enter a national market in terms of language, distribution or regulatory regimes.

52. The market investigation did not confirm the view of the parties that the geographic scope of the product markets mentioned above is worldwide. Indeed, there is evidence from the market investigation that the competitive conditions are not homogenous between the EEA and the rest of the world. First, most of the customers having responded to the market investigation indicated a preference towards vendor proximity for instrument after sales services and training purposes. Only few customers on the different product markets have indicated within the market investigation that they would be willing to source on global basis if necessary, whereas the majority of customers would stick to suppliers in the EEA.

53. Second, although the parties and their competitors manufacture from a single site, they also operate regional distribution hubs[14] and have subsidiaries in the EEA to sell the products and provide after sales and training services. Third, different pricing lists and to some extent

[14] All Agilent systems distributed to European customers are distributed from a hub in Germany.

marketing strategies appear to exist for, in particular, the EEA and the USA. Fourth, there are differences regarding the market presence of some competitors: for example on the ICP-MS market, Shimadzu only has a significant business in Asia, its home market.

54. Within the EEA, whilst most customers have indicated a preference for vendor proximity for instrument after sales services and training purposes, the market investigation has confirmed that the main instrument and consumables providers on the different product markets are present in the various EEA states either directly or indirectly via distributors. Customers explained that while they might prefer suppliers which are located in their own country, they generally see no problems in procuring from suppliers on an EEA level should this be necessary.

55. The market investigation has also confirmed that no significant differences in price and market shares of the main players for instruments and consumables exist between EEA states. Since the main players are present in the different countries, the same competitive forces and constraints exist throughout the EEA.

56. Therefore, it is concluded that the geographic scope of the (i) Lab GC instruments; (ii) Analysers; (iii) Micro/portable GC instruments; (iv) triple quad GC-MS instruments; (v) single quad GC-MS instruments; (vi) ICP-MS instruments; and (vii) the hypothetical markets for GC, GC-MS and ICP-MS consumables are EEA-wide in scope.

57. Given the small overlaps which will result from the transaction with regard to HPLC and LC-MS spaces under any plausible alternative market delineation, it can be left open whether these segments are EEA-wide or global.

V. COMPETITIVE ASSESSMENT

(a) Horizontal overlap: Lab GCs

Market share

58. Agilent is the historic market leader in the EEA for Lab GCs. According to the notifying party estimates as shown in table 1 below, in 2008 the merged entity will hold a combined market share of [40-50]% in value terms with a significant increment of [5-10]%, while in volume terms it would hold a combined market share of [30-40]% with an increment of [5-10]%. The market share of the main market participants appear to have been relatively stable over the period 2006-2008. The combined entity will have an appreciably larger market share than the next competitor post-merger.

Table 1: Lab GC market shares in the EEA (in %)

	2007		2008	
	Value	**Volume**	**Value**	**Volume**
Agilent	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Varian	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***

Shimadzu	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Thermo	[10-20]%	[5-10]%	[10-20]%	[5-10]%
Perkin Elmer	[10-20]%	[5-10]%	[10-20]%	[5-10]%
Others	[10-20]%	[30-40]%	[10-20]%	[30-40]%

Source: Form CO p.55 and Second SDI Report[15] p.2.

59. The market investigation has sought to reconstruct the market shares of the main players in the Lab GC market[16]. This market reconstruction has revealed significantly higher estimates for the combined market share of the merged entity (approximately [60-70]% in value and [50-60]% in volume for 2008). According to the market reconstruction, the combined entity post-merger would be by far the biggest player with the other remaining competitors, Shimadzu, Thermo and Perkin Elmer having much smaller market shares both in terms of revenue and volume.

60. The notifying party despite the appreciable combined market share of the merged entity achieved as a result of the proposed transaction submits that no serious doubts will arise in the Lab GC market since (i) GC technology has become a commoditised and mature technology; (ii) Intellectual property ('IP') rights, regulation and the need to set up a distribution network do not pose significant barriers to entry; (iii) recent new entry trend by smaller low cost manufacturers and that this trend is likely to continue; (iv) barriers to switching for customers are very low given the simplicity and familiarity of GC technology; and (v) customers are generally able to exercise material purchasing power.

61. During the Commission's market investigation, the majority of competitors and a significant number of customers (both end-consumers and value-added resellers) expressed concerns that the merged entity would have the capacity to increase prices post-merger. The following factors are relevant in this respect.

62. With regard to actual competition, the market investigation has confirmed that the majority of the customers consider Agilent and Varian to be close competitors in the supply of Lab GC, in particular as participants perceive them to provide instruments with comparable functionalities and that compete in similar application areas. The market investigation has also revealed that Agilent and Varian tend to participate in parallel in open tenders for the supply of Lab GC. The majority of the customers have, in the past, considered the other supplier when purchasing a Lab GC instrument. Varian's transaction level database submitted by the parties showed that Agilent appeared as the most frequently identified competitor in those cases in which Varian finally won a sale.

63. In addition, the market investigation has highlighted that Varian seems to be historically the first undertaking to have started applying a very vigorous discount policy. Some respondents to the market investigation submitted that the merger would thus remove a significant constraint on pricing in the Lab GC market.

64. With regard to potential competition, the market investigation has revealed that although the technology involved in Lab GC has already been available for a relative long period of time,

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15 A report prepared by SDI for the notifying party and dated 30 September 2009.

16 The market reconstruction employed the conservative assumption made in the SDI report of attributing 10% additional in value and 30% in volume to account for other Lab GC manufacturers, although the responses gathered in the market investigation did not find strong support for this assumption.

no significant entry in the market has occurred in the last three years and that the main players in Lab GCs tend to maintain their relative market shares over time.

65. The market investigation has also shown that entry of new competitors is unlikely in the foreseeable future due to existence of appreciable barriers to entry in the Lab GC market. In particular, a majority of customers have identified the costs associated with the development and mass production of Lab GC as obstacles to entry. Some respondents have also indicated IP rights, implied R&D expenses and costs associated with the developing and marketing of new technology as further barriers to entry in this market. The results of the market investigation suggest that reputation and brand recognition also play a relevant role in the Lab GC market directly influencing customers' purchases. In this respect, the responses gathered in the market investigation show that customers perceive Agilent and Varian as solid brands exhibiting a strong reputation and customer loyalty in the market.

66. The market investigation revealed that the installed base (i.e. the instruments already being used at the customers' site) is a determinant factor with regards to potential switching. In fact, Lab GCs can be operated in parallel within a laboratory environment or within the same company at different sites. As a result, Lab GCs are subject to learning effects, given that the benefit of each Lab GC instrument to a particular customer increases the more Lab GC instruments of the same brand are purchased. Sticking to just one Lab GC brand has advantages for customers in terms of training, accumulated know how, documentation, software connectivity.

67. In this context, repetitive customers normally stick to one vendor because of the large costs associated to switching and the learning effects mentioned above. Factors such as accumulated know how, service relation with vendors, maintenance of spare parts, required training associated to the use of the instrument make switching highly unlikely. Moreover, given the relevance of obtaining precise measurements, customers show preference for proven products. Accordingly, it is reasonable to conclude that by benefiting post-merger from a very large combined installed base, the combined entity would benefit from a 'lock-in effect' which would make it hard for the other players to reposition in the market and effectively compete with the merged entity.

68. Moreover, the result of the market investigation suggests that in most of the cases the instrument manufacturer is the supplier of the after-sales services of the Lab GC instrument. This factor contributes to strengthen the potential market power achieved through the installed base.

69. In light of the above, it is concluded that the proposed transaction raises serious doubts as to its compatibility with the common market with regard to the EEA market for Lab GCs.

(b) Horizontal overlap: Micro/portable GCs

70. The Micro/portable GC market in the EEA is led by Agilent and Varian. As indicated in table 2 below, the proposed transaction will result in the combined entity holding particularly large market shares for Micro/portable GCs. Varian is the market leader in Micro/portable GCs in the EEA and already enjoys significantly high market shares. The notifying party

estimates that as a result of the proposed transaction, the market share of the combined entity would be of [80-90]% in value and [80-90]% in volume. The market shares of the merging parties appear to have been relatively stable over the period 2006-2008.

Table 2: Micro/portable GC market shares in the EEA (in %)

	2007		2008	
	Value	**Volume**	**Value**	**Volume**
Agilent	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Varian	[50-60]%	[50-60]%	[50-60]%	[50-60]%
Combined	***[80-90]%***	***[80-90]%***	***[80-90]%***	***[80-90]%***
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Source: Second SDI Report, page 5.

71. The significantly high market shares to be achieved by the merged entity may in themselves be taken as evidence of the existence of a dominant position on the EEA market for Micro/portable GCs.[17] With such a strong position on the market the merged entity will have the capacity to increase prices post-merger as there would be practically no competition left post-merger in the EEA Micro/portable GC market.

72. In addition to the above mentioned very high market shares, other factors contribute to reinforce the competition concerns arising from the transaction in Micro/portable GC.

73. The market investigation has revealed that a significant number of customers and competitors have a negative perception about the impact of the merger on Micro/portable GCs. The responses obtained highlight that there is already not much competition in Micro/portable GCs and that this limited competition will disappear post-merger given that the market leader is taking over its main competitor.

74. The evidence gathered in the market investigation suggests that the remaining players would not be able to reposition since there are large customers' costs associated to switching, including costs in terms of users' training, adaptation of the production line workflow and rebuilding up the stock of spare parts. Furthermore, the market investigation has revealed that brand recognition, software requirements and installed base effects exert a negative effect on switching for Micro/portable GC customers.

75. The market investigation has revealed large barriers to entry in the EEA Micro/portable GC market. These barriers are linked to the development of required miniaturization technology and to the setting up of a dedicated specialized sales force for Micro/portable GCs. The substantial sunk costs associated with entry in Micro/portable GC reduce the likelihood of entry in the market.

76. For the above mentioned reasons, it is concluded that the transaction raises serious doubts as to its compatibility with the common market in relation to the EEA market for Micro/portable GCs.

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[17] See paragraph 17 of the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, p. 5-18 (***'Horizontal Guidelines'***).

(c) Horizontal overlap: GC consumables

77. As regards the overall market for GC consumables, according to the notifying party estimate, Agilent had a market share of [10-20]% and Varian of [0-5]% ([20-30]%) in 2008. The proposed transaction will therefore lead to a small increment in market share on the markets for consumables used in relation to GC instruments. Moreover, a number of other players (including Sigma Aldrich, Thermo, Merck, Grace, Restek, Shimadzu and Perkin Elmer) sell consumables used in relation to GC instruments in the EEA and may be expected to continue to exercise a competitive constraint on the merged entity.

78. As regards the narrower segmentations of a GC consumables market (the proposed transaction will lead to combined EEA market shares above [10-20]% only in relation to GC columns (Agilent [10-20]%, Varian [20-30]%, combined [30-40]%). The parties have not been in a position to provide market shares of the main other players (Sigma Aldrich, Restek, Phenomenex, Thermo Fisher, SGE and Perkin Elmer) but it transpired from the market investigation that these vendors are present on an EEA market for GC consumables and may be expected to continue to exercise a competitive constraint on the merged entity. Furthermore, the market investigation provided indications that the GC columns from a specific GC manufacturer can be used in the GCs from a different manufacturer, although it may involve the revalidation of the employed analytical method. In addition, as regards the supply of GC columns, customers did not raise any specific competition concerns which would result from the transaction.

79. In light of the above, it is concluded that the proposed transaction will not raise serious doubts as to its compatibility with the common market in relation to GC consumables in the EEA.

(d) Vertical link: Lab GCs (upstream) and Analysers (downstream)

80. Besides its sales of Lab GCs to end customers, Agilent sells Lab GCs as inputs for analysers to nine Analyser Value Added Resellers ('Analyser VARs'). Analyser VARs add features to a standard Lab GC, and then resell it as an analyser as well as offering related services. Varian does not sell Lab GCs as inputs for analysers. Currently, Varian constitutes an integrated undertaking, insofar as it is present both upstream in the Lab GC market and downstream in the Analysers market, whilst Agilent is only present in the upstream Lab GC market. Table 3 below indicates the notifying party's estimate of market shares for Varian and its main competitors on the EEA analyser market.

Table 3: Analysers market share in the EEA (in %). Value terms. 2008

Varian	PAC	Perkin Elmer	Thermo	Shimadzu	Others
[10-20]%	[40-50]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%

Source: Notifying party's best estimate, Form CO, page 93.

81. As indicated in Table 1 above, on the upstream market, the proposed transaction will result in the combined entity holding market shares of [40-50]% and [30-40]% in terms of value and

volume respectively. Other main Lab GCs suppliers such as Perkin Elmer, Shimadzu and Thermo are all vertically integrated insofar as they manufacture both Lab GCs and analysers.

82. The notifying party submits that the proposed transaction will not result in a risk of input foreclosure with respect to sales of Lab GCs to VARs. In this regard, the notifying party submits that: (i) sales of Lab GCs to Analyser VARs are carried out by virtue of contracts of a short duration ([…]); (ii) other Analyser VARs active on the market besides those currently supplied by Agilent, use Lab GCs supplied by other Lab GC manufacturers; (iii) Analyser VARs could easily switch between suppliers; and (iv) VARs also sell other Agilent products […]. The notifying party also submits that the proposed transaction will not result in a risk of price increase of Varian's Analysers since Varian faces strong competition on the Analyser market and a segment of end- customers has in-house customisation capability.

83. In the market investigation, Analyser's customers have signalled that the underlying Lab GC is the key component for an Analyser, and the Analyser's quality is determined by the quality of the Lab GC. The market investigation revealed that end-customer's source Analysers both from vertically integrated suppliers and from VARs. Most of the Analyser VARs have indicated that they do not consider that the strong presence of Agilent in the Lab GC market and of Varian in the Analyser market could post-merger affect their access to Lab GCs. Indeed, it appears that for a Lab GC manufacturer it is quite important from a business perspective to have a stable supplier relationship with VARs (known as a "channel partner" relationship) because VARs, contrary to end-customers, purchase a large number of instruments and engage in promoting the Original Equipment Manufacturer ('OEM') brand in markets in which the OEM may not be directly present.

84. Even assuming that Agilent would try to impose unsustainable trading conditions to its current VARs and engage in input foreclosure type of behaviour, the other remaining Lab GC suppliers would certainly have the capacity to alternatively supply the VARs given that they are already present in this market at a global scale. In addition, they would also have the incentive to secure such important business relationships and enhance their position in the Lab GC market. Therefore it does not appear that the combined entity would have the required incentives to foreclose access to inputs for VARs.

85. As regards customer foreclosure, the proposed transaction will not result in the integration of an important customer downstream, since Varian is already vertically integrated and self-supplies Lab GCs for the production of analysers. Upstream rivals will continue to have access to the same customer base post-merger. Moreover, Varian's market share in relation to analysers in the EEA is not significant. Therefore, the proposed transaction will not result in any customer foreclosure concerns.

86. Consequently, it is concluded that the vertical link between Lab GCs and Analysers does not lead to serious doubts as regards to its compatibility with the common market. In any event, given that serious doubts have been identified regarding the Lab GC market and remedies have been offered by the parties with the aim of maintaining the pre-merger competitive situation, this proposed solution will also eliminate any new vertical link that may arise as a result of this transaction.

(e) Horizontal overlap: HPLC

87. Both Agilent and Varian are present in the HPLC space and their product activities in this regard overlap in relation to systems based on the following techniques: (i) analytical HPLC;

(ii) gel permeation / size exclusion HPLC ('GPC/SEC'); and (ii) preparation HPLC ('Prep HPLC').

88. According to the information submitted by the notifying party, Agilent held a worldwide market share of [10-20]% in 2008 in relation to HPLC instruments, whilst Varian's worldwide market share was only [0-5]% in the same year. The notifying party submits that Agilent and Varian's market shares in the EEA are not materially different from their worldwide shares. Similarly, as regards those possible sub-segments of the HPLC space where the proposed transaction will lead to horizontal overlaps, Agilent appears to be only a minor player worldwide in relation to the GPC/SEC and Prep HPLC sub-segments, whilst Varian appears to be only a minor player worldwide in relation to the analytical HPLC sub-segment.[18] Moreover, a number of competitors such as Waters, Shimadzu, Dionex and Thermo are active in the HPLC space and these market players might be expected to continue to exercise a competitive constraint on the merged entity.

89. In light of the above, it is concluded that the proposed transaction will not raise serious doubts as to its compatibility with the common market in relation to HPLC instruments.

(f) Horizontal overlap: triple quad GC-MS

90. The table below indicates SDI's market share estimates for Varian and its main competitors in relation to the EEA triple quad GC-MS market. Agilent entered the EEA triple quad GC-MS instrument market in 2008. The notifying party submits that no independent comprehensive data has been published since Agilent's entry into the market and therefore the market share data indicated in table 4 below does not include Agilent's market share.

Table 4: EEA triple quad GC-MS instrument market shares Value terms 2007 and 2008

		Varian	Thermo	Waters	Others
2008	**Volume**	**[50-60]%**	[20-30]%	[10-20]%	[5-10]%
	Value	**[50-60]%**	[20-30]%	[10-20]%	[0-5]%
2007	**Volume**	**[60-70]%**	[10-20]%	[10-20]%	[5-10]%
	Value	**[50-60]%**	[10-20]%	[10-20]%	[0-5]%

Source: Second SDI Report, page 6.

91. The notifying party submits that the triple quad GC-MS instrument market is a highly competitive one and that Agilent and Varian are not each others' closest competitors on this market. Moreover, the notifying party submits that Thermo and Waters will continue to offer strong competition to the merged entity following the proposed transaction and that there is a strong prospect for further entry in this market.

92. The proposed transaction will effectively eliminate competition brought by the very recent entry of Agilent. In 2008 Varian, on its own, already held very large market shares of [50-60]% and [50-60]% by volume and value respectively on the EEA triple quad GC-MS instrument market, whereas its next two competitors held significantly smaller market shares. Agilent launched its triple quad GC-MS instrument in June 2008 and started generating its first

[18] SDI Report, pages 61 and 62.

meaningful revenues in this regard in 2009. The market investigation has sought to reconstruct the market shares of the main players in the EEA triple quad GC-MS market. This market reconstruction has revealed lower 2008 market shares for Varian (approximately [40-50]% by volume and approximately [30-40]% by value). There are a number of additional elements indicating that the proposed transaction is likely to raise serious doubts regarding its impact on effective competition by removing a player having brought significant competitive constraint.

93. Agilent's triple quad GC-MS system is the very first such system on the market which has been designed from the ground up as a GC-MS system, rather than being adapted from an LC-MS platform, and therefore purpose-designed for optimal GC-MS capability.[19] Agilent has explained in the notification that its triple quad GC-MS achieves very reliable performances due to an inlet technology which is much better at removing unwanted molecules. Moreover, the collision cell incorporated in Agilent's instruments optimises the accuracy and reliability of results[20]. These technological features combine to make the Agilent system a very reliable and robust instrument.

94. Having launched its triple quad GC-MS instrument in June 2008, Agilent's EEA market share in 2008 was almost inexistent. However, given the high capabilities of its product, Agilent has swiftly gained significant influence on the competitive process in the EEA triple quad GC-MS market in 2009[21] with an estimated market share of [50-60]% in value terms, which shows that its entry has been extremely successful.[22]

95. Indeed, Agilent is seen as having developed a very reliable technology that is welcome by customers and constitutes an immediate competitive force in the market. In this regard, the market investigation has confirmed that, although a recent entrant, Agilent is already considered to exert considerable competitive pressure in the market. Indeed, a significant amount of customers consider that the proposed transaction will have a negative impact on the GC-MS space due to a risk of price increase and decreased innovation. Market participants have indicated that Thermo and Waters would not be in a position to reposition themselves to compensate for this loss of competition and they are therefore similarly concerned that the transaction will result in a limitation of customers' choice.

96. The market investigation has also confirmed that the majority of customers view Agilent and Varian's respective triple quad GC-MS instrument offerings as direct substitutes and that both companies compete directly on the EEA triple quad GC-MS instrument market.

97. Given its strong leading position in the Lab GC market and its significant market presence in neighbouring product areas such as single quad GC-MS and single quad LC-MS and its successful entry in the triple quadrupole LC-MS space[23], Agilent was the main potential

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19 SDI Report, page 175.

20 Form CO, pages 138-139

21 The notifying party estimates that Agilent generated EUR […] worth of revenue worldwide from sales of triple quad GC-MS instruments.

22 Source: Second SDI report, page 5 and notifying party's estimates of Agilent's worldwide sales for triple quad GC-MS instruments (see footnote 20 above).

23 Agilent's entry in this space has been described by SDI (SDI Report, page 170) as proving to be "*wildly successful*".

candidate for entry into the triple quad GC-MS market. Indeed, Agilent has been the only recent entrant into the EEA triple quad GC-MS market.[24].

98. Although some customers have, in the past, switched GC-MS instrument supplier, revalidation of systems and methodologies, re-training and consumables re-stocking are nonetheless important barriers to switching for customers. Yet, Agilent is viewed by the vast majority of customers as being amongst the best three suppliers for GC-MS instruments in terms of quality, specifications, services/training and price. Therefore, these attributes in combination with its reputation and the reliability of the instrument are serving to enable Agilent to overcome this barrier to successful entry and expansion in the EEA triple quad GC-MS instrument market.

99. Nevertheless, the triple quad GC-MS sub-segment is growing significantly[25] and one could expect that companies active in other GC-MS instrument markets or Lab GC markets might enter the EEA market triple quad GC-MS market. However, for likely entry to be considered as a sufficient competitive constraint on the merging parties, it must be timely and sufficient to deter or defeat any potential anti-competitive effects of the proposed transaction.[26] The market investigation did not show that any potential entry into the EEA triple quad GC-MS market would be timely and sufficient to deter or defeat the potential anti-competitive effects of the proposed transaction.

100. In light of the above, it may be concluded that the proposed transaction is likely to lead to the elimination of an important competitive force on the EEA triple quad GC-MS instrument market[27] and therefore the proposed transaction raises serious doubts with regard to the EEA triple quad GC-MS instruments market.

(g) Horizontal overlap: Single quad GC-MS

101. As regards the EEA single-quad GC-MS market, Agilent held market shares of [60-70]% and [60-70]% by value and volume respectively in 2008. Although it has been present on the single quad GC-MS instrument market for many years[28], Varian has not been able to achieve a significant market share. In fact, it is only a very minor player in this EEA market with a

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24 SDI Report, page 175.

25 SDI estimates an annual worldwide growth rate of 22.4% between 2007 and 2012 for the triple quad GC-MS sub-segment (SDI Report, page 172).

26 See paragraphs 68-75 of the Commission's Horizontal Guidelines.

27 See paragraphs 37 and 38 of the Commission's Horizontal Guidelines.

28 SDI Report, page 181.

market share below [0-5]% in 2008.[29] Accordingly, the proposed transaction will result in only a very minimal increment in market share for the combined entity.

102. Other market players such as Shimadzu ([10-20]%), Thermo ([10-20]%) and Perkin Elmer ([5-10]%) hold more significant shares in the EEA single-quad GC-MS market than Varian. Consequently, there are a significant number of vendors which exert a stronger competitive constraint on the market leader Agilent. Furthermore, the Commission's market investigation has not revealed any customer concerns in relation to the EEA single quad GC-MS instrument market.

103. Therefore, it is concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market in relation to the EEA single quad GC-MS market.

(h) Horizontal overlap: GC-MS consumables

104. As regards GC-MS consumables, the proposed transaction will lead to a small increment in market share on a market for all consumables used in relation to GC-MS instruments (Agilent: [20-30]%; Varian: [0-5]%; combined: [20-30]%)[30]. Moreover, a number of other players (including Sigma Aldrich, Thermo and Merck) are present on an EEA market for all consumables used in relation to GC-MS instruments and may be expected to continue to exercise a competitive constraint on the merged entity.

105. As regards the narrower segmentations of a GC-MS consumables market the proposed transaction will lead to combined EEA market shares [10-20]% only in relation to GC-MS detector supplies (Agilent: [10-20]%; Varian: [0-5]%, combined [10-20]%)[31] and ion source supplies (Agilent: [10-20]%; Varian: below [0-5]%, combined below [20-30]%).[32] Yet, the combined EEA market shares for the merged entity will remain below [20-30]% in relation to these two categories of consumables**.**

106. Neither Agilent nor Varian manufactures GC-MS detector supplies; they merely purchase and resell a small number of detector supplies. Moreover, a number of other players (including Shimadzu, Thermo and Perkin Elmer) are present on an EEA market for detector supplies and may be expected to continue to exercise a competitive constraint on the merged entity. Similarly, Varian does not manufacture any ion source supplies but sells filaments and a small number of other consumables in this category. Agilent sells a number of ion source supplies. Moreover, numerous market players (including Shimadzu, SGE and Thermo) are present on an EEA market for ion source supplies and may be expected to continue to exercise

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29 Varian's market share is captured in the category titled *"others"* in the table containing the notifying party's estimates of market shares for market players active in the EEA market for single quad GC-MS instruments (Form CO, page 133). This *"others"* category covers also a number of other market players besides Varian, including JEOL and Alpha Moss. This effectively means that Varian's market share is in reality smaller than [0-5]%.

30 Third SDI Report, page 5.

31 Form CO, page 150.

32 Form CO, page 150.

a competitive constraint on the merged entity. Furthermore, the market investigation did not reveal any significant concerns in relation to detector supplies and ion source supplies.

107. In light of the above, it is concluded that the proposed transaction will not raise serious doubts as to its compatibility with the common market in relation to GC-MS consumables in the EEA.

(i) Horizontal overlap: LC-MS

108. Both Agilent and Varian are present in the LC-MS space and their product activities in this regard overlap in relation to instruments based on the single quad LC-MS technique.

109. Agilent appears to have held a worldwide market share of [10-20]% in 2007 in relation to LC-MS instruments, whilst Varian's worldwide market share in this regard was only [0-5]% in the same year.[33] As regards the possible single quad LC-MS sub-segment of the LC-MS space, the only sub-segment where the parties' activities overlap, Agilent appears to have held a worldwide market share of [30-40]% in 2007, whilst according to the notifying party's estimates, Varian held a worldwide market share of only [0-5]% in the same year.[34] The notifying party submits that Agilent and Varian's shares in the EEA are not materially different. Therefore, the increment in market share which will result from the proposed transaction will be insignificant both in relation to the LC-MS space in general and, more specifically, as regards single quad LC-MS space. Moreover, a number of competitors are present on the possible single quad sub-segment and might be expected to continue to exercise a competitive constraint on the merged entity post-merger.

110. In light of the above, it is concluded that the proposed transaction will not raise serious doubts as to its compatibility with the common market in relation to LC-MS instruments.

(j) Horizontal overlap: quadrupole ICP-MS

111. The notifying party estimates that the merged entity will hold a combined market share of [40-50]% in terms of volume and of [30-40]% in terms of value, as indicated in table 5 below. According to the Commission's market reconstruction, the combined entity would have a higher market share in the EEA market for quadrupole ICP-MS (approximately [50-60]% in terms of volume and [60-70]% in terms of value in 2008).

Table 5: Quadrupole ICP-MS market shares (in %) in the EEA in 2008 according to SDI study

	2008	
	Volume	**Value**
Agilent	[20-30]%	[20-30]%
Varian	[10-20]%	[10-20]%
Combined	**[40-50]%**	**[30-40]%**

33 SDI Report, pages 159, 164 and 165.

34 Form CO, Annex 6.1.2.

Thermo	[20-30]%	[30-40]%
Perkin Elmer	[20-30]%	[10-20]%
Others	[5-10]%	[5-10]%

Source: Fourth SDI study, pages 4 and 5

112. On the EEA quadrupole ICP-MS instrument market, the merger would thus lead to a reduction of the number of players active from four to three. The merged entity would have a market share which is higher than those of its remaining rivals Thermo and Perkin Elmer.

113. Despite some technological differences between the instruments offered by Agilent and Varian, a vast majority of respondents to the Commission's market investigation considered Agilent's and Varian's offerings as being in direct competition with each other and as potential alternatives in tenders. Some of these respondents have provided tender data showing that Agilent and Varian compete in general for the same tenders, despite existing differences in ICP technology between these two vendors.

114. Agilent's products are in general perceived as more expensive due to their high capabilities and performance. For example, Agilent is considered by most of the respondents as the best supplier in terms of specifications and service/training. On the other hand, with regard to pricing, most of the respondents on the customer side consider Thermo and Varian as particularly competitive, Varian being "leader in pricing" for some respondents. while Perkin Elmer's development in this field so far has been hindered by the limited resources this company allocated to quadrupole ICP-MS . The proposed transaction would therefore be likely to eliminate a market player which is considered by customers as one of the most competitive in the market.

115. With regard to potential competition, the market investigation has shown that repetitive customers normally stick to one vendor because of the large costs involved with switching (accumulated know how, service relation with vendors, maintenance of spare parts stock, training). Therefore, an "installed base" effect also exists on the EEA quadrupole ICP-MS instrument market. Likewise, building a reputation and a track record of reliability in this high-tech market has been identified by customers as a main barrier to entry and explains the significant customer loyalty to incumbent vendors in this already concentrated market.

116. The notifying party submits that new entry into the EEA quadrupole ICP-MS instrument market could be expected. However, the Commission's market investigation has revealed that potential entry is not expected to occur within the next two years and would thus not be timely.[35]

117. In light of the above, the proposed transaction is likely to give rise to significant non-coordinated effects in the EEA market for the supply of quadrupole ICP-MS instruments and would thus raise serious doubts with regard to its compatibility with the common market.

(k) Horizontal overlap: ICP-MS consumables

118. With regard to ICP-MS consumables, the market shares of the merging parties were as follows in the EEA in 2008: (i) gas management supplies: Agilent [10-20]%, Varian [10-20]%, combined [20-30]%; (ii) detector supplies: Agilent [20-30]%, Varian below [0-5]%,

35 See the Commission's Horizontal Merger Guidelines, paragraph 74.

combined below [20-30]%; (iii) samples introduction supplies: Agilent [10-20]%, Varian below [0-5]%, combined below 19%; (iv) samples vials/containers: Agilent [0-5]%, Varian below [0-5]%, combined below [5-10]%. In particular on the gas management supplies market, other players like Thermo and Perkin Elmer are significant forces.

119. In light of the low increments brought by the transaction and of the presence of significant competitors, it is concluded that the proposed transaction will not raise serious doubts as to its compatibility with the common market in relation to ICP-MS consumables in the EEA.

VI. PROPOSED REMEDIES

120. In order to address the serious doubts identified by the Commission, the parties have proposed to divest Agilent's entire global Micro/portable GC business and Varian's entire global Lab GC, triple quad GC-MS and ICP-MS businesses. The parties have committed to divest these four businesses to one or several up-front buyers[36] who will be viable purchasers, independent of and unconnected with the parties and an effective competitor to Agilent/Varian.

a) Lab GCs

121. In order to address the serious doubts identified by the Commission with regard to the EEA Lab GC market, the notifying party has proposed to divest Varian's entire global business located at […] (***'Laboratory GC Divestment Business'***). The Laboratory GC Divestment Business utilizes approximately […] of the instrument production capacity at Varian's […] which relates to the manufacture of analytical instruments.

122. The Lab GC Divestment Business consists of:

(i) all Varian-owned assets used in the design, assembly, manufacture and testing of the laboratory GC instruments;

(ii) the relevant know-how and IP[37] rights linked to the design, assembly, testing and operation of Varian's laboratory GC instruments;

(iii) a licence with a field of use restriction (use only in connection with laboratory instruments) in respect of the software associated with Varian's laboratory GC instruments, Galaxie, and provision of relevant source codes, as well as a license of any relevant upgrades of Galaxie and technical support for a period of […] from closing;

(iv) up to […] employees dedicated to the research and development, assembly, testing, sale and marketing of Varian's laboratory GC instruments;

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36 A binding purchase agreement for the sale of these Divestment businesses has to be concluded with one or several suitable buyers before the merger can be consummated

37 Where this IP is used exclusively in relation to the laboratory GC, ownership will be transferred to the purchaser as part of the divestment. Where the intellectual property is used in relation to the laboratory GC but also in relation to other Varian businesses, the purchaser will be granted an exclusive, royalty-free licence for the appropriate field of use.

(v) transfer of any agreements between Varian and its customers (excluding service contracts) which relate to the Laboratory GC Divestment Business;

(vi) transfer of any agreements between Varian and its distributors which relate exclusively to the Lab GC Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the Lab GC Divestment Business) of any agreement between Varian and its distributors which relates to the Lab GC Divestment Business and also to other Varian businesses. Agilent will not distribute its own Lab GC systems through any distributor that currently distributes Varian's Lab GC system for a time period of […] from Closing;

(vii) transfer of any agreements between Varian and its suppliers which relate exclusively to the Lab GC Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the Lab GC Divestment Business) of any agreement between Varian and its suppliers which relates to the Lab GC Divestment Business and also to other Varian businesses;

(viii) temporary and transitional supply agreements, under which the Laboratory GC Divestment Business will supply, for a transitional period, laboratory GCs to the retained Varian businesses in single quadrupole GC-MS, ion trap GC-MS and Analysers and to the Triple quad divestment businesses (see below); and

(ix) transitional services to assist with the transfer of the Laboratory GC Divestment Business.

b) Micro/portable GCs

123. In order to address the serious doubts identified by the Commission with regard to the EEA Micro/portable GC market, the notifying party has proposed to divest Agilent's entire Micro/portable GC business (***'Micro/portable GC Divestment Business'***).

124. The Micro/portable GC Divestment Business consists of:

(i) all tangible and intangible assets relating to the design, assembly and testing of the Micro/portable GC instruments at Agilent's […];

(ii) licenses of the relevant know-how and IP rights linked to the design, assembly and testing of Agilent's Micro/portable GC unit, with a field of use restriction (for use solely in connection with Micro/portable GC products);

(iii) licenses of Agilent's marketing materials, manuals, source code for embedded Micro/portable GC-specific software and support documents;

(iv) optionally, up to […] employees dedicated to the design, assembly, testing, and marketing of Agilent's Micro/portable GC instruments;

(v) optionally, the benefit of some or all of the distribution agreements (and three Value Added Resellers as sales channel support) with some distributors of Agilent's Micro/portable GC systems; subject to their consent (where required), Agilent will either assign the benefit of the relevant part of the relevant distribution agreements, or, if consent is required but is not given, Agilent will make the necessary arrangements for the continued distribution of the products of the Micro/portable

GC Divestment Business; Agilent also commits that it will not distribute Varian's Micro/portable GC system through any of these distributors or VARs for a […];

(vi) unfilled sales orders relating to the Micro/portable GC Divestment Business and other contracts;

(vii) a supply agreement with […], the only dedicated supplier of Agilent's Micro/portable GC business; as well as a supply agreement whereby Agilent is willing to supply the purchaser with plate manifolds required to assemble the Micro/portable GC products for […]

(viii) a transition Services Agreement relating to other components and services; and

(ix) up […] training on Agilent Micro/portable product specifications and service repair.

c) Triple quad GC-MS

125. In order to address the serious doubts identified by the Commission with regard to the EEA triple quad GC-MS instrument market, the notifying party commits to divest Varian's global triple quad GC-MS business at […] (***'triple quad GC-MS divestment business'***), which accounts for approximately […] of Varian's manufacturing capacity and resources at the […].

126. The triple quad GC-MS divestment business consists of:

(i) all Varian-owned assets used in the design, assembly, manufacture and testing of the triple quad GC-MS (and those components incorporated therein during the manufacturing process) instruments located in Varian's […];

(ii) transfer of the ownership of all know-how and IP rights exclusively linked to the design, assembly, testing and operation of Varian's triple quad GC-MS instruments. Those which are not exclusively used in relation to the triple quad GC-MS Divestment Business will be licensed on a royalty-free basis;

(iii) a licence with a field of use restriction (use only in connection with laboratory instruments) in respect of the proprietary software associated with Varian's triple quad GC-MS instruments, MS Workstation and provision of the relevant source codes;

(iv) […] key personnel and at the purchaser's request, up to a […] employees located within particular business functions within the triple quad GC-MS Divestment Business;

(v) all contracts, commitments and unfilled sales orders and all customers and other records necessary to ensure the viability and competitiveness of the triple quad GC-MS Divestment Business;

(vi) in the same manner as for Lab GCs, transfer of any agreements between Varian and its suppliers which relate to the triple quad GC Divestment Business, including supply by Varian to the Purchaser (at its request) of vacuum rotary and turbo pumps during a transitional period and a supply agreement related to the supply of Lab GCs by Varian to the triple quad GC-MS Divestment Business;

(vii) in the same manner as for Lab GCs, transfer of any agreements between Varian and its distributors which relate to the triple quad GC-MS Divestment Business ; and

(viii) at the request of the purchaser, transitional services pursuant to which the combined entity will offer for a transitional period with the components, know-how and services required for the operation of the triple quad GC-MS Divestment Business.

d) ICP-MS

127. In order to address the serious doubts identified by the Commission with regard to the EEA ICP-MS instrument market, the notifying party proposed to divest Varian's global ICP-MS business at […] ('***ICP-MS divestment business***').

128. The ICP-MS divestment business consists of:

(i) all Varian-owned assets used in the design, assembly, manufacture and testing of the ICP-MS (and those components incorporated therein during the manufacturing process) instruments located in […];

(ii) transfer of the ownership of all know-how and IP rights exclusively linked to the design, assembly, testing and operation of Varian's ICP-MS instruments. Those which are not exclusively used in relation to the ICP-MS Divestment Business will be licensed on a royalty-free basis;

(iii) transfer of the proprietary software associated with Varian's ICP-MS instruments, ICP Expert and provision of relevant source codes;

(iv) all key personnel and personnel dedicated to the research and development, assembly, testing, sale and marketing of Varian's ICP-MS;

(v) all contracts, commitments and unfilled sales orders and all customers and other records necessary to ensure the viability and competitiveness of the ICP-MS Divestment Business;

(vi) in the same manner as for Lab GCs, transfer of any agreements between Varian and its suppliers which relate to the ICP-MS Divestment Business, including supply by Varian to the Purchaser (at its request) of vacuum rotary and turbo pumps during a transitional period;

(vii) in the same manner as for Lab GCs, transfer of any agreements between Varian and its distributors which relate to the ICP-MS Divestment Business; and

(viii) at the request of the purchaser, transitional services pursuant to which the combined entity will offer for a transitional period with the components, know-how and services required for the operation of the ICP-MS Divestment Business.

VII. ASSESSMENT OF THE COMMITMENTS

129. As set out in the Commission Notice on Remedies[38], the Commission assesses the compatibility of a notified concentration with the common market in line with the terms of

[38] Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Official Journal C 267, 22.10.2008, p. 1-27.

the Merger Regulation. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the Parties may undertake to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the transaction approved. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise.

130. As concerns the different types of remedy, the most effective way to maintain effective competition is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestiture by the merging parties. The divested activities must consist of a viable business, which if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and which is divested as a going concern.

131. The Commission has concluded that the proposed remedy package as submitted by the notifying party on 19 January 2010 addresses all serious doubts identified during the course of the procedure and adequately deals with concerns identified by market participants in response to the remedy package. As such, the Commission has concluded that the proposed remedy package is effective in removing the serious doubts brought about by the transaction in the relevant markets.

Suitability for removing the serious doubts

a) Lab GCs

132. The remedy proposed as regards Lab GCs completely eliminates the horizontal overlap at global level between the parties. The remedy will restore the market structure which existed pre-merger. The suitable purchaser of the Lab GC Divestment Business will have an initial EEA market share of [5-10]%.

133. The market test of the remedies provoked in general a positive feedback as to the suitability of the remedy in the Lab GC market to address the serious doubts mentioned above. However, some issues have been raised by respondents to the market test, which have been adequately addressed by the parties in their improved remedy proposal submitted on 19 January 2010.

Up-front buyer

134. The Lab GC Divestment Business is not a stand-alone legal entity but includes several tangible and intangible assets, contracts, licenses agreements belonging to or having been concluded by Varian. Some of these assets are currently shared with other product areas where the Commission did not find serious doubts and which are therefore retained by Agilent such as liquid chromatography and analysers.

135. Thus the Lab GC Divestment Business has necessarily to be carved out from the remaining businesses. In such carve-out operations, it is of utmost importance for the viability of the transferred business that it has access to all inputs and other resources such as R&D, distribution networks and intellectual property rights necessary to carry out its operation in full independence. The Commission can only accept commitments which require the carve-out of a

business if it can be certain that, when the business is transferred to the Purchaser, the risks for the viability and the competitiveness caused by the carve-out will be reduced to a minimum.

136. In this regard, the transfer of agreements between Varian and its customers (including current Varian's distributors), as well as Agilent's commitment not to distribute its own Lab GC systems through any Varian's distributor for a period of […] have been welcomed by respondents as necessary to facilitate access to customers' base and consequently enhance the viability of the Lab GC carved-out assets.

137. During the market test however, several respondents emphasised that the identity of the purchaser plays an important role for the viability of the Lab GC Divestment Business. It was often expressed that such a purchaser should already have an experience and a proven track record in the Lab GC area for reasons of product and service know-how as well as reputation and brand recognition which influence directly customers' purchases. Given the importance of the installed base as a factor enabling a player to appear as a viable competitive force in the market, expertise in Lab GC appears to be necessary for several respondents.

138. Respondents to the market test who have not indicated that an experience in the GC lab area was essential submitted however that the Purchaser needs to have an established sales and service organization in analytical measurement techniques. In that regard, the Purchaser would need to have specific critical capabilities such as a sales, support and service organization that can sell, train and support customers locally throughout the world and an access to the existing market and customers through a variety of products typically found in the same laboratory as lab GCs.

139. In the light of these comments, and of the fact that the access to such inputs and resources which are necessary to operate viably the Lab GC Divestment Business depends to a large extent on the parties finding a purchaser which meets these requirements or at least may ensure that they are met, the parties have put forward an up-front buyer solution. The parties commit to find a purchaser and not to complete the notified transaction until a binding sale and purchase agreement has been entered with the Purchaser and the Commission has approved both the Purchaser and the terms of sale. In order to be approved by the Commission, it is necessary in particular that such a buyer has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force. The sale of the Lab GC Divestment Business to such a buyer prior to the consummation of the proposed transaction would significantly improve the incentives for the parties to find a suitable Purchaser and enable the Commission to conclude, with the requisite degree of certainty, that the implementation of the remedy will be efficient in restoring effective competition in the EEA Lab GC market.

Software issues and access to some components

140. Several respondents to the market test submitted that the Purchaser should have access to the upgrading of the Galaxie software which supports the functioning of the Varian lab GC. This issue has been considered by these respondents as critical for the success of the Lab GC Divestment Business as updated GC lab software is essential to get best performance of the GC hardware. The parties have addressed this issue by granting a license of Galaxie and technical support for a period of […].

141. Likewise, several respondents highlighted during the market test that access to specific GC labs components such as autosamplers and autoinjectors should be ensured during a longer transitional period before the Purchaser is in a position to source these products from independent suppliers. The parties have agreed to provide autosamplers and autoinjectors for

a longer period ([…] instead of […] in the original remedy proposal, extendable by a further […] at the Purchaser's request).

Conclusion on the Lab GC Divestment Business

142. In the light of the above, the Commission considers the Lab GC Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the EEA Lab GC market.

b) Micro/portable GCs

143. The remedy proposed as regards Micro/portable GCs completely eliminates the horizontal overlap at global level between the parties. The remedy will restore the market structure which existed pre-merger. The suitable purchaser of the Micro/portable GC Divestment Business will have an initial EEA market share of [30-40]%.

144. The market test of the remedies provoked in general a positive feedback as to the suitability of the remedy in the Micro/portable GC market to address the serious doubts mentioned above. However, some issues have been raised by respondents to the market test, which have been adequately addressed by the parties in their remedy proposal submitted on 19 January 2010.

Up-front buyer

145. The Micro/portable GC Divestment Business is not a stand-alone legal entity but includes several tangible and intangible assets, contracts, licenses agreements belonging to or having been concluded by Agilent. Some of these assets are currently shared with other product areas where the Commission did not find serious doubts and which are therefore retained by Agilent.

146. Thus the Micro/portable GC Divestment Business has necessarily to be carved out from the remaining businesses. In such carve-out operations, it is of utmost importance for the viability of the transferred business that it has access to all inputs and other resources such as R&D, distribution networks and intellectual property rights necessary to carry out its operation in full independence. The Commission can only accept commitments which require the carve-out of a business if it can be certain that, when the business is transferred to the Purchaser, the risks for the viability and the competitiveness caused by the carve-out will be reduced to a minimum

147. In this regard, the benefit of distribution agreements between Agilent and its distributors (and three Value Added Resellers as sales channel support), as well as Agilent's commitment not to distribute Varian's Micro/portable GC systems through any of these distributors or VARs for a period of […] have been welcomed by respondents as necessary to facilitate access to customers' base and consequently enhance the viability of the Micro/portable GC carved-out assets. Guaranteed access to some key components such as plate manifolds or other flow parts will also ensure continuity of the activity of the Micro/portable GC Divestment Business.

148. During the market test however, several respondents emphasised that the identity of the purchaser plays an important role for the viability of the Micro/portable Divestment Business. It was often expressed that such a purchaser should already have an experience and a proven track record in the Micro/portable area. Previous distribution and sales channel based on distributing portable products and well established relationships with customers (large petrochemical companies mainly) have been also identified as critical.

149. In the light of these comments, and of the fact that the access to such inputs and resources which are necessary to operate viably the Micro/portable GC Divestment Business depends to a large extent on the parties finding a purchaser which meets these requirements or at least may ensure that they are met, the parties have put forward an up-front buyer solution. The parties commit to find a purchaser and not to complete the notified transaction until a binding sale and purchase agreement has been entered with the Purchaser and the Commission has approved both the Purchaser and the terms of sale. In order to be approved by the Commission, it is necessary in particular that such a buyer has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force. The sale of the Micro/portable Divestment Business to such a buyer prior to the consummation of the proposed transaction would significantly improve the incentives for the parties to find a suitable purchaser and enable the Commission to conclude, with the requisite degree of certainty, that the implementation of the remedy will be efficient in restoring effective competition in the EEA Micro/portable GC market.

Conclusion on the Micro/portable Divestment Business

150. In the light of the above, the Commission considers the Micro/portable GC Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the EEA Micro/portable GC market.

c) Triple quad GC-MS

151. The remedy proposed as regards triple quad GC-MS completely eliminates the horizontal overlap at global level between the parties. The remedy will restore the market structure which existed pre-merger. The suitable purchaser of the triple quad GC-MS Divestment Business will have an initial EEA market share of approximately [20-30]%.[39]

152. The market test of the remedies provoked in general a positive feedback as to the suitability of the remedy in the triple quad GC-MS market to address the serious doubts mentioned above. However, some issues have been raised by respondents to the market test, which have been adequately addressed by the parties in their remedy proposal submitted on 19 January 2010.

Up-front buyer

153. The triple quad GC-MS Divestment Business is not a stand-alone legal entity but includes several tangible and intangible assets, contracts, licenses agreements belonging to or having been concluded by Varian. Some of these assets are currently shared with other product areas where the Commission did not find serious doubts and which are therefore retained by Agilent such as single-quad GC-MS or ion trap GC-MS.

154. Thus the triple quad GC-MS Divestment Business has necessarily to be carved out from the remaining businesses. In such carve-out operations, it is of utmost importance for the viability of

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[39] This is an estimate of Varian's market share for 2009 based on the notifying party's estimates of Agilent's worldwide sales for triple quad GC-MS instruments (see footnote 20 above) and the Second SDI report, (page 5).

the transferred business that it has access to all inputs and other resources such as R&D, distribution networks and intellectual property rights necessary to carry out its operation in full independence. The Commission can only accept commitments which require the carve-out of a business if it can be certain that, when the business is transferred to the Purchaser, the risks for the viability and the competitiveness caused by the carve-out will be reduced to a minimum

155. In this regard, the transfer of agreements between Varian and its customers (including current Varian's distributors), as well as Agilent's commitment not to distribute its own triple quad GC-MS systems through any Varian's distributor for a period of […] have been welcomed by respondents as necessary to facilitate access to customers' base and consequently enhance the viability of the triple quad GC-MS carved-out assets. Guaranteed access to some key components such as vacuum rotary and turbo pumps will also ensure continuity of the activity of the triple quad GC-MS Divestment Business.

156. During the market test however, several respondents emphasised that the identity of the purchaser plays an important role for the viability of the triple quad GC-MS Divestment Business. It was often expressed that such a purchaser should already have an experience and a proven track record in the MS area.

157. Several respondents submitted that an offering which is limited to triple quad GC-MS in this area appears insufficient and that the portfolio of the Purchaser would be too small if it does not already own an alternative MS technology (which can be in liquid chromatography for some respondents). Several customers submitted that the Purchaser should be in a position to offer triple quad GC-MS and other GC-MS products as customers have to decide which instrument is the more suitable for their specific needs. They therefore expect their suppliers to provide a wide offering of GC-MS products in order to enable them during the selection process to compare the performances of these MS products from a unique supplier. Furthermore, hardware and software development overlap significantly for single quad and triple quad GC-MS.

158. A majority of respondents have not indicated that an experience in the GC-MS area was essential. They submitted however that the Purchaser needs to have manufacturing, distribution, sales and support capabilities to compete on a level playing field with Agilent. Access to customers related to an existing market presence in the area of analytical instruments area has been identified as a key factor of success for the viability of the triple quad GC-MS Divestment business.

159. In the light of these comments, and of the fact that the access to such inputs and resources which are necessary to operate viably the triple quad GC-MS Divestment Business depends to a large extent on the parties finding a purchaser which meets these requirements or at least may ensure that they are met, the parties have put forward an up-front buyer solution. The parties commit to find a purchaser and not to complete until a binding sale and purchase agreement has been entered with the Purchaser and the Commission has approved both the Purchaser and the terms of sale. In order to be approved by the Commission, it is necessary in particular that such a buyer has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force. The sale of the triple quad GC-MS Divestment Business to such a buyer prior to the consummation of the proposed transaction would significantly improve the incentives for the parties to find a suitable purchaser and enable the Commission to conclude, with the requisite degree of certainty, that the implementation of the remedy will be efficient in restoring effective competition in the EEA triple quad GC-MS instrument market.

Conclusion on the triple quad GC-MS Divestment Business

160. In the light of the above, the Commission considers the triple quad GC-MS Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the EEA triple quad GC-MS instrument market.

d) ICP-MS

161. The remedy proposed as regards ICP-MS completely eliminates the horizontal overlap at global level between the parties. The remedy will restore the market structure which existed pre-merger. The suitable purchaser of the ICP-MS Divestment Business will have an initial EEA market share of [10-20]%.

162. The market test of the remedies provoked in general a positive feedback as to the suitability of the remedy in the quadrupole ICP-MS market to address the serious doubts mentioned above. However, some issues have been raised by respondents to the market test, which have been adequately addressed by the parties in their remedy proposal submitted on 19 January 2010.

Up-front buyer

163. The ICP-MS Divestment Business is not a stand-alone legal entity but includes several tangible and intangible assets, contracts, licenses agreements belonging to or having been concluded by Varian. Some of these assets are currently shared with other product areas where the Commission did not find serious doubts and which are therefore retained by Agilent such as ICP-OES or Atomic Absorbance (AA).

164. Thus the ICP-MS Divestment Business has necessarily to be carved out from the remaining businesses. In such carve-out operations, it is of utmost importance for the viability of the transferred business that it has access to all inputs and other resources such as R&D, distribution networks and intellectual property rights necessary to carry out its operation in full independence. The Commission can only accept commitments which require the carve-out of a business if it can be certain that, when the business is transferred to the Purchaser, the risks for the viability and the competitiveness caused by the carve-out will be reduced to a minimum

165. In this regard, the transfer of agreements between Varian and its customers (including current Varian's distributors), as well as Agilent's commitment not to distribute its own ICP-MS systems through any Varian's distributor for a period of […] have been welcomed by respondents as necessary to facilitate access to customers' base and consequently enhance the viability of the ICP-MS carved-out assets. Guaranteed access to some key components such as vacuum rotary and turbo pumps will also ensure continuity of the activity of the ICP-MS Divestment Business.

166. During the market test however, several respondents emphasised that the identity of the purchaser plays an important role for the viability of the ICP-MS Divestment Business. It was often expressed that such a purchaser should already have an experience and a proven track record in the atomic spectroscopy area for example in ICP-OES. Agilent itself has recognised that the ability to offer a full suite of atomic spectroscopy technologies (AA, ICP-OES and ICP-MS) is important given that 80-90% of laboratories will employ at least ICP-OES and ICP-MS[40]. Some respondents also mentioned that the key technology which is the interface between plasma and mass spectrometer is common to ICP-OES and ICP-MS.

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40 Form CO page 170 and internal documents of Agilent available in annex E1.

167. A majority of respondents have not indicated that an experience in the ICP-MS area was essential. They submitted however that the Purchaser needs to have an established sales and service organization in analytical measurement techniques. In that regard, the Purchaser would need to have specific critical capabilities such as a sales, support and service organization that can sell, train and support customers locally throughout the world and an access to the existing market and customers through a variety of products typically found in the same laboratory as ICP-MS.

168. In the light of these comments and of the fact that the access to such inputs and resources which are necessary to operate viably the ICP-MS Divestment Business depends to a large extent on the parties finding a purchaser which meets these requirements or at least may ensure that they are met, the parties have put forward an up-front buyer solution. The parties commit to find a purchaser and not to complete the notified transaction until a binding sale and purchase agreement has been entered with the Purchaser and the Commission has approved both the Purchaser and the terms of sale. In order to be approved by the Commission, it is necessary in particular that such a buyer has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force. The sale of the ICP-MS Divestment Business to such a buyer prior to the consummation of the proposed transaction would significantly improve the incentives for the parties to find a suitable purchaser and enable the Commission to conclude, with the requisite degree of certainty, that the implementation of the remedy will be efficient in restoring effective competition in the EEA ICP-MS market.

Conclusion on the ICP-MS Divestment Business

169. In the light of the above, the Commission considers the ICP-MS Divestment Business as a suitable commitment to remedy the serious doubts identified with regard to the EEA quadrupole ICP-MS market.

VIII. CONDITIONS AND OBLIGATIONS

170. Under the first sentence of the second subparagraph of Article 6(2) of the EC 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.

171. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common 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 EC Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the EC Merger Regulation.

172. In accordance with the basic distinction described above, the decision in this case is conditional on the full compliance with Section B of the Commitments. The remaining requirements set out in the other Sections C, D and E of the Commitments are considered to constitute obligations.

IX. CONCLUSION

173. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

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

European Commission – Merger Task Force
DG Competition
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Case M.5611 – Agilent/Varian

174. COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Agilent Technologies, Inc. ("***Agilent***") hereby provides the following Commitments (the "***Commitments***") in order to enable the European Commission (the "***Commission***") to declare the acquisition of sole control over Varian, Inc., the ultimate parent company of the Varian Group ("***Varian***") by Agilent (the "***Transaction***") 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 139/2004 and under Commission Regulation (EC) No 802/2004.

174.1.1. 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 each Divestment Business to the respective purchaser. The term 'Closing' in Section B, paragraphs 4(a) to 4(d) shall be construed to exclusively refer to, in the relevant context, the transfer of the legal title of the respective Divestment Business described in Section B, paragraphs 4(a) to 4(d).

Consummation Date: the date on which the Agreement and Plan of Merger that was signed on 26 July 2009 by and between Agilent, Varian and Cobalt Acquisition Corp (Cobalt) will be consummated by way of a merger of Cobalt with Varian, as a result of which Varian will exist as a wholly-owned subsidiary of Agilent.

Micro/portable GC Commitment: the commitment to divest the Agilent business relating to manufacture and sale of micro/portable GC systems as defined in Section B and Schedule A (***Micro/portable GC Divestment Business***).

Laboratory GC Commitment: the commitment to divest the Varian business relating to the manufacture and sale of laboratory GC systems as defined in Section B and Schedule B (***Laboratory GC Divestment Business***)

Triple Quadrupole GC-MS Commitment: the commitment to divest the Varian business relating to the manufacture and sale of Triple Quadrupole GC-MS systems defined in Section B and Schedule C (***Triple Quadrupole GC-MS Divestment business***).

ICP-MS Commitment: the commitment to divest the Varian business relating to the manufacture and sale of ICP-MS systems as defined in Section B and Schedule D (***ICP-MS Divestment Business***).

Divestment Business or **Divestment Businesses:** the business or businesses as defined in Section B and Schedules A to D. The singular term 'Divestment Business' shall be deemed to include, as the case may be, all below-defined Divestment Businesses.

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

Hold Separate Manager: the person(s) appointed by Agilent for the Divestment Businesses 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 Businesses, as listed in the Schedules.

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

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

Purchaser: the respective entity approved by the Commission as acquirer of one or more of the Divestment Businesses in accordance with the criteria set out in Section D. The term 'Purchaser' in Section B, paragraphs 4(a) to 4(d) shall be construed to exclusively refer to, in the relevant context, the purchaser of the respective Divestment Businesses described in Section B, paragraphs 4(a) to 4(d).

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

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

Section B. The Divestment Businesses

Commitment to divest the Divestment Businesses

1. In order to restore effective competition,

   Agilent commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to one or several purchasers and on terms of sale approved by the Commission in accordance with the procedure described in Section D, paragraph 14. To carry out the divestiture, Agilent commits to finding one or more purchasers and to enter into, or to cause Varian to enter into, final binding sale and purchase agreements for the sale of the Divestment Businesses within the First Divestiture Period. If Agilent has not entered into such agreements at the end of the First Divestiture Period, Agilent shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in Section E, paragraph 23 in the Trustee Divestiture Period. The proposed concentration shall not be implemented unless and until Agilent or the Divestiture Trustee has entered into final binding sale and purchase agreements for the sale of each of the Divestment Businesses and the Commission has approved the Purchaser(s) and the terms of sale in accordance with paragraph 14.

2. Agilent shall be deemed to have complied with the Commitments if, by the end of the Trustee Divestiture Period, Agilent or Varian – as the case may be – have entered into a final binding sale and purchase agreement in relation to all Divestment Businesses with one or more purchaser/s, if the Commission approves the purchaser/s and the terms in accordance with the procedure described in Section D, paragraph 14 and if the Closing takes place within a period not exceeding […] months after the approval of the purchaser/s 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 Businesses, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over one or more of the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Businesses

4. The Commitments contained herein relate to the above defined Divestment Businesses.

   (a) The Micro/portable GC Divestment Business consists of Agilent's entire micro/portable GC business. The present legal and functional structure of the Micro/portable GC Divestment Business as operated to date, described in more detail in Schedule A, includes

      i. 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 Micro/portable GC Divestment Business;

      ii. to the extent that they can be assigned, all supplier and distribution contracts which relate exclusively to the Micro/Portable GC Divestment Business (subject to any necessary consents) and, to the extent possible, the transfer of the relevant part (being that part relating to the Micro/Portable GC

Divestment Business) of any agreement between Agilent and its distributors or suppliers which relates to the Micro/Portable GC Divestment Business and also to other Agilent businesses

iii. all contracts, commitments and unfulfilled customer orders of the Micro/portable GC Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Micro/portable GC Divestment Business; all customer and other records of the Micro/portable GC Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Micro/portable GC Divestment Business (items referred to under (i)-(ii) hereinafter collectively referred to as "***Micro/portable GC Assets***");

iv. all key personnel and personnel which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Micro/portable GC Divestment Business including in particular […] additional sales specialists ([…] in the EU, […] in Asia Pacific and […] in the US) and […] servicing specialist or, to the extent that there are any insurmountable obstacles to the transfer of such key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the Micro/portable GC Divestment Business;

v. the transfer of two agreements with […], relating to the supply of parts (mainly flow parts) and equipment maintenance services to the Micro/portable GC Divestment Business (subject to […] consent); if no consent is given, Agilent will make the necessary arrangements for the supply of flow parts and equipment maintenance services to the Micro/portable GC Divestment Business;

vi. at the request of the Purchaser, the benefit, for a transitional period of up to […] after Closing, of the supply arrangements under which Agilent supplies manifold plates to the Micro/portable GC Divestment Business;

vii. at the request of the Purchaser, and to the extent supply contracts with third parties cannot be assigned in accordance with paragraph 4(a)ii supply to the Purchaser by Agilent of all components required in the assembly of Micro/portable GC instruments at […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request)

viii. at the request of the Purchaser, a Transition Services Agreement, pursuant to which Agilent will offer to supply to the Purchaser, for a transitional period of […] from Closing (extendable by a further […] at the Purchaser's request), with other components and services required in the assembly of micro/portable GCs, as well as up to […] of training;

ix. at the request of the Purchaser, sales channel support, including cooperation with the Purchaser with a view to causing the VARs listed in Schedule A (at paragraph 2(d)(v)) and the current distributors of the Micro/portable GC Divestment Business listed in Annex Schedule A (7) (insofar as the relevant parts of the distribution agreements are not assigned) to continue selling the products of the Micro/portable GC Divestment Business after Closing in

some or all territories where Agilent currently sells micro/portable GCs via distributors or the relevant VARs.

(b) The Laboratory GC Divestment Business consists of Varian's entire laboratory GC business. The present legal and functional structure of the Laboratory GC Divestment Business as operated to date, described in more detail in Schedule B, includes

i. 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 Laboratory GC Divestment Business;

ii. to the extent that they can be assigned, all supplier and distribution contracts which relate exclusively to the Laboratory GC Divestment Business (subject to any necessary consents) and, to the extent possible, the transfer of the relevant part (being that part relating to the Laboratory GC Divestment Business) of any agreement between Varian and its distributors or suppliers which relates to the Laboratory GC Divestment Business and also to other Varian businesses;

iii. all other contracts, commitments and unfulfilled customer orders of the Laboratory GC Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Laboratory GC Divestment Business; all customer, credit and other records of the Lab GC Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Laboratory GC Divestment Business (items referred to under (i)-(iii) hereinafter collectively referred to as "***Laboratory GC Assets***");

iv. all key personnel and personnel which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Laboratory GC Divestment Business or, or, to the extent that there are any insurmountable obstacles to the transfer of such key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the Laboratory GC Divestment Business;

v. subject to any necessary consents, the transfer of Varian's relationship with Varian's outsourcing partner […] (regarding the manufacture of GC "cabinets" and other services);

vi. at the Purchaser's request, supply to the Purchaser by Varian of autosamplers (currently manufactured through its third party manufacturer […]) at […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request);

vii. at the request of the Purchaser and to the extent this supply contract cannot be assigned in accordance with paragraph 4(b)ii, supply to the Purchaser by Varian of autoinjectors (currently manufactured through third party manufacturers) at […] transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request).

viii. at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(b)ii, supply to the Purchaser by Varian of all components required in the assembly of Laboratory GC instruments at […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request).

ix. at the request of the Purchaser, a Transition Services Agreement, pursuant to which the combined entity will offer to supply to the Purchaser, for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request), with the components, know-how and services required for the operation of the Laboratory GC Divestment Business;

x. at the request of the Purchaser, sales channel support, including cooperation with the Purchaser with a view to causing the current distributors of the Laboratory GC Divestment Business (insofar as the relevant parts of the distribution agreements are not assigned) to continue selling the products of the Laboratory GC Divestment Business after Closing in certain or all territories where Varian currently sells laboratory GC instruments via distributors.

(c) The Triple Quadrupole GC-MS Divestment Business consists of Varian's entire triple quadrupole GC-MS business. The present legal and functional structure of the Triple Quadrupole GC-MS Divestment Business as operated to date, described in more detail in Schedule C, includes

i. 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 Triple Quadrupole GC-MS Divestment Business;

ii. to the extent that they can be assigned, all supplier and distribution contracts which relate exclusively to the Triple Quadrupole GC-MS Divestment Business (subject to any necessary consents) and, to the extent possible, the transfer of the relevant part (being that part relating to the ICP-MS Divestment Business) of any agreement between Varian and its suppliers or distributors which relates to the Triple Quadrupole GC-MS Divestment Business and also to other Varian businesses;

iii. all other contracts, commitments and unfulfilled customer orders of the Triple Quadrupole GC-MS Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the GC-MS Triple Quadrupole Divestment Business; all customer, credit and other records of the Triple Quadrupole GC-MS Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the GC-MS Triple Quadrupole Divestment Business (items referred to under (i)-(iii) hereinafter collectively referred to as "***Triple Quadrupole GC-MS Assets***");

iv. all key personnel and personnel of the Triple Quadrupole GC-MS Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the GC-MS Triple

Quadrupole Divestment Business or, to the extent that there are any insurmountable obstacles to the transfer of such key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the GC-MS Triple Quadrupole Divestment Business;

v. at the request of the Purchaser, the benefit, for a transitional period of […] from Closing (extendable by a further […] at the Purchaser's request), of the supply arrangements under which Varian currently supplies vacuum rotary and turbo pumps to the Triple Quadrupole GC-MS Divestment Business and a supply agreement relating to the supply of laboratory GCs from the Laboratory GC Divestment Business to the Triple Quadrupole GC-MS Divestment Business for a period of up to […], in each case at […]; such agreement shall also contain provision for an option in favour of the Triple Quad Divestment Business to extend the duration of such supply agreement for a further […] on terms to be agreed between the Triple Quad Divestment Business and the purchaser of the Laboratory GC Divestment Business.

vi. at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(c)ii, supply to the Purchaser by Varian of all components required in the assembly of Triple Quadrupole GC-MS instruments at […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request);

vii. at the request of the Purchaser, a Transition Services Agreement, pursuant to which the combined entity will offer to supply to the Purchaser, for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request), with the components, know-how and services required for the operation of the Triple Quadrupole GC-MS Divestment Business;

viii. at the request of the Purchaser, sales channel support, including cooperation with the Purchaser with a view to causing the current distributors of the Triple Quadrupole GC-MS Divestment Business (insofar as the relevant parts of the distribution agreements are not assigned) to continue selling the products of the Triple Quadrupole GC-MS Divestment Business after Closing in certain or all territories where Varian currently sells Triple Quadrupole GC-MS instruments via distributors.

(d) The ICP-MS Divestment Business consists of Varian's entire ICP-MS business. The present legal and functional structure of the ICP-MS Divestment Business as operated to date, described in more detail in Schedule D, includes

i. 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 ICP-MS Divestment Business;

ii. to the extent that they can be assigned, all supplier and distribution contracts which related exclusively to the ICP-MS Divestment Business (subject to any necessary consents) and, to the extent possible, the transfer of the relevant part (being that part relating to the ICP-MS Divestment Business) of

any agreement between Varian and its distributors or suppliers which relates to the ICP-MS Divestment Business and also to other Varian businesses;

iii. all other contracts, commitments and unfulfilled customer orders of the ICP-MS Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the ICP-MS Divestment Business; all customer, credit and other records of the ICP-MS Divestment Business (items referred to under (i)-(iii) hereinafter collectively referred to as "***ICP-MS Assets***");

iv. all key personnel and personnel of the ICP-MS Divestment Business which contribute to the current operation or are necessary to ensure the viability and competitiveness of the ICP-MS Divestment Business or, to the extent that there are any insurmountable obstacles to the transfer of such key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the ICP-MS Divestment Business;

v. at the request of the Purchaser, the benefit, for a transitional period of [..] from Closing (extendable by a further […] at the Purchaser's request), of the supply arrangements under which Varian currently supplies rotary and turbo pumps to the ICP-MS Divestment Business at […];

vi. at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(d)ii, supply to the Purchaser by Varian of all components required in the assembly of ICP-MS instruments at […] a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request);

vii. at the request of the Purchaser, a Transition Services Agreement, pursuant to which the combined entity will offer to supply to the Purchaser, for a transitional period of between […] from Closing (extendable by a further […]at the Purchaser's request), with the components, know-how and services required for the operation of the ICP-MS Divestment Business;

viii. at the request of the Purchaser, sales channel support, including cooperation with the Purchaser with a view to causing the current distributors of the ICP-MS Divestment Business (insofar as the relevant parts of the distribution agreements are not assigned) to continue selling the products of the ICP-MS Divestment Business after Closing in certain or all territories where Varian currently sells ICP-MS instruments via distributors.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Agilent shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Agilent 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 any of the Divestment

Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of any of the Divestment Businesses;

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

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

Hold-separate obligations of Parties

6. Agilent commits, from the Effective Date until Closing, to keep or to cause Varian to keep the Divestment Businesses separate from the businesses Agilent and Varian are retaining and to ensure that Key Personnel of the Divestment Businesses – including the Hold Separate Manager(s) – have no involvement in any business retained and vice versa. Agilent shall also ensure that the Personnel do not report to any individual outside the Divestment Businesses.

7. Until Closing, Agilent shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses retained by the Parties. Agilent shall appoint or shall cause Varian to appoint one or several Hold Separate Managers who shall be responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager/s shall manage the Divestment Businesses independently and in the best interest of the business with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by the Parties.

Ring-fencing

8. Agilent shall implement and shall cause Varian to implement all necessary measures to ensure that Agilent or Varian do 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 Businesses. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Agilent may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to Agilent or Varian is required by law.

Non-solicitation clause

9. The Parties undertake, subject to customary limitations (e.g. responses to general job advertisements), not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of […] after Closing.

Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Agilent 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 Businesses;

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

Reporting

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

12. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any 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, any 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/es he intends to acquire 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(es) (the afore-mentioned criteria for the purchaser hereafter the "***Purchaser Requirements***").

14. The final binding sale and purchase agreements shall be conditional on the Commission's approval. When Agilent or Varian have reached an agreement with a proposed purchaser, Agilent shall submit a fully documented and reasoned proposal, including a copy of the final agreements, to the Commission and the Monitoring Trustee. Agilent must be able to demonstrate to the Commission that the proposed 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 proposed 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 a Divestment Businesses 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

Appointment Procedure

15. Agilent shall appoint a Monitoring Trustee and shall cause, as the case may be, Varian to empower the Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Agilent or Varian have not entered into a binding sale and purchase

agreement for one or more of the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser of a Divestment Business proposed by Agilent at that time or thereafter, Agilent shall appoint a Divestiture Trustee and shall cause, as the case may be, Varian to empower the 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 a Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

17. No later than one week after the Effective Date, Agilent shall submit a list of one or more persons whom Agilent 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, Agilent shall submit a list of one or more persons whom Agilent 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, Agilent 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, Agilent 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, Agilent 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 Agilent shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Agilent, 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 Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Agilent 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 Businesses, and the keeping separate of the Divestment Businesses from the businesses retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;

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

(c) (i) in consultation with Agilent and Varian, determine all necessary measures to ensure that Agilent and Varian do 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 Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses, and (ii) decide whether such information may be disclosed to Agilent and Varian as the disclosure is reasonably necessary to allow Agilent and Varian 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 Businesses and Agilent and Varian or Affiliated Undertakings of each of Agilent and Varian;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Agilent such measures as the Monitoring Trustee considers necessary to ensure Agilent'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 Businesses, the holding separate of the Divestment Businesses 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 Businesses 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 Agilent 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 Businesses so that the Commission can assess whether the businesses are 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 Agilent a non-confidential copy at the same time, if it concludes on reasonable grounds that Agilent 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 any proposed purchaser and the viability of any of the Divestment Businesses after the Sale and as to whether all of the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of any Divestment Business without one or more Assets or not all of the Personnel affects the viability of that 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/es to one or several purchasers, provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement(s) 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(s) 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 Agilent, 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. Agilent 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 Agilent's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Agilent and the Divestment Businesses shall provide to and shall cause Varian or, where possible, the Divestment Businesses, to provide, the Trustee upon request with copies of any document. Agilent shall make available, or shall cause Varian or, where possible, the Divestment Businesses, to 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. Agilent shall provide or shall cause Varian to provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Agilent 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. Agilent shall inform, or shall cause Varian to 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. Agilent shall grant or procure Varian and 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, Agilent shall cause the documents required for effecting the sale and the Closing to be duly executed.

28. Agilent 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 Agilent 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 Agilent, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Agilent'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 Agilent refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard Agilent. 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 Agilent 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 Agilent to replace the Trustee; or

    (b) Agilent, 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 Agilent 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 Agilent 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 Agilent be entitled to request an extension within the last month of any period.

SCHEDULE A

MICRO/PORTABLE GC COMMITMENT

1. Under the Micro/portable GC Commitment, Agilent will divest the Micro/portable GC Divestment Business. The Micro/portable GC Divestment Business as operated to date has the following legal and functional structure:

The Micro/portable GC Divestment Business is part of Agilent's […].

2. Following paragraph 4 of the Commitments, the Micro/portable GC Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The following main equipment and machinery dedicated to the design, assembly and testing of micro/portable GCs (and those components incorporated therein during the manufacturing process) located in Agilent's […] plants (the ***Micro/portable GC Production Assets***):

Item	Description (English)	Qty	Function	Legal Entity
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
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Item	Description (English)	Qty	Function	Legal Entity
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Details of the Micro/portable GC Production Assets are provided in **Annex Schedule A (1)**.

(b) the following main intangible assets:

(i) Perpetual, non-exclusive non-transferrable licences to the technical and manufacturing know-how, trade secrets and designs which contribute to the current

operation of or are necessary to ensure the viability and the competitiveness of the Micro/portable GC Divestment Business;

(ii) Perpetual, non-exclusive, non-transferrable[41] royalty-free licences to all patents which contribute to the current operation of or are necessary to ensure the viability and the competitiveness of the Micro/portable GC Divestment Business, including but not necessarily limited to those set out in **Annex Schedule A (2)** with a field of use restriction (for use solely in connection with micro/portable GC products). Agilent will commit not to licence the relevant patents to competitors of the Purchaser or incorporate the intellectual property set forth in them into Varian's micro/portable GC products after Closing;

(iii) A non-exclusive, non-transferrable licence to Agilent's micro/portable GC injector hardware (insofar as not already covered by the patents listed in (ii) above);

(iv) Perpetual, non-exclusive, non-transferrable licences to Agilent's marketing materials, manuals, sourcecode for embedded micro/portable GC-specific software and support documents used in connection with the Micro/portable GC Divestment Business.

(v) Non-exclusive, non-transferrable licences to the trademarks listed in **Annex Schedule A (3)** for a transitional period of […];

(vi) Perpetual, non-exclusive, non-transferable, royalty-free licences in respect of Cerity, the software associated with Agilent's micro/portable GC instruments, and the relevant source codes, in each case restricted to use in connection with micro/portable GCs; and, at the Purchaser's request, a licence of any relevant upgrades of Cerity (if any) and technical support for a period of […] from the date of Closing on commercial terms;

(vii) A perpetual, non-exclusive, non-transferable, royalty-free licence, restricted to use in connection with micro/portable GCs, in respect of EZ Chrome Elite; as well as, at the Purchaser's request, a licence of any relevant upgrades of EZ Chrome Elite (if any) and technical support for a period of […] from the date of Closing on commercial terms;

(c) the following main licences, permits and authorisations: None.

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

(i) unfulfilled orders of Agilent' micro/portable GC business at the date of Closing;

(ii) ongoing warranty liabilities at the time of Closing;

(iii) the contracts with […], relating to the supply of parts (mainly flow parts) and equipment maintenance services to the Micro/portable Divestment Business attached as **Annex Schedules A (4) and A (5)**, subject to […] consent;

(iv) at the request of the Purchaser, the benefit of some or all of the distribution agreements with the distributors listed in **Annex Schedule A (7)** in relation to the distribution of micro/portable GC systems: subject to the relevant distributor's

[41] except in case of change of control

consent (where required), Agilent will either assign (or otherwise transfer) the benefit of the relevant part of the relevant distribution agreements, or, if consent is required but is not given, Agilent will make the necessary arrangements for the continued distribution of the products of the Micro/portable GC Divestment Business;

(v) at the request of the Purchaser, additional sales channel support, including access to three of Agilent's VARs, namely […];

(vi) Agilent will not distribute Varian's micro/portable GC systems through any of the distributors listed in Annex Schedule A (7) or any of the VARs identifies in (v) above for a time period of […] from Closing;

(vii) at the request of the Purchaser, […] of training on Agilent's micro/portable GC product specifications and service repair;

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

(i) customer lists;

(ii) finished goods inventory;

(iii) production data;

(iv) engineering records;

(v) all other business records used solely in the conduct of the Micro/portable GC Divestment Business (excluding Agilent's general ledgers and other corporate books and records);

(f) at the purchaser's request, all or some of the following Key Personnel:[…] or, to the extent that there are any insurmountable obstacles to the transfer of this key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the Micro/portable GC Divestment Business;

(g) at the Purchaser's request, the following additional Personnel listed in **Annex Schedule A (6)**.

3. At the Purchaser's request, the following supply arrangements:

(a) Supply of manifold plates: supply of the Purchaser with manifold plates for a transitional period of up to […] from Closing (terminable by the Purchaser after a shorter contract term);

(b) Other components: supply of the Purchaser with any other components required in the assembly of micro/portable GCs on the basis of a Transition Services Agreement for a duration of […] after Closing (extendable by a further […] at the Purchaser's request).

(c) After-sales service and support: provision of after-sales service and support (including spare parts) under a Transition Services Agreement for a transitional period of […] after Closing (extendable by a further […] at the Purchaser's request).

4. The Micro/portable GC Divestment Business shall not include:

Any IT systems, logistics, back office, overhead functions and ongoing service contracts.

SCHEDULE A – TABLE OF ANNEXES

No	Title
1	Annex Schedule A (1) – Micro/portable GC Production Assets
2	Annex Schedule A (2) – List of patents to be licensed to the Purchaser
3	Annex Schedule A (3) – List of trademarks to be licensed to the Purchaser
4	Annex Schedule A (4) - Supply contract with […], relating to the supply of flow parts to the Micro/portable Divestment Business
5	Annex Schedule A (5) - Contract with […], relating to the supply of equipment maintenance services to the Micro/portable Divestment Business
6	Annex Schedule A (6) – List of Personnel
7	Annex Schedule A (7) – Distributors which currently sell Agilent's micro/portable GC systems

ANNEX SCHEDULE A (1)

List of assets and equipment to be transferred as part of the Micro/Portable GC Divestment Business

Item	Description (English)	Qty	Function	Legal Entity	Description
[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]
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Item	Description (English)	Qty	Function	Legal Entity	Description
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[…]	[…]	[…]	[…]	[…]	[…]

ANNEX SCHEDULE A (2)

List of patents to be licensed to the Purchaser

Agilent case #	Patent no. / pub no.	Title	EPO link	USPTO link
[…]	[…]	[…]	[…]	[…]
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Agilent case #	Patent no. / pub no.	Title	EPO link	USPTO link
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]

ANNEX SCHEDULE A (3)

List of Trademarks to be Licensed to the Purchaser

No	Trademark
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

ANNEX SCHEDULE A (6)

LIST OF AGILENT EMPLOYEES THAT AGILENT IS PROPOSING TO TRANSFER AS PART OF THE MICRO/PORTABLE GC DIVESTMENT BUSINESS

Employee	Role
[…]	[…]
[…]	[…]
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ANNEX SCHEDULE A (7)

LIST OF AGILENT DISTRIBUTORS

	Supplier	Country
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	Supplier	Country
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SCHEDULE B

LABORATORY GC COMMITMENT

5. Under the Laboratory GC Commitment, Agilent will divest the Laboratory Divestment Business. The Laboratory GC Divestment Business as operated to date has the following legal and functional structure:

The Laboratory GC Divestment Business is part of the Varian business.

6. Following paragraph 4 of the Commitments, the Laboratory GC Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The following main equipment and machinery used in the design, assembly and testing of laboratory GC systems (and those components incorporated therein during the manufacturing process) located in Varian's […] (the ***Laboratory GC Production Assets***):

Item	Description	Qty	Function
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(b) the following main intangible assets used in the design, assembly, testing and operation of Varian's laboratory GC instruments:

(i) transfer of the ownership of all intellectual property rights and knowhow (including instrument operating manuals and documentation) used exclusively in relation to the Laboratory GC Divestment Business, including but not necessarily limited to those presented at **Annex Schedule B (1)**;

(ii) perpetual, exclusive, royalty-free licences with a field of use restriction (use only in connection with laboratory GC) for all intellectual property rights which are not used exclusively in relation to the Laboratory GC Divestment Business but also in relation to other Varian businesses, including but not necessarily limited to those presented at **Annex Schedule B (2)**;

(iii) perpetual, exclusive, royalty-free licences in respect of the software associated with Varian's laboratory GC instruments, Galaxie, and the relevant source codes, in each case restricted to use in connection with laboratory GCs; and – at the Purchaser's request – a licence of any relevant upgrades of Galaxie (if any) and technical support for a period of […] from the date of Closing on commercial terms;

(c) the following main licences, permits and authorisations: None.

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

(i) transfer of the the relationship with Varian's outsourcing partner […] (regarding the manufacture of GC "cabinets" and other outsourcing services);

(ii) transfer of any agreements between Varian and its suppliers which relate exclusively to the Laboratory GC Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the Laboratory GC Divestment Business) of any agreement between Varian and its suppliers which relates to the Laboratory GC Divestment Business and also to other Varian businesses;

(iii) transfer of any agreements between Varian and its distributors which relate exclusively to the Laboratory GC Divestment Business (subject to any necessary

consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the Laboratory GC Divestment Business) of any agreement between Varian and its distributors which relates to the Laboratory GC Divestment Business and also to other Varian businesses. Agilent will not distribute its own laboratory GC systems through any distributor that currently distributes Varian's laboratory GC system for a time period of […] from Closing. A list of relevant distributors is set out at **Annex Schedule B (3)**;

(iv) transfer of any agreements between Varian and its customers (excluding service contracts) which relate to the Laboratory GC Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement), including, but not limited to, the following temporary and transitional supply contracts:

(A) supply by the Laboratory GC Divestment Business, for a temporary period of […] from the date of Closing, of laboratory GCs (and associated spare parts) to Varian's analyser business on terms and conditions to be agreed upon between the Prospective Purchaser and the merged entity;

(B) supply by the Laboratory GC Divestment Business, for a temporary period of […] from the date of Closing, of laboratory GCs (and associated spare parts) to Varian's ion trap GC-MS business on terms and conditions to be agreed upon between the Prospective Purchaser and the merged entity and

(C) supply by the Laboratory GC Divestment Business, for a temporary period of up to […] from the date of Closing, of laboratory GCs (and associated spare parts) to Varian's Triple Quadrupole GC-MS Divestment Business on the basis of […]. Such agreement shall also contain provision for an option in favour of the Triple Quad Divestment Business to extend the duration of such supply agreement for a further […] on terms to be agreed between the Triple Quad Divestment Business and the purchaser of the Laboratory GC Divestment Business.

(v) unfulfilled customer orders of the Laboratory GC Divestment Business at the time of Closing;

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

(i) customer list**;**

(ii) finished goods inventory;

(iii) production data;

(iv) engineering records;

(v) all other business records used in the operation of the Laboratory GC Divestment Business;

(f) the following Key Personnel:

Role	Name
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
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[…]	[…]

To the extent that there are any insurmountable obstacles to the transfer of this key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the Laboratory GC Divestment Business will be put in place.

(g) the following Personnel: at the Purchaser's request, up to a further […] employees located within the relevant business functions as identified in **Annex Schedule B (4)**.

7. Agilent and Varian are prepared to transfer and enter into the following arrangements to support the Purchaser's ownership of the Laboratory GC Divestment Business and to maintain its economic viability and competitiveness:

(a) at the Purchaser's request, supply to the Purchaser by Varian of autosamplers manufactured through Varian's third party manufacturer […] at […] for a transitional period of between […] (extendable by a further […] at the Purchaser's request);

(b) at the request of the Purchaser and to the extent this supply contracts cannot be assigned in accordance with paragraph 4(b)ii of the Commitments, supply to the Purchaser by Varian of autoinjectors (currently manufactured through a third party manufacturer) at […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request).

(c) at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(b)ii of the Commitments, supply to the Purchaser by Varian of all components required in the assembly of Laboratory GC instruments at […] for a transitional period of between[…] from Closing (extendable by a further […] at the Purchaser's request)

(d) at the Purchaser's request, assignment of the relevant part of two licence agreements which may be subject to the relevant counter party's consent; a list of these agreements is presented at **Annex Schedule B (5)**;

(e) at the Purchaser's request, transitional services to assist with the transfer of the Laboratory GC Divestment Business under a Transition Services Agreement for a transitional period of […] (extendable by a further […] at the Purchaser's request), including some or all of the following: manufacturing of laboratory GC Instruments, use

of Varian's laboratory GC manufacturing facilities at its […], assistance with the physical move of assets, provision of know-how to support the start-up of operations in a new facility and know-how in relation to operation of existing machinery and systems, training of new and relocated employees, providing support for a shift to outsourced manufacturing, supply of spare parts, supporting the Purchaser in making its own arrangements relating to the procurement of any necessary components and maintaining relationships with the current customers and distributors of the Laboratory GC Divestment Business.

8. The Laboratory GC Divestment Business shall not include:

(a) Any IT systems, logistics, back office and overhead functions apart from on a transitional basis under the TSA.

SCHEDULE – TABLE OF ANNEXES

No	Title
1	Annex Schedule B (1) – List of intellectual property rights and know-how used exclusively in relation to the Laboratory GC Divestment Business
2	Annex Schedule B (2) – List of intellectual property rights which are not used exclusively in relation to the Laboratory GC Divestment Business
3	Annex Schedule B (3) – Distributors which currently distribute Varian's Laboratory GC systems
4	Annex Schedule B (4) – Laboratory GC Divestment Business organisation chart
5	Annex Schedule B (5) – List of license agreements which may require counter-party consent

ANNEX SCHEDULE B (1)

LIST OF INTELLECTUAL PROPERTY RIGHTS AND KNOW-HOW USED EXCLUSIVELY IN RELATION TO THE LABORATORY GC DIVESTMENT BUSINESS

	Trademark/Copyright	Description	Status	Country
	Trademarks exclusive to Laboratory GC business			
1.	[…]	[…]	[…]	[…]
2.	[…]	[…]	[…]	[…]
3.	[…]	[…]	[…]	[…]
4.	[…]	[…]	[…]	[…]
5.	[…]	[…]	[…]	[…]
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7.	[…]	[…]	[…]	[…]
8.	[…]	[…]	[…]	[…]
9.	[…]	[…]	[…]	[…]
	Copyrights exclusive to Laboratory GC business			
1.	[…]	[…]	[…]	[…]

ANNEX SCHEDULE B (2)

LIST OF INTELLECTUAL PROPERTY RIGHTS WHICH ARE NOT USED EXCLUSIVELY IN RELATION TO THE LABORATORY GC DIVESTMENT BUSINESS

LABORATORY GC PATENTS AND APPLICATIONS

	Title	Coun-try	Application Number	Patent Number	Status
Patents and Applications Shared with other Varian Businesses					
[…]	[…]	[…]	[…]	[…]	[…]
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	Title	Coun-try	Application Number	Patent Number	Status
Patents and Applications Shared with other Varian Businesses					
[…	[…]	[…]	[…]	[…]	[…]
[…	[…]	[…]	[…]	[…]	[…]
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	Title	Coun-try	Application Number	Patent Number	Status
Patents and Applications Shared with other Varian Businesses					
[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]

Laboratory GC Trademarks and Copyright

	Trademark/Copyright	Description	Status	Country
	Trademarks shared with other Varian businesses			
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
	Copyrights shared with other Varian businesses			
[…]	[…]	[…]	[…]	[…]

ANNEX SCHEDULE B (3)

VARIAN'S LABORATORY GC DISTRIBUTORS

	Distributor	Country
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	Distributor	Country
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Notes:

***** Dealers with very low aggregate revenue, but with actual laboratory GC sale during the period.

† Dealers with laboratory GC sales in fiscal year 2009

SCHEDULE B (5)

ROYALTY, LICENSING, DEVELOPMENT AND TECHNOLOGY AGREEMENTS

Party and Title of Agreement	IP Licensed	Execution Date	Exclusivity	Term	IP Ownership and Rights	Description
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

SCHEDULE C

TRIPLE QUADRUPOLE GC-MS COMMITMENT

9. Under the Triple Quadrupole GC-MS Commitment, Agilent will divest the Triple Quadrupole GC-MS Divestment Business. The Triple Quadrupole GC-MS Divestment Business as operated to date has the following legal and functional structure:

The Triple Quadrupole GC-MS Divestment Business is part of the Varian business.

10. Following paragraph 4 of the Commitments, the Triple Quadrupole GC-MS Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The following main equipment and machinery fully dedicated to the design, assembly and testing of triple quadrupole GC-MS systems (and those components incorporated therein during the manufacturing process) located in […] (the ***Triple Quadrupole GC-MS Production Assets***):

Item	Description (English)	Qty	Function
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Item	Description (English)	Qty	Function
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Item	Description (English)	Qty	Function
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(b) the following main intangible assets used in the design, assembly, testing and operation of Varian's triple quadrupole GC-MS instruments:

(i) transfer of the ownership of all trademarks and copyrights (including instrument operating manuals and documentation) used exclusively in relation to the Triple Quadrupole GC-MS Divestment Business including but not necessarily limited to those presented at **Annex Schedule C (1)**;

(ii) perpetual, exclusive, royalty-free licences with a field of use restriction (use only in connection with triple quadrupole GC-MS) for all patents and trademarks which are not used exclusively in relation to the Triple Quadrupole GC-MS Divestment Business but also in relation to other Varian businesses including but not necessarily limited to those presented at **Annex Schedule C (2)**;

(iii) perpetual, exclusive, royalty-free licences in respect of MS Workstation, the software associated with Varian's triple quadrupole GC-MS instruments, and the relevant source codes, in each case restricted to use in connection with triple quadrupole GC-MS instruments; as well as, at the Purchaser's request, a licence of any relevant upgrades of MS Workstation (if any) and technical support for a period of […] from the date of Closing on commercial terms;

(iv) at the Purchaser's request, assignment of the relevant part of a licence agreement which may be subject to the relevant counter party's consent; details of this agreement are presented at **Annex Schedule C (3)**;

(v) at the Purchaser's request, transfer of the benefit of various mass spectrometry software (so-called "libraries") agreements with third parties which are designed to operate specifically on Varian's instruments. Alternatively, and again at the Purchaser's request, Varian will assist the Purchaser in setting up its own

arrangements with the respective suppliers of the software. A list of all relevant software programmes is presented at **Annex Schedule C (4);**

(c) the following licences, permits and authorisations: None.

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

(i) transfer of any agreements between Varian and its suppliers which relate exclusively to the Triple Quadrupole GC-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement), and to the extent possible, the transfer of the relevant part (being that part relating to the Triple Quadrupole GC-MS Divestment Business) of any agreement between Varian and its suppliers which relates to the Triple Quadrupole GC-MS Divestment Business and also to other Varian businesses;

(ii) transfer of any agreements between Varian and its distributors which relate exclusively to the Triple Quadrupole GC-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement), and to the extent possible, the transfer of the relevant part (being that part relating to the Triple Quadrupole GC-MS Divestment Business) of any agreement between Varian and its distributors which relates to the Triple Quadrupole GC-MS Divestment Business and also to other Varian businesses. Agilent will not distribute its own Triple Quadrupole GC-MS system through any distributor that currently distributes Varian's Triple Quadrupole GC-MS system for a time period of […] from Closing. A list of relevant distributors is set out at **Annex Schedule C (6);**

(iii) transfer of any agreements between Varian and its customers (excluding ongoing service contracts) which relate to the Triple Quadrupole GC-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement);

(iv) unfulfilled customer orders of the Triple Quadrupole GC-MS Divestment Business at the date of Closing;

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

(i) customer list**;**

(ii) finished goods inventory;

(iii) production data;

(iv) engineering records;

(v) all other business records used in the operation of the Triple Quadrupole GC-MS Divestment Business;

(f) the following Key Personnel

Name	Role
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

To the extent that there are any insurmountable obstacles to the transfer of this key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the Triple Quadrupole GC-MS Divestment Business will be put in place.

(g) the following Personnel: at the Purchaser's request, up to a further […] employees located within the relevant business functions as identified in **Annex Schedule C (5)**.

11. Varian is prepared to transfer and enter into the following arrangements to support the Purchaser's ownership of the Triple Quadrupole GC-MS Divestment Business and to maintain its economic viability and competitiveness:

(a) at the Purchaser's request, supply of the Purchaser with rotary and/or turbo pumps' vacuum components at […] for a transitional period between […] (extendable by a further […] at the Purchaser's request);

(b) at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(c)ii of the Commitments, supply to the Purchaser by Varian of all components required in the assembly of Triple Quadrupole GC-MS instruments at […] for a transitional period of between […] from Closing (extendable by a further[…] at the Purchaser's request)

(c) at the Purchaser's request, a supply agreement with the Purchaser for the Laboratory GC Divestment Business (for incorporation by the Purchaser into triple quadrupole GC-MS systems) for a transitional period of […], extendable at the purchaser's option for further […] on conditions negotiated between the parties to the contract. The supply obligation under this agreement will be transferred as part of the divestment of the Varian laboratory GC business to the purchaser of that business;

(d) at the Purchaser's request, transitional services to assist with the transfer of the Triple Quadrupole GC-MS Divestment Business under a Transition Services Agreement for a transitional period of between […] (extendable by a further […] at the Purchaser's request), including some or all of the following: manufacturing of GC-MS Triple Quadrupole Instruments, use of Varian's Triple Quadrupole GC-MS manufacturing facilities at […], assistance with the physical move of assets, provision of know-how to

support the start-up of operations in a new facility, training of new and relocated employees, providing support for a shift to outsourced manufacturing, supply of spare parts, supporting the Purchaser in making its own arrangements relating to the procurement of any necessary components, maintaining relationships with the customers and current distributors of the Triple Quadrupole GC-MS Divestment Business.

12. The Triple Quadrupole GC-MS Divestment Business shall not include:

(a) […];

(b) any IT systems, logistics, back office and overhead functions, apart from on a transitional basis under the TSA; and

(c) […].

SCHEDULE – TABLE OF ANNEXES

No	Title
1.	Annex Schedule C (1) – List of trademarks and copyright used exclusively in relation to the Triple Quadrupole Divestment Business
2.	Annex Schedule C (2) – List of patents and trademarks which are not used exclusively in relation to the ICP-MS Divestment Business
3.	Annex Schedule C (3) – Details of license agreement which may require counter-party consent
4.	Annex Schedule C (4) - A list of all relevant software programmes (the so-called libraries)
5.	Annex Schedule C (5) – Triple Quadrupole Divestment Business organisation chart
6.	Annex Schedule C (6) – Distributors which currently distribute Varian's Triple Quadrupole GC-MS systems

ANNEX SCHEDULE C (1)

TRADEMARKS AND COPYRIGHT USED EXCLUSIVELY IN THE TRIPLE QUADRUPOLE DIVESTMENT BUSINESS

1. Copyright

Copyright	Status
[…]	[…]

2. Trademarks

Country	Trademark	Status	Description
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

ANNEX SCHEDULE C (2)

PATENTS AND TRADEMARKS NOT USED EXCLUSIVELY IN RELATION TO THE TRIPLE QUADRUPOLE GC-MS DIVESTMENT BUSINESS

File no.	Country	Title	Inventor(s)	Status	File date	App No.	Pat no.	Issue date	Pub No.
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
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ANNEX SCHEDULE C (3)

ROYALTY, LICENSING, DEVELOPMENT AND TECHNOLOGY AGREEMENT

Party and Title of Agreement	IP Licensed	Execution Date	Exclu-sivity	Term	IP Ownership and Rights
[…]	[…]	[…]	[…]	[…]	[…]

ANNEX SCHEDULE C (4)
List of Software Programmes

No.	Software programmes	Third party
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ANNEX SCHEDULE C (5)

TRIPLE QUADRUPOLE GC-MS DIVESTMENT BUSINESS ORGANISATION CHART

[…]

ANNEX SCHEDULE C (6)

VARIAN'S TRIPLE QUADRUPOLE GC-MS DISTRIBUTORS

	Distributor*
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	Distributor*
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Notes:

* Key distributors determined by revenue across all Varian products sold by dealer.

** Dealers with very low aggregate revenue, but with actual GC-MS sale during the period.

SCHEDULE D

ICP-MS COMMITMENT

13. Under the ICP-MS Commitment, Agilent will divest the ICP-MS Divestment Business. The ICP-MS Divestment Business as operated to date has the following legal and functional structure:

The ICP-MS Divestment Business is part of Varian's business.

14. Following paragraph 4 of the Commitments, the ICP-MS Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

The following main equipment and machinery fully dedicated to the design, assembly and testing of ICP-MS systems (and those components incorporated therein during the manufacturing process) located in Varian's […] (the ***ICP-MS Production Assets***):

Item	Description	Qty	Function
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(b) the following main intangible assets used in the design, assembly, testing and operation of Varian's ICP-MS instruments:

(i) transfer of the ownership of all trademarks and copyright used exclusively in relation to the ICP-MS Divestment Business, (including instrument operating manuals, documentation and the assignment of the copyright in relation to ICP Expert, the proprietary software associated with Varian's ICP-MS instruments as well as the relevant source codes); the relevant assets include but are not necessarily limited to those presented at **Annex Schedule D (1)**;

(ii) perpetual, exclusive, royalty-free licences with a field of use restriction (use only in connection with ICP-MS) for all patents and trademarks which are not used exclusively in relation to the ICP-MS Divestment Business but also in relation to other Varian businesses including but not necessarily limited to those presented at **Annex Schedule D (2)**

(c) the following main licences, permits and authorisations: None.

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

(i) transfer of any agreements between Varian and its suppliers which relate exclusively to the ICP-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the ICP-MS Divestment Business) of any agreement between Varian and its suppliers which relates to the ICP-MS Divestment Business and also to other Varian businesses;

(ii) transfer of any agreements between Varian and its distributors which relate exclusively to the ICP-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement) and, to the extent possible, the transfer of the relevant part (being that part relating to the ICP-MS Divestment Business) of any agreement between Varian and its distributors which relates to the ICP-MS Divestment Business and also to other Varian businesses. Agilent will not distribute its own ICP-MS system through any distributor that currently distributes Varian's ICP-MS system for a time period of […] from Closing. A list of relevant distributors is set out at **Annex Schedule D (4);**

(iii) transfer of any agreements between Varian and its customers (excluding service contracts) which relate to the ICP-MS Divestment Business (subject to any necessary consents of the counter-party to the relevant agreement);

(iv) unfulfilled customer orders of the ICP-MS Divestment Business at the date of Closing;

(e) the following customer, credit and other records of the ICP-MS Divestment Business:

(i) customer lists;

(ii) finished goods inventory;

(iii) production data;

(iv) manuals and engineering records;

(v) all other business records used in the operation of the ICP-MS Divestment Business;

(f) the following Key Personnel:

Name	**Role**
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]

To the extent that there are any insurmountable obstacles to the transfer of this key personnel, appropriate arrangements, such as arrangements providing for training of and assistance to the Purchaser's employees, to ensure the continuity, viability and competitiveness of the ICP-MS Divestment Business will be put in place.

(g) the following Personnel: at the Purchaser's request, up to a further 54 employees in the business functions identified in **Annex Schedule D (3)**.

15. Varian is prepared to transfer and enter into the following arrangements to support the Purchaser's ownership of the ICP-MS Divestment Business and to maintain its economic viability and competitiveness:

(a) at the Purchaser's request, supply to the Purchaser of rotary and turbo pumps to the Purchaser at cost […] for a transitional period of between […] (extendable by a further […] at the Purchaser's request);

(b) at the request of the Purchaser and to the extent that existing supply contracts with third parties cannot be assigned in accordance with paragraph 4(d)ii of the Commitments, supply to the Purchaser by Varian of all components required in the assembly of ICP-MS instruments […] for a transitional period of between […] from Closing (extendable by a further […] at the Purchaser's request);

(c) at the Purchaser's request, transitional services to assist with the transfer of the ICP-MS Divestment Business under a Transition Services Agreement for a period of between […] (extendable by a further […] at the Purchaser's request), including some or all of the following: manufacture of ICP-MS instruments, use of Varian's ICP-MS manufacturing facilities at […], operation – on the Purchaser's behalf – of two manufacturing shifts per day, assistance with the physical move of assets, provision of know-how to support the start-up of operations in a new facility, training of new and relocated employees, provision of support for a shift to outsourced manufacturing, supply of spare parts, supporting the Purchaser in making its own arrangements relating to the procurement of any necessary components, and maintaining relationships with the current customers and distributors of the ICP-MS Divestment Business.

16. The ICP-MS Divestment Business shall not include:

(a) Any IT systems, logistics, back office and overhead functions, apart from on a transitional basis under the TSA.

SCHEDULE – TABLE OF ANNEXES

No	Title
1.	Annex Schedule D (1) – List of trademarks and copyright used exclusively in relation to the ICP-MS Divestment Business
2.	Annex Schedule D (2) – List of patents and trademarks which are not used exclusively in relation to the ICP-MS Divestment Business
3.	Annex Schedule D (3) – ICP-MS Divestment Business organisation chart
4.	Annex Schedule D (4) – Distributors which currently distribute Varian's ICP-MS systems

ANNEX SCHEDULE D (1)

TRADEMARKS AND COPYRIGHT USED EXCLUSIVELY IN RELATION TO THE ICP-MS DIVESTMENT BUSINESS

	Trademark/copyright	Description	Status	Country
Trademarks shared with other Varian businesses				
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
Copyrights exclusive to ICP-MS business				
[…]	[…]	-	[…]	[…]
[…]	[…]	-	[…]	-

ANNEX SCHEDULE D (2)

PATENTS, LICENCES AND TRADEMARKS SHARED WITH OTHER VARIAN BUSINESSES

1. Royalty, Licensing, Development and Technology Agreements

Party and Title of Agreement	IP Licensed	Execution Date	Royalty obligations	Exclusivity	Term	IP Ownership and Rights	Description
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

2. ICP-MS trademarks

Trademark/copyright	Description	Status	Country
[…]	[…]	[…]	[…]

ANNEX SCHEDULE D (3)

ICP-MS DIVESTMENT BUSINESS ORGANISATION CHART

[…]

ANNEX SCHEDULE D (4)

LIST OF VARIAN ICP-MS DISTRIBUTORS

	Distributor	Country
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
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	Distributor	Country
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[…]	[…]	[…]

Notes:

***** Denotes distributors that have sold a Varian ICP-MS product in FY 2009.