

15 January 2017

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Case M.8087 – SMITHS GROUP/MORPHO DETECTION

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Smiths Group plc (“*Smiths*”) (the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of sole control over Morpho Detection, LLC and Morpho Detection International, LLC (together, “*Morpho Detection*”) by Smiths Detection, US Holdings, LLC, an indirect wholly owned subsidiary of Smiths (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in 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 (the “*Remedies Notice*”).

SECTION A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “*Consolidated Jurisdictional Notice*”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 6 to 8 and described more in detail in the Schedule.

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

Closing Period: the period of [redacted] months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party 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 [redacted] months from the Effective Date.

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

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

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

Parties: the Notifying Party and Morpho Detection.

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

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

Purchaser Criteria: the criteria laid down in paragraph 18 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

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

SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESS

Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these Commitments. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.
3. The Notifying Party shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, the Notifying Party, Morpho Detection, any Affiliated Undertakings or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 19; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 45 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of Morpho Detection's global Trace business and comprises all of the elements of Morpho Detection's existing business required for the development, manufacture, sale and provision of aftermarket services for its Trace product range as set out in Annex A, (the *Trace Products*).
6. More particularly, the Divestment Business includes, subject to paragraph 8:

- (a) the assignment of the lease (or, alternatively, the sublease) of the following facilities currently used by Morpho Detection for its global Trace business:
 - (i) R&D and manufacturing facility located at Andover, Massachusetts;
 - (ii) R&D facility located at Santa Ana, California; and
 - (iii) sales/service depot located at Cambridge in the UK.
- (b) in relation to the Trace Products:
 - (i) the transfer of Morpho Detection's intellectual property rights commercialised exclusively in relation to the Trace Products, as set out in Annex B;
 - (ii) the transfer of Morpho Detection's intellectual property rights used in relation to all parts and consumables for the Trace Products (and their predecessors), as set out in Annex B;
 - (iii) a non-exclusive, irrevocable, worldwide, royalty-free licence of Morpho Detection's intellectual property rights commercialised in relation to both the Trace Products and any products retained by Morpho Detection, as set out in Annex C; and

in each case as at the time when the legal title to the Divestment Business is transferred to the Purchaser;
- (c) the Trace Products repair depot equipment and a copy of related know-how;
- (d) the assignment of servicing contracts to the extent relating to the Trace Products;
- (e) inventories associated exclusively with the Trace Products and their predecessors;
- (f) production, quality, and manufacturing, engineering and R&D equipment used to develop, produce or support production of the Trace products;
- (g) all assets used by the development organisation to customise and develop new algorithms on the Trace Products;
- (h) transitional support arrangements for a period no longer than [redacted] months to ensure the operation of the Divestment Business until it has been established by, and migrated to, the Purchaser;
- (i) all personnel necessary to ensure the viability of the Divestment Business, including all key personnel, to produce, sell, support and develop the Trace Products activities, as set out in Annex E and Annex F;

- (j) the transfer of all agreements with Morpho Detection's current distributors to the extent relating to the sale and servicing of Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these distributors;
 - (k) the transfer of all agreements with Morpho Detection's current customers to the extent relating to the sale and servicing of Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these customers;
 - (l) the transfer of all agreements with Morpho Detection's current suppliers to the extent relating to Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these suppliers;
 - (m) the disclosure of customer records and full information about the terms of customer contracts with all of the Divestment Business's customers to the extent relating to the purchase of the Divestment Business;
 - (n) Morpho Detection's intellectual property rights in its Mass Spectrometry (MS) technology for use in Trace products and consumables and any existing prototype Trace products employing this technology, subject to a non-exclusive, irrevocable, worldwide, royalty-free licence back to Smiths and/or Morpho Detection and their affiliates in relation to products other than Trace products (see Annex D);
 - (o) Morpho Detection's intellectual property rights in its pipeline [redacted], subject to a non-exclusive, irrevocable, worldwide, royalty-free licence back to Smiths and/or Morpho Detection and their affiliates in relation to products other than Morpho Detection's Trace Products (see Annex D); and
 - (p) to the extent not already referred to above, Morpho Detection's intellectual property rights in its product pipeline relating wholly or primarily to Trace Products.
7. The Purchaser of the Divestment Business will be required to enter into transitional support arrangements with Smiths and/or Morpho Detection or their affiliates for a period no longer than [redacted] months to ensure the operation of the non-Trace business retained by Morpho Detection until it has been established by, and migrated to, Smiths and/or Morpho Detection or their affiliates.
8. The Divestment Business does not include any right, title, or interest in or to:
- (a) Morpho Detection's non-Trace Products businesses, including any intellectual property rights which are exclusively commercialised in relation to non-Trace Products;

- (b) Morpho Detection's trade marks (and related rights), nor any right to use the word "Morpho" or "Morpho Detection";¹
 - (c) any technologies or intellectual property rights not used in Trace Products;
 - (d) any rights to technologies which relate to networking functionality for non-Trace products;
 - (e) any rights in Morpho Detection's subcontract with Leidos, for the servicing of checkpoint equipment deployed by the US Transportation Security Administration, including Morpho Detection's Trace equipment; the Purchaser will be required to enter an agreement with Smiths/Morpho Detection or their affiliates to provide consumables and parts, and any necessary services, for the Trace Products covered by the subcontract with Leidos;
 - (f) the personnel required in relation to 8(e) above; and
 - (g) Morpho Detection's webstore.
9. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

10. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the

¹ [redacted].

industrial or commercial strategy or the investment policy of the Divestment Business;

- (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the remaining businesses of the Parties. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Party shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

11. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business the Notifying Party is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Notifying Party have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the Divestment Business.
12. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the business retained by the Notifying Party. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(c) of these Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace the Hold Separate Manager.

Ring-fencing

13. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such

Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties are required by law.

Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [redacted] years after Closing.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
17. The Notifying Party 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

18. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - (b) The Purchaser shall have [redacted: industrial background] the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Party and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party or Affiliated Undertakings has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. At the request of the Notifying Party, the Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different 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

- 20. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
- 21. If the Notifying Party, Morpho Detection or Affiliated Undertakings have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee.

The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

22. The Trustee shall:
- (a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
 - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (c) neither have nor become exposed to a Conflict of Interest.
23. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Party

24. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party 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 or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 22 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

25. 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, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party 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 Notifying Party

26. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 and 25 of these Commitments.

Trustee nominated by the Commission

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

Functions of the Trustee

28. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, 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

29. The Monitoring Trustee shall:
 - (a) 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.
 - (b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Notifying Party, in accordance with paragraphs 10 and 11 of these Commitments;
 - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments;
 - (iii) with respect to Confidential Information:

- (A) determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - (B) in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - (C) make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties; and
 - (D) decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;
- (iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;
- (c) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (d) 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:
- (i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (ii) potential purchasers are granted reasonable access to the Personnel;
- (e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (f) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the

business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

- (g) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
 - (h) within one week after receipt of the documented proposal referred to in paragraph 19 of these Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
 - (i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
30. If the Monitoring and Divestiture Trustee are not the same legal persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 18 and 19 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
32. 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 Notifying Party.

Duties and obligations of the Parties

33. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Morpho Detection's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
34. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
35. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), 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, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
36. The Notifying Party shall indemnify the Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party 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.
37. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party'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 the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 of these Commitments shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

38. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
39. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
40. For a period of 10 years from the Effective Date the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

Replacement, discharge and reappointment of the Trustee

41. 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 and the Notifying Party, require the Notifying Party to replace the Trustee; or
 - (b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.
42. If the Trustee is removed according to paragraph 41 of these Commitments, 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 20 to 27 of these Commitments.
43. Unless removed according to paragraph 41 of these Commitments, 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

44. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.
45. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

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

(Signed)

duly authorised for and behalf of
Smiths Group plc

duly authorised for and behalf of
Morpho Detection, LLC

duly authorised for and behalf of
Morpho Detection International, LLC

SCHEDULE

Legal and functional structure of the Divestment Business

1. The Divestment Business as operated to date has the following legal and functional structure.
2. The constituent parts of the Divestment Business are owned directly or indirectly by Morpho Detection, LLC, with registered office at [redacted] or Morpho Detection International, LLC, with registered office at [redacted].
3. The Divestment Business consists of the manufacture, sale and repair of Morpho Detection's range of Trace products as listed in Annex A.
4. The Divestment Business will be carved out by way of a pre-closing reorganisation and comprise the essential functions of the Trace Products business, including relevant assets, licences, personnel, etc. The Parties will use reasonable efforts to transfer relevant material contracts with third parties relating to the Trace Products pre-Closing to the corporate entities to be transferred to the Purchaser or (where this is not possible) to facilitate the Purchaser to recreate these relationships by introducing the Purchaser to the relevant third parties.

Composition of the Divestment Business

5. The Divestment Business consists of Morpho Detection's global Trace business and comprises all of the elements of Morpho Detection's existing business required for the development, manufacture, sale and provision of aftermarket services for its Trace product range as set out in Annex A, (the *Trace Products*).
6. More particularly, the Divestment Business includes, subject to paragraph 8:
 - (a) the assignment of the lease (or, alternatively, the sublease) of the following facilities currently used by Morpho Detection for its global Trace business:
 - (i) R&D and manufacturing facility located at Andover, Massachusetts;
 - (ii) R&D facility located at Santa Ana, California; and
 - (iii) sales/service depot located at Cambridge in the UK.
 - (b) in relation to the Trace Products:
 - (i) the transfer of Morpho Detection's intellectual property rights commercialised exclusively in relation to the Trace Products, as set out in Annex B;
 - (ii) the transfer of Morpho Detection's intellectual property rights used in relation to all parts and consumables for the Trace Products (and their predecessors), as set out in Annex B;

- (iii) a non-exclusive, irrevocable, worldwide, royalty-free licence of Morpho Detection's intellectual property rights commercialised in relation to both the Trace Products and any products retained by Morpho Detection, as set out in Annex C; and

in each case as at the time when the legal title to the Divestment Business is transferred to the Purchaser;

- (c) the Trace Products repair depot equipment and a copy of related know-how;
- (d) the assignment of servicing contracts to the extent relating to the Trace Products;
- (e) inventories associated exclusively with the Trace Products and their predecessors;
- (f) production, quality, and manufacturing, engineering and R&D equipment used to develop, produce or support production of the Trace products;
- (g) all assets used by the development organisation to customise and develop new algorithms on the Trace Products;
- (h) transitional support arrangements for a period no longer than [redacted] months to ensure the operation of the Divestment Business until it has been established by, and migrated to, the Purchaser;
- (i) all personnel necessary to ensure the viability of the Divestment Business, including all key personnel, to produce, sell, support and develop the Trace Products activities, as set out in Annex E and Annex F;
- (j) the transfer of all agreements with Morpho Detection's current distributors to the extent relating to the sale and servicing of Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these distributors;
- (k) the transfer of all agreements with Morpho Detection's current customers to the extent relating to the sale and servicing of Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these customers;
- (l) the transfer of all agreements with Morpho Detection's current suppliers to the extent relating to Trace Products, or (where this is not possible) to use reasonable efforts to introduce the Purchaser to these suppliers;
- (m) the disclosure of customer records and full information about the terms of customer contracts with all of the Divestment Business's customers to the extent relating to the purchase of the Divestment Business;
- (n) Morpho Detection's intellectual property rights in its MS technology for use in Trace products and consumables and any existing prototype

Trace products employing this technology, subject to a non-exclusive, irrevocable, worldwide, royalty-free licence back to Smiths and/or Morpho Detection and their affiliates in relation to products other than Trace products (see Annex D);

- (o) Morpho Detection's intellectual property rights in its pipeline [redacted], subject to a non-exclusive, irrevocable, worldwide, royalty-free licence back to Smiths and/or Morpho Detection and their affiliates in relation to products other than Morpho Detection's Trace Products (see Annex D); and
 - (p) to the extent not already referred to above, Morpho Detection's intellectual property rights in its product pipeline relating wholly or primarily to Trace Products.
7. The Purchaser of the Divestment Business will be required to enter into transitional support arrangements with Smiths and/or Morpho Detection or their affiliates for a period no longer than [redacted] months to ensure the operation of the non-Trace business retained by Morpho Detection until it has been established by, and migrated to, Smiths and/or Morpho Detection or their affiliates.
8. The Divestment Business does not include any right, title, or interest in or to:
- (a) Morpho Detection's non-Trace Products businesses, including any intellectual property rights which are exclusively commercialised in relation to non-Trace Products;
 - (b) Morpho Detection's trade marks (and related rights), nor any right to use the word "Morpho" or "Morpho Detection";²
 - (c) any technologies or intellectual property rights not used in Trace Products;
 - (d) any rights to technologies which relate to networking functionality for non-Trace products;
 - (e) any rights in Morpho Detection's subcontract with Leidos, for the servicing of checkpoint equipment deployed by the US Transportation Security Administration, including Morpho Detection's Trace equipment; the Purchaser will be required to enter an agreement with Smiths/Morpho Detection or their affiliates to provide consumables and parts, and any necessary services, for the Trace Products covered by the subcontract with Leidos;
 - (f) the personnel required in relation to (e) above; and
 - (g) Morpho Detection's webstore.
9. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more

² [Redacted].

detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

- (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel.
10. If there is any asset or personnel which is not be covered by paragraph 6 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Annex A

List of Trace Products included in the Divestment Business

1. Desktop products:
 - (a) Itemiser DX;
 - (b) Itemiser 4DX;
 - (c) Itemiser 3; and
 - (d) Itemiser 3 Enhanced
2. Handheld products:
 - (a) MobileTrace; and
 - (b) Hardened MobileTrace
3. Portal:
 - (a) EntryScan 4

Annex B

Intellectual property rights commercialised exclusively in relation to the Trace Products which will be transferred to the Purchaser

Patents

AppNumber	PubNumber	IssDate	PatNumber	ApplicationStatus
15/064203				Pending
14/974137				Pending
15/087251				Pending
11/402190	2007-0169570	9/29/2009	7594447	Granted
10/774003	2005-0019220	11/25/2008	7456393	Granted
10/929915	2006-0042407	5/23/2006	7047829	Granted
14/530081	2016-0123942			Published
12/082535	2011-0181288	12/24/2013	8614582	Granted
10/886952	2005-0057354	8/7/2007	7253727	Granted
1516609.3	2536076			Published
2904479	2904479			Published
14/492196	2016-0282321			Published
15/082108				Pending
15/064264				Pending
11/554160	2008-0098794	9/29/2009	7594422	Granted
11/967539	2009-0166531	2/16/2010	7663099	Granted
8172075.7	2075578	5/18/2016	2075578	Granted
2688352	2688352	6/16/2015	2688352	Granted
12/082638	2009-0223310	5/29/2012	8186234	Granted
13/860360	2013-0239704	10/14/2014	8857278	Granted
11/639579	2013-0091963	5/7/2013	8434375	Granted
2620405	2620405	7/8/2014	2620405	Granted
11/202455	2007-0034024	11/27/2007	7299710	Granted
11/426442	2008-0067341	6/2/2009	7541577	Granted
11/075199	2006-0196249	7/22/2008	7401498	Granted
10/936112	2006-0049346	11/28/2006	7141786	Granted
10/033874	2002-0078767	3/23/2004	6708572	Granted
11/687063	2007-0220953	5/25/2010	7721588	Granted
2644937	2644937	11/24/2015	2644937	Granted
10/640551	2004-0131503	3/4/2008	7338638	Granted
10/774004		1/11/2005	6840122	Granted
12/650195	2011-0154918	3/26/2013	8402842	Granted

Trademarks

CaseNumber	TrademarkName	CountryName	TrademarkStatus	AppNumber	FilDate	RegNumber	RegDate	ClientRef	Code
30017-00321	ENTRYS CAN	European Union (Community)	Registered	2610210	3/5/2002	2610210	3/30/2004	IM0031EM	CBR NE- And
30017-00322	ENTRYS CAN	United States of America	Registered	77/607,642	11/5/2008	3,682,394	9/15/2009	IM0031US	CBR NE- And
30017-00332	ITEMISE R	European Union (Community)	Registered	1932458	10/23/2000	1932458	2/6/2002	IM0032EM	CBR NE- And
30017-00628	ENTRYS CAN	United Kingdom	Registered	2249485	10/20/2000	2249485	7/11/2003	IM0031GB	CBR NE- And
30017-00722	VAPORT RACER	United States of America	Registered	85/331,603	5/26/2011	4,255,467	12/4/2012	RS0004US	CBR NE- And
30017-00333	ITEMISE R	United States of America	Registered	77/076,890	1/5/2007	3,458,778	7/1/2008	IM0032US	CBR NE- And
30017-00334	STREETLAB	United States of America	Registered	78/018,492	7/26/2000	2,592,987	7/9/2002	RS0003US	CBR NE- And
30017-00602	MOBILE TRACE	United States of America	Registered	78/954,471	8/17/2006	3,358,058	12/18/2007	IM0033US	CBR NE- And
30017-00818	VAPORT RACER	Canada	Registered	1553963	11/28/2011	865735	11/22/2013	RS0004CA	CBR NE- And
30017-00819	VAPORT RACER	Int'l Registration - Madrid Protocol Only	Registered	1102934	11/28/2011	1102934	11/28/2011	RS0004WP	CBR NE- And
30017-00820	VAPORT RACER	China (People's Republic)	Registered	1102934	11/28/2011	1102934	11/28/2011	RS0004CN	CBR NE- And
30017-00821	VAPORT RACER	European Union (Community)	Registered	1102934	11/28/2011	1102934	11/28/2011	RS0004EM	CBR NE- And

Annex C

Morpho Detection's intellectual property rights licensed to the Purchaser

AppNumber	PubNumber	IssDate	PatNumber	ApplicationStatus
2538709	2538709	2/26/2013	2538709	Granted
10/672958	2004-0119009	9/19/2006	7109476	Granted
2924580	2924580			Published
14/666856	2016-0282304			Published
15/135679				Pending
2790430	2790430			Published
13/248501	2013-0082172	5/13/2014	8723111	Granted
1944520.4	1297554			Published
2411532	2411532	4/13/2010	2411532	Granted
09/596307		10/7/2003	6630664	Granted
2548177	2548177	9/30/2014	2548177	Granted
11/138594	2006-0284103	3/27/2007	7196325	Granted
09/653038		12/11/2001	6329653	Granted
2362449	2362449	10/28/2008	2362449	Granted
09/247646		4/3/2001	6211516	Granted

Annex D

Morpho Detection's intellectual property rights transferred to the Purchaser and licenced back to Smiths / Morpho Detection by the Purchaser

AppNumber	PubNumber	IssDate	PatNumber	ApplicationStatus
15003073.2	3015858			Published
2910780	2910780			Published
14004012.2	2884254			Published
12/244381	2009-0038370	12/28/2010	7856898	Granted
11/299915	2007-0131017	11/11/2008	7448248	Granted
2738053	2738053			Published
13/091365	2011-0278447	10/16/2012	8288735	Granted
09/386577		12/4/2001	6326615	Granted
15003417.1	3032570			Published
2913931	2913931			Published
14/186820	2015-0007447	2/10/2015	8952327	Granted
13000897.2	2637013			Published
2.0131E+11	103308590			Published
2807894	2807894			Published
13/415359	2013-0234013	4/1/2014	8686355	Granted
11/966179	2009-0166521	2/1/2011	7880137	Granted
10/103601	2002-0134933	7/20/2004	6765198	Granted
14000785.7	2778650			Published
2844222	2844222			Published
13/843320	2015-0268147	5/31/2016	9354153	Granted
2479875	2479875	2/22/2011	2479875	Granted
10/101670	2003-0173514	5/18/2004	6737642	Granted
09/910197	2002-0017605	2/10/2004	6690005	Granted
11/875536	2008-0093549	5/5/2009	7528367	Granted
15003658	3040717			Published
201511015498.X	105738461			Published
2915785	2915785			Published
14/586503		9/29/2015	9147565	Granted
10/628753	2004-0056191	12/14/2004	6831273	Granted
2153371	2153371	3/23/1999	2153371	Granted
14000925.9	2778669			Published
2845959	2845959			Published
14/194279	2014-0264002	10/21/2014	8866073	Granted
09/411455		11/4/2003	6642513	Granted
2285153	2285153	5/11/2010	2285153	Granted
10/657223	2004-0094707	11/9/2004	6815670	Granted
99307838.5	992782	8/31/2005	992782	Granted
90/013012		10/30/2014	6815670Cl	Granted

1219147.4	GB2496286			Published
95304941.8	692712	10/2/2002	692712	Granted
12/276118	2010-0126284	4/24/2012	8161830	Granted
9829865.6	2368102			Published
14/133921	2015-0177214	11/1/2016	9482655	Granted

Annex E

Overview of the personnel that will be included in the Divestment Business

The Divestment Business includes in the region of 170-180 personnel based in Andover (Massachusetts, USA), Santa Ana (California, U.S.A), Cambridge (U.K.) and several other remote locations worldwide.

Annex F

Overview of the key personnel that will be included in the Divestment Business

Seven appropriate roles covering product management, engineering, program management, systems engineering and sales/account management.