



EUROPEAN COMMISSION  
DG Competition

***Case M.8492 - QUAKER /  
GLOBAL HOUGHTON***

Only the English text is available and authentic.

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

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 11/12/2018

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## EUROPEAN COMMISSION

Brussels, 11.12.2018  
C(2018) 8753 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

### **To the notifying party:**

**Subject: Case M.8492 – Quaker / Global Houghton  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the  
Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 19 October 2018, the European Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation and following a referral pursuant to Article 4(5) of the Merger Regulation ("the notified concentration"), which would result from a proposed transaction by which Quaker Chemical Corporation ("Quaker") acquires sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, of Global Houghton, Ltd. ("Houghton") by way of a purchase of shares ("the Transaction"). In this Decision, Quaker is also referred to as the "Notifying Party" and, together with Houghton, they are collectively referred to as "the Parties". The undertaking that would result from the Transaction is referred to as "the merged entity".

#### **1. THE PARTIES**

- (2) Quaker, headquartered in Conshohocken, Pennsylvania (USA), is a global provider of process fluids, chemical specialty products and technical expertise to

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

a wide range of industries, including steel, aluminium, automotive mining, aerospace, tube and pipe, cans and others.

- (3) Houghton, headquartered in Valley Forge, Pennsylvania (USA) is a global provider of specialty chemicals, oils and lubricants. It serves a wide variety of sectors, including steel, aluminium, aerospace, automotive, food and beverage, machinery and equipment, and others.

## **2. THE TRANSACTION**

- (4) The notified concentration consists of the acquisition by Quaker of sole control over Houghton by way of a purchase of shares. In exchange for this, Houghton's shareholders will receive a cash consideration of USD 172.5 million, and 24.5% of Quaker's common shares. This minority shareholding will not confer joint control to Houghton's shareholders.<sup>3</sup>
- (5) It follows that the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. UNION DIMENSION**

- (6) The notified concentration does not meet the thresholds of Article 1(2) of the Merger Regulation. The combined aggregate worldwide turnover of the Parties is lower than EUR 5 000 million (Quaker: EUR 674.9 million; Houghton EUR 692.9 million). Nor does the notified concentration meet the thresholds set out in Article 1(3) of the Merger Regulation, since the combined aggregate worldwide turnover of the Parties is lower than EUR 2 500 million. The notified concentration therefore does not have a Union dimension within the meaning of Article 1 of the Merger Regulation.
- (7) On 17 May 2017, the Notifying Party informed the Commission by way of a reasoned submission that the Transaction was capable of being reviewed under

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<sup>3</sup> Houghton is indirectly controlled by Gulf Oil International Ltd. ("Gulf", through Gulf Houghton), ultimately held by the holding vehicle AMAS Holding SPF ("Amas", Luxembourg). Amas is owned by numerous members of the Hinduja family (India) with no single individual having a share of [...]. No family member(s) either solely or jointly exercise(s) control over Amas. Post-Transaction, Quaker's Board of Directors will be composed of twelve members and Gulf Houghton will have the right to appoint three Directors. Strategic decisions at the level of the Board will be taken by simple majority. Most decisions at the Shareholder Meeting will be taken by simple majority with a minimum quorum of [...]. The only decisions which will require a supra-majority of [...] % of the shareholders' votes relate to standard minority shareholders protection rights, with the exception of the removal of directors. While Gulf Houghton will be able to veto such decision in light of their [...] % share, this is not, on its own, sufficient to confer them negative control over Quaker post-Transaction. As regards points pertinent to the competitive assessment regarding this non-controlling minority stake, it is noted that the information submitted by the Notifying Party indicates that: (i) there are only very small overlaps between the activities of Gulf and those of the Parties in the EEA: first, while Gulf supplies mineral-based hydraulic fluids (a market where the Parties have minor activities), the supplied volumes are very limited; second, Gulf licenses its brand to companies selling products in markets where the Parties are active. However, the quantities sold under the Gulf brand are also very limited; and (ii) no other meaningful relationship would arise between the Parties' activities and Gulf's activities. Accordingly, the non-controlling minority shareholding is not discussed further in this Decision.

the national competition laws of Germany, Portugal and Spain, and requested that the Transaction be reviewed by the Commission. The Member States competent to examine the Transaction did not express disagreement to the referral request within the period laid down by the Merger Regulation.

- (8) Accordingly, the notified concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

#### **4. THE PROCEDURE**

- (9) The Transaction was initially notified to the Commission on 2 February 2018. Following the results of an initial market investigation, the Parties formally submitted to the Commission a first set of commitments on 2 March 2018.

- (10) The first set of commitments consisted of the divestment of EEA product formulations in relation to Quaker's aluminium hot rolling oil business and Houghton's steel rolling oil business, with a non-exclusive royalty-free licence-back to the merged entity outside the EEA, to the extent permitted by the US Federal Trade Commission in its proceedings. The market test concerning the first set of commitments yielded negative results. The remedy package was deemed inadequate to allow a potential purchaser to run the divestment business viably and competitively. Notably, the mix-and-match of carved out assets from both Quaker and Houghton presented serious implementation risks, particularly in relation to the transfer of sufficient personnel. In light the results of the market test, the Parties withdrew their initial notification on 16 March 2018.

- (11) The Parties re-notified the concentration on 19 October 2018 ("the second notification"). Shortly after, on 25 October 2018, the Parties submitted an improved set of commitments, as described in Section 6.2.1 of this Decision.

- (12) In the context of the second notification, the Commission has carried out a market investigation and a market test (the latter is hereinafter referred to as "the market test") in parallel.

- (13) Virtually all respondents confirmed that their views on the markets concerned by the Transaction had not changed with respect to those provided in the context of the initial market investigation. Therefore, for the purpose of the competitive assessment in this Decision, the Commission relies on the information that the market participants already provided in response to the initial market investigation, which is hereinafter referred to as "the market investigation".

#### **5. COMPETITIVE ASSESSMENT**

##### **5.1. Product market definition**

- (14) Quaker and Houghton are both active in the development, production and marketing of specialty chemical products globally. The Parties' activities overlap in the production and sale of industrial lubricants and industrial surface treatment products.

- (15) As regards lubricants, in its decision in the *Exxon/Mobil*<sup>4</sup> case, the Commission identified four general types of lubricants applications, namely industrial, automotive, marine and aviation. The main function of lubricants used for industrial applications is to reduce friction and wear between moving parts within a system. Also, the Commission underlined in *Exxon/Mobil* that industrial lubricants include metalworking fluids ("MWFs"), hydraulic fluids ("HFs"), industrial gear oils, turbine oils, transformer oils, compressor oils and process oils/aromatic extracts. The Parties are only active in two of these categories, namely MWFs and HFs.

#### 5.1.1. Metal working fluids

##### 5.1.1.1. *Introduction*

- (16) MWFs comprise a range of oils and liquids used in metal production processes to lubricate and/or cool metal workpieces whilst being processed. Contrary to other types of industrial lubricants such as HFs<sup>5</sup>, MWFs come into direct contact with the workpiece.
- (17) The Notifying Party submits that the relevant product market encompasses the manufacture and sale of all industrial lubricants, without any further segmentation.
- (18) In this regard, the Notifying Party refers to a decision dating back to 1996, IV/M.727 - *BP/Mobil*, where the Commission noted the limited extent of demand-side substitutability regarding industrial lubricants but also recognised considerable supply-side substitutability in the lubricants manufacture process. Notably, the Commission considered that in blending plants, base oils can be blended with different additives to manufacture different types of lubricants and that switching between different types of industrial lubricants is relatively simple. In that decision, the Commission noted that some customers demand the full range of lubricants for their operations from their lubricants supplier, rather than sourcing individual lubricants from different suppliers and that this portfolio effect, combined with the very strong supply-side substitutability in terms of manufacturing process would seem to indicate a single market for industrial lubricants despite the specific products which are produced for different end uses. The Notifying Party submits that the production process relating to industrial lubricants simply involves blending tanks with agitators, and customized ingredients. On that basis, the Notifying Party argues that the existence of significant supply-side substitutability warrants the findings of a single market comprising all industrial lubricants.
- (19) Notwithstanding the above, the Notifying Party also submits that the market for the manufacture and sale of MWFs, might be subdivided into four main categories: (a) Removal fluids, (b) Forming fluids, (c) Protecting fluids; and (d)

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<sup>4</sup> Commission decision in case IV/M.1383 - *Exxon/Mobil* dated 29 September 1999. It is pertinent to note that the competitive assessment in that case focused mainly on a component of lubricants, namely base oils. The present Decision focuses on overlaps of downstream products thereof, i.e. lubricants.

<sup>5</sup> Under certain circumstances, HFs may enter in contact with the workpiece in case of leakages and potentially with the MWFs. Depending on the end product, compatibility between HFs and MWFs may therefore need to be ensured.

Treating fluids. The Notifying Party further acknowledges that each of these MWF segments comprises a number of different products:

- (a) Removal fluids are used in metalworking operations in which chips are removed from the metal (e.g. cutting fluids, grinding fluids, coolants, etc.). Within the removal fluids category, the following main product groups may be identified, according to the information provided by the Notifying Party: (i) emulsifiables, and (ii) neat oils.
  - (b) Forming fluids are used in chipless metalworking operations that involve changing the shape or contour of metals by bending, stretching, pounding or squeezing the metal. The diversity of forming applications results in a wide range of fluid types, serving various industries. Within the forming fluids category, the following main product groups may be identified, according to the information provided by the Notifying Party: (i) rolling oils, which are used in the steel and non-ferrous (i.e. aluminium, copper, and zinc) industries, for hot and cold rolling oil operations, (ii) wet temper fluids, (iii) drawing and forming fluids, (iv) forging fluids, and (v) cans fluids. Within some of these product groups, different products can be identified depending on their intended use (e.g. within rolling oils, distinction between i.a. steel hot rolling oils and steel cold rolling oils, as well as aluminium hot rolling oils and aluminium cold rolling oils).
  - (c) Protecting fluids are used to temporarily shield metal surfaces, protecting them from air, water or other corrosive substances (e.g. rust preservatives). Within the protecting fluids category, the Notifying Party explains that a specific product category could be distinguished in view of the peculiar characteristics of its oils, i.e. prelubes, and that no further meaningful subdivision would be adequate.
  - (d) Treating fluids are used in thermal processes in which the physical properties of metal are changed to meet application requirements (e.g. to render the metal hard, soft, elastic or brittle). The Notifying Party submits that it is not aware of possible sub-divisions of this category and does not discuss it further as the Parties' activities do not overlap in this respect.<sup>6</sup>
- (20) While the Notifying Party acknowledges that, internally, it segments the market for industrial lubricants in multiple ways (for example by [...] or by [...]), it submits that such internal segmentations cannot serve as a basis to define product markets for the purpose of merger control review.
- (21) The market investigation has shown that demand-side substitutability between different categories or products of industrial lubricants is very limited. The vast majority of respondents indicated that it is technically impossible to use a particular lubricant for a different purpose than what it was designed for. The results of the market investigation indicated that the very limited demand-side substitutability does not only apply to the possibility to substitute products within

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<sup>6</sup> Quaker does not produce or sell any treating fluids to any of its customers, with the exception of a single customer for which Quaker performs broader fluid management services, [...].

a given MWF category (e.g. a forming fluid with a removal fluid), but also in relation to the different products within the various MWF product categories.<sup>7</sup>

- (22) Moreover, in the present case, results of the market investigation do not generally confirm the Notifying Party's submission about supply-side substitutability. Supply-side substitutability may be taken into account when defining markets in those situations in which its effects are equivalent to those of demand-side substitution in terms of effectiveness and immediacy. This means that suppliers are able to switch production to the relevant products and market them in the short term without incurring significant costs or risks in response to a small and permanent change in relative prices. When companies market a wide range of qualities or grades for one product and even if, for a given final customer or group of consumers, the different qualities are not substitutable, the different qualities will be grouped into one product market, provided that most suppliers are able to offer and sell the various qualities immediately and without incurring significant increases in costs.<sup>8</sup>
- (23) The market investigation has also shown that manufacturing equipment does not appear to represent a significant barrier to switching production from one particular individual product to another. Indeed, if a supplier possessed the chemical formulation and production know-how to produce a particular lubricant, switching production to that lubricant would not appear to be characterised by high costs and delays.<sup>9</sup> In this respect, the Notifying Party submits, for example, that switching production between different types of industrial lubricants would involve only the step of cleaning the blending tank, which can be performed within a couple of hours. The Notifying Party further submits that the costs resulting from switching the production between different types of industrial lubricants are generally not high.
- (24) However, what does appear, in light of the results of the market investigation, to constitute a significant barrier to switching for certain industrial lubricants is the chemical formulation of the product and production know-how, which appear to be essential in the production process in relation to certain MWF lubricants (for example, in relation to some rolling oils).
- (25) The results of the market investigation have indicated that developing the formulation and know-how for certain MWF involves significant costs. Because of this, most suppliers active in the industrial lubricants space acknowledge that if a supplier did not already possess the formulation and know-how to produce certain products, that supplier would not be able to offer and sell those products immediately and without incurring significant costs.<sup>10</sup> Accordingly, supply-side substitutability cannot be considered equivalent in terms of effectiveness and immediacy as demand-side substitution. More details about this lack of supply-side substitutability in relation to particular products pertinent to the assessment of the Transaction are presented in the following paragraphs, where applicable.

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<sup>7</sup> Replies to Q2 – questionnaire to customers, question 7.

<sup>8</sup> Commission's notice on the definition of relevant market for the purposes of Community competition law, paragraphs 20-21.

<sup>9</sup> Replies to Q1 – questionnaire to competitors, question 12.

<sup>10</sup> Replies to Q1 – questionnaire to competitors, questions 12 and 13.

### 5.1.1.2. Removal fluids

- (26) Removal fluids are used in metalworking operations in which chips are removed from the workpiece. They are designed to cool machined parts and metalworking tools. Additionally, Removal fluids act to wash away bits of metal or chips from the workpiece, protect the workpiece from corrosion and reduce friction. The ultimate objective of the use of Removal fluids is to increase the productivity and the product quality.
- (27) According to the results of the market investigation, the vast majority of metal working fluid producers considers Removal fluids as a separate product market within MWF<sup>11</sup>. This conclusion is shared by the vast majority of customers of MWF<sup>12</sup>. The majority of the respondents to the market investigation with producers of MWF also indicated that starting the supply of Removal fluids in the short term is not realistic due to the high costs (gathering know-how, R&D processes, set-up costs) and time needed (products need to be developed, but also tested by the customers).<sup>13</sup>
- (28) Furthermore, according to the information provided by the Notifying Party, the following sub-segments may be identified within the Removal fluids category: (i) Emulsifiables; and (ii) Neat oils.
- (a) Emulsifiables are water soluble Removal fluids. These fluids are mixed with water in order to produce an emulsion, which is then applied to the operation for which the Removal fluid is required.
- (b) Neat oils are oil-based Removal fluids without water content. They are typically used for low-speed operations and large cutting depths, where there is no specific need for cooling and thus no demand for water content.
- (29) The vast majority of the producers of MWF participating in the market investigation confirm the Notifying Party's view that Emulsifiables and Neat oils are the two main types of Removal fluids<sup>14</sup>. According to the results of the market investigation, the majority of the producers of MWF consider the barriers to entry the sub-segments of Emulsifiables or Neat oils as difficult and costly if the company is not already present in that sub-segment. The estimated time needed to enter either segment without pre-existing knowledge and activity can be up to 2 years and cost estimates range between low and EUR 10 million.<sup>15</sup> Other hurdles mentioned by producers of MWF are IP rights, regulatory hurdles, customer and machine tool manufacturer approvals, etc.<sup>16</sup>
- (30) However, the market investigation with the customers has not provided a clear result to the customer's perception of the demand-side-substitutability of Emulsifiables and Neat oils. Approximately 1/3 of the respondents considered Neat oils and Emulsifiables can be substitutes to each other, but another third of

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<sup>11</sup> Replies to Q1 – questionnaire to competitors, question 5.

<sup>12</sup> Replies to Q2 – questionnaire to customers, question 5.

<sup>13</sup> Replies to Q1 – questionnaire to competitors, question 13.

<sup>14</sup> Replies to Q1 – questionnaire to competitors, question 60.

<sup>15</sup> Replies to Q1 – questionnaire to competitors, question 62.

<sup>16</sup> Replies to Q1 – questionnaire to competitors, question 62.1.1.



the customers indicated that this was not the case (the remainder had no opinion).<sup>17</sup> However, all respondents indicated that a substitution would not be straightforward and required new trials to be ran with the new fluid, potential needs to modify the production equipment and the overall risk of quality loss in the final product. The majority of customers also indicated that, even if one of the two types of removal fluids would undergo a permanent price increase of 5 to 10%, they would not switch away from the more expensive product.<sup>18</sup>

- (31) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, (i) Removal fluids constitute a relevant product market; and (ii) the question of whether the market for Removal fluids should be segmented between Emulsifiables and Neat oils can be left open, since the notified concentration does not raise serious doubts as to its compatibility with the internal market, regardless of the exact product market definition.

#### 5.1.1.3. *Forming fluids*

- (32) Forming fluids are used in chipless metalworking operations that involve changing the shape or contour of metals by bending, stretching, pounding or squeezing the metal. The diversity of forming applications has resulted in a wide range of fluid types, services various industries.

##### i. Rolling oils

#### *Non-ferrous rolling oils, including aluminium rolling oils*

- (33) The category of non-ferrous rolling oils includes MWF used in the rolling of metals that do not contain iron in appreciable amounts, i.e. typically aluminium, copper, and zinc. Depending on the temperature that characterises the rolling stage, each of these metals may undergo two different main rolling processes, namely hot rolling and cold rolling. Different types of rolling oils are used by manufacturers, depending on the type of rolling process and metal considered.
- (34) In the EEA, the Parties' activities mainly overlap in relation to the supply of aluminium hot rolling oils (AHRO). Additional overlaps arise in relation to the supply of aluminium cold rolling oils (ACRO) and copper cold rolling oils (CCRO), but Quaker's sales of each of these two products are *de minimis*.
- (35) AHRO is a forming MWF used by aluminium manufacturers in forming or shaping aluminium to reduce forces on the roll, to prevent roll wear and to cool the roll. More specifically, AHRO is used to reduce the thickness of the aluminium ingot or slab in order to form different aluminium shapes. AHRO provides cooling, metal wetting, a high friction coefficient and film strength and also prevents metal pickup by the rolls.<sup>19</sup>
- (36) The Commission has never considered in the past potential markets for rolling oils used in the production of non-ferrous metals, including aluminium.

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<sup>17</sup> Replies to Q2 – questionnaire to customers, question 40 and sub-questions.

<sup>18</sup> Replies to Q2 – questionnaire to customers, question 40.2 and 40.3.

<sup>19</sup> Form CO, paragraph 196.

- (37) The information provided by the Notifying Party indicates that a given non-ferrous rolling oil (e.g. AHRO) is generally designed to be applied during the production process of a specific type of non-ferrous metal. Due to varied metallurgical properties of each of the different non-ferrous metals, lubricants dedicated to specific metals have to be used for each of these metals and cannot therefore be fully substituted from the demand side. According to the Notifying Party, the same reasoning applies to rolling oils used in hot and cold production processes as they are designed specifically for each application type.<sup>20</sup>
- (38) Similarly to its assertion about significant degree of supply-side substitutability in the industrial lubricants space, the Notifying Party submits that there is a significant degree of supply-side substitutability in the manufacture of various types of non-ferrous rolling oils.<sup>21</sup>
- (39) However, the Notifying Party's views appear to be contradicted both by the Parties' internal documents and by the results of the market investigation, which suggest the existence of a separate product market for the manufacture and supply of AHRO for the following reasons.
- (40) First, in their internal documents, the Parties analyse their sales and discuss the position of their competitors on the basis on narrow product segments, including at the level of "aluminium hot rolling" products.<sup>22</sup>
- (41) Second, the results of the market investigation indicated that there is a lack of demand-side and supply-side substitutability between AHRO and other lubricants, including other non-ferrous rolling oils.
- (42) On the demand side, customers explained that AHRO cannot be substituted with any other product which is not specifically designed for that application purpose.<sup>23</sup> One AHRO customer explained for instance that *"No other forming fluids can be substitute[s] for AHROs due to their unique chemistries."*<sup>24</sup>
- (43) On the supply side, competitors explained that switching production to AHRO constitutes a costly and lengthy process. While manufacturing equipment does not appear to represent a significant barrier to switching production, the majority of competitors explained that without specific know-how on the chemical composition of AHRO and the blending process of its different ingredients, it would be extremely difficult to start producing a rolling oil which is not already in their product portfolio.<sup>25</sup> In particular, results of the market investigation indicated that switching production to AHRO would require suppliers to run a long R&D process and, potentially, to face significant set-up costs, regardless of whether they are already active in the production of other rolling oils.<sup>26</sup>

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<sup>20</sup> Form CO, paragraph 213.

<sup>21</sup> Form CO, paragraph 213.

<sup>22</sup> See for example Annex 5.4(ii)(a)(25) to the Form CO, [*Reference to internal documents*].

<sup>23</sup> Replies to Q2 – questionnaire to customers, questions 7 and 9.

<sup>24</sup> One customer's reply to Q2 – questionnaire to customers, question 9.

<sup>25</sup> Replies to Q1 – questionnaire to competitors, question 39.

<sup>26</sup> Replies to Q1 – questionnaire to competitors, question 21.

- (44) For the reasons set out above, the Commission considers that, for the assessment of the Transaction, the market for AHRO constitutes a distinct product market. In relation to other non-ferrous rolling oils, given that the notified concentration is unlikely to lead to competition concerns regardless of the exact product market definition, the Commission considers that the question as to whether non-aluminium non-ferrous rolling oils individually constitute separate product markets or are part of a broader market for non-aluminium non-ferrous rolling oils can be left open for the purpose of the present case.

Steel rolling oils

- (45) Similarly to the aluminium sector, steel can be processed under hot and cold rolling. Different types of rolling oils are used by steel manufacturers depending on the type of process considered.
- (46) In particular, Steel Hot Rolling Oils (“SHRO”) are a type of MWF used in the hot rolling of steel with the aim to increase productivity (higher speeds and less wear of the rolls) and quality of the metal being worked (reduced oxide formation). The use of SHRO also facilitates the production of increasingly thinner sheets in the hot rolling process.<sup>27</sup>
- (47) Steel Cold Rolling Oils (“SCRO”) are a type of MWF used in the cold rolling of steel with the aim to lubricate and protect the metal against corrosion, abrasion and other damages.<sup>28</sup> Besides SCRO, tinplate rolling oils (TRO) are used for the cold rolling of very thin steel, which is predominantly used as packaging steel, for example thin cans. The function of TRO is the same as for SCRO, that is to say to lubricate and protect steel against corrosion and other damages.<sup>29</sup>
- (48) Furthermore, pickle oil is a lubricant which is typically applied to the steel surface after pickling, before the cold rolling mills. Pickle oil is only used if the pickling line and the rolling mill are not coupled to avoid scratching and corrosion, and to provide the lubrication in the first stand of the rolling mill.<sup>30</sup>
- (49) The Commission has never considered in the past potential markets for rolling oils used in the production of steel.
- (50) As explained in Section 5.1.1.1, the Notifying Party takes the view that one single product market for industrial lubricants, including the various types of MWFs such as SHRO and SCRO, exists, in view of strong supply-side substitutability.
- (51) As regards TRO, the Notifying Party considers that the function of TRO and SCRO is essentially the same. TRO formulations are similar to SCRO formulations, but generally contain fewer additives and are therefore considered

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<sup>27</sup> Form CO, paragraphs 173-174. Not all steel producers use SHRO, which explains why the market size of SHRO is much smaller than the market size of other rolling oils used in the steel sector, notably SCRO (Form CO, paragraph 369). As explained, customers make use of SHRO as soon as the steel needs to undergo hot rolling operations and, for example, the quality of the metal produced needs to be particularly high.

<sup>28</sup> Form CO, paragraph 175.

<sup>29</sup> Form CO, paragraph 189.

<sup>30</sup> Form CO, paragraph 176.

relatively less complex.<sup>31</sup> Therefore, the Notifying Party considers TRO to be part of the same product market as SCRO.

- (52) As regards pickle oils, the Notifying Party explains that all large steel cold rolling mills in Europe are coupled with the pickling line, and that the demand for pickle oil is therefore limited. In addition, the Notifying Party argues that most of the times the same formulation is used for pickle oil and for SCRO. Therefore, in the Notifying Party's view, SCRO and pickle oil are substitutable both from the demand side and the supply side.<sup>32</sup>
- (53) The Notifying Party's views appear to be contradicted both by the Parties' internal documents and by the results of the market investigation, which suggest that separate markets exist for the manufacture and supply of SHRO and SCRO.
- (54) First, in their internal documents, the Parties analyse their sales and discuss the position of their competitors on the basis on narrow product segments, including at the level of "steel hot rolling" products<sup>33</sup> and "steel cold rolling" products.<sup>34</sup>
- (55) Second, the results of the market investigation indicated that there is a lack of demand-side and supply-side substitutability between SHRO and other lubricants, including SCRO, and *vice versa*.
- (56) On the demand side, customers explained that SHRO and SCRO are specifically used in the hot rolling and cold rolling of steel, respectively, and cannot be substituted with other products in view of their very specific characteristics.<sup>35</sup> For instance, one customer operating in the steel sector explained that *"Rolling oils are developed for the specific use in hot or cold rolling process of steel sheet and are designed to each application specifically. Therefore, it is not substitutable within the same category."*<sup>36</sup>
- (57) On the supply side, competitors responding to the market investigation explained that switching production to each of SHRO and SCRO constitutes a costly and lengthy process. While manufacturing equipment does not appear to represent a significant barrier to switching production, the majority of competitors mentioned that having the relevant, specific know-how is necessary to be able to produce those products and that, in order to develop this, substantial investments, notably in R&D, would be required.
- (58) Overall, competitors explained that starting to produce SHRO would take up to two years for a company already producing other types of rolling oils, and up to five years for a company not active in the rolling oils business. Beyond the lack of necessary know-how, a company not active in rolling oils would likely face

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<sup>31</sup> Form CO, paragraph 190.

<sup>32</sup> Form CO, paragraph 177-178.

<sup>33</sup> See for example Annex 5.4(ii)(a)(25) to the Form CO, [*Reference to internal documents*]; Annex 5.4(ii)(d)(1) to the Form CO, [*Reference to internal documents*].

<sup>34</sup> See for example Annex 5.4(ii)(a)(25) to the Form CO, [*Reference to internal documents*]; Annex 5.4(ii)(d)(1) to the Form CO, [*Reference to internal documents*].

<sup>35</sup> Replies to Q2 – questionnaire to customers, question.

<sup>36</sup> One customer's reply to Q2 – questionnaire to customers, question 9.

higher commercial barriers as it would not possess relevant customer references.<sup>37</sup> Empirical evidence shows that switching production may be even more difficult than what emerged overall from the market investigation since, for example, one competitor active on the market for SCRO reported that while they have been trying to start producing SHRO, they have not managed to effectively enter this space yet.<sup>38</sup>

- (59) Similarly, possessing the specific know-how in relation to SCRO is essential to be able to compete on the market, which entails costly R&D investments and time efforts (up to several years). Having knowledge of other rolling oils used in steel, such as SHRO, is not fungible since, as one competitor explained: *"With regards to cold rolling oils and hot rolling oils, they require different formulation technologies and know how."*<sup>39</sup>
- (60) As regards pickle oil, the market investigation confirmed that only a few steel mills purchase these oils in Europe, since demand for this product arises only where the cold mill is not paired with the pickling line. In addition, some customers and competitors explained that SCRO may be used in the pickling process, and thus may be used as a substitute product for pickle oil.<sup>40</sup> For example, a competitor active in SCRO market explained that *"In many cases the pickle oil is the same oil as is used later for cold rolling operations"*.<sup>41</sup>
- (61) As regards TRO, the market investigation showed rather limited demand-side substitutability with standard SCRO, since TRO are specifically designed for the treatment of thinner metal and are thus not substitutable with other lubricants in terms of product characteristics.<sup>42</sup> As regards the supply side, the results of the market investigation are mixed. While some competitors explained that SCRO and TRO are relatively similar products, others point out to the existence of relevant differences in the product formulations.<sup>43</sup>
- (62) For the reasons set out above, the Commission considers that, for the assessment of the Transaction, the markets for SHRO and SCRO constitute distinct product markets. As regards, pickle oils and TRO, given that the assessment of the Transaction would not change regardless of whether they are considered part of the SCRO market or distinct product markets, the Commission considers that this question can be left open.

ii. Wet Temper fluids

- (63) Wet Temper fluids are used by steel mill operators on their temper mills. A temper mill has the primary purpose to improve the surface finish on steel

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<sup>37</sup> Replies to Q1 – questionnaire to competitors, question 21. As one competitor explained, a new entrant would face: *"Long or costly R&D processes, lack of access to essential inputs, extensive know-how needed, prohibitive set-up costs, commercial barriers and high approval costs from third parties."*

<sup>38</sup> Replies to Q1 – questionnaire to competitors, question 20.

<sup>39</sup> Replies to Q1 – questionnaire to competitors, question 23.

<sup>40</sup> Replies to Q2 – questionnaire to customers, question 9 and replies to Q1 – questionnaire to competitors, question 18.

<sup>41</sup> Replies to Q1 – questionnaire to competitors, question 18.

<sup>42</sup> Replies to Q2 – questionnaire to customers, question 10.

<sup>43</sup> Replies to Q1 – questionnaire to competitors, question 18.

products which have already been cold rolled and annealed. Wet Temper fluids help to remove iron, carbon and other contaminants from the steel strip.

- (64) According to the market investigation, the majority of competitors active in MWF agree that Wet Temper fluids form a separate product category within Forming fluids<sup>44</sup>. The respondents indicated that entering the supply of Wet Temper fluids can take anywhere between 6 months to 24 months, depending on whether or not the company has some pre-existing knowledge and manufacturing equipment<sup>45</sup>. According to the Notifying Party, the manufacturing equipment for Wet Temper fluids is the same as for any other Forming fluids or even MWF.
- (65) The vast majority of customers of MWF having replied to the market investigation consider that different types of Forming fluids (e.g. Wet Temper fluids), cannot be substituted with other Forming fluids<sup>46</sup>.
- (66) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, Wet Temper fluids can be considered as a separate product market.

### iii. Drawing and Forming fluids

- (67) Drawing and Forming fluids are used in metalworking operations that change the shape and contour of the metal by bending, stretching, pounding and squeezing. Typical customers are the automotive industry, the tube industry and the wire industry.
- (68) According to the market investigation, the majority of competitors active in MWF agree that Drawing and Forming fluids form a separate product category within Forming fluids<sup>47</sup>. The respondents indicated that entering the sub-segment of Drawing and Forming fluids can take anywhere up to 24 months, depending on whether or not the company has some pre-existing knowledge and manufacturing equipment<sup>48</sup>. According to the Notifying Party, the manufacturing equipment for Drawing and Forming fluids is the same as for any other forming or even MWF.
- (69) The vast majority of customers of MWF having responded to the market investigation consider that different types of Forming fluids (e.g. Drawing and Forming Fluids), cannot be substituted with other Forming fluids<sup>49</sup>.
- (70) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, Drawing and Forming fluids can be considered as a separate product market

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<sup>44</sup> Replies to Q1 – questionnaire to competitors, question 16

<sup>45</sup> Replies to Q1 – questionnaire to competitors, questions 21.7 and sub-questions and 22.

<sup>46</sup> Replies to Q2 – questionnaire to customers, question 9.

<sup>47</sup> Replies to Q1 – questionnaire to competitors, question 16

<sup>48</sup> Replies to Q1 – questionnaire to competitors, questions 21.7 and sub-questions and 22.

<sup>49</sup> Replies to Q2 – questionnaire to customers, question 9.

#### iv. Forging fluids

- (71) Forging fluids are used to prevent damage to the metal as it is forced into a die during the forging process whereby the density, toughness and strength of metal is increased by forcing metal into different shapes by repeated hammer-like blows. Forging fluids cool and lubricate the die to reduce friction and minimize metal pickup and die wear.
- (72) According to the market investigation, the majority of competitors active in MWF agree that Forging fluids form a separate product category within Forming fluids<sup>50</sup>. The respondents indicated that entering the sub-segment of Forging fluids can take anywhere up to 24 months, depending on whether or not the company has some pre-existing knowledge and manufacturing equipment<sup>51</sup>. According to the Notifying Party, the manufacturing equipment for Forging fluids is the same as for any other Forming fluid or even MWF.
- (73) The vast majority of customers of MWF having responded to the market investigation consider that different types of Forming fluids (e.g. Forging fluids), cannot be substituted with other Forming fluids<sup>52</sup>.
- (74) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, Forging fluids can be considered as a separate product market

#### v. Can Copper fluids

- (75) Can Copper fluids provide lubrication in the cup and protect against bleed-through in the manufacturing of aluminium cans. They also give ferrous and non-ferrous corrosion protection to can making equipment and tooling. Typical customers are beverage can manufacturers.
- (76) According to the market investigation, the majority of competitors active in MWF agree that Can Copper fluids form a separate product category within Forming fluids<sup>53</sup>. The respondents indicated that entering the sub-segment of Can Copper fluids requires a R&D process and substantial efforts to receive the necessary qualifications from potential customers, as the actual manufacturing process of cans is very sensitive in terms of quality and output performance<sup>54</sup>.
- (77) The vast majority of customers of MWF replying to the market investigation consider that different types of Forming fluids (e.g. Can Copper Fluids), cannot be substituted with other Forming fluids<sup>55</sup>.
- (78) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, Can Copper fluids can be considered as a separate product market.

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<sup>50</sup> Replies to Q1 –questionnaire to competitors, question 16.

<sup>51</sup> Replies to Q1 – questionnaire to competitors, questions 21.7 and sub-questions and 22.3.

<sup>52</sup> Replies to Q2 – questionnaire to customers, question 9.

<sup>53</sup> Replies to Q1 – questionnaire to competitors, question 16.

<sup>54</sup> Replies to Q1 – questionnaire to competitors, questions 21.7 and sub-questions and 22.2.

<sup>55</sup> Replies to Q2 – questionnaire to customers, question 9.

vi. Can Bodymaker fluids

- (79) Can Bodymaker fluids are coolants used in a second step of the can-making process, whereby the body of the can is made from a cup. Typical customers are again beverage can manufacturers.
- (80) According to the market investigation, the majority of competitors active in MWF agree that Can Bodymaker fluids form a separate product category within Forming fluids<sup>56</sup>. The respondents indicated that entering the sub-segment of Can Bodymaker fluids requires a R&D process and substantial efforts to receive the necessary qualifications from potential customers, as the actual manufacturing process of cans is very sensitive in terms of quality and output performance<sup>57</sup>.
- (81) The vast majority of customers of MWF replying to the market investigation consider that different types of Forming fluids (e.g. Can Bodymaker fluids), cannot be substituted with other Forming fluids<sup>58</sup>.
- (82) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, Can Bodymaker fluids can be considered as a separate product market.

*5.1.1.4. Protecting fluids*

- (83) Protecting fluids are used to temporarily shield metal surfaces from air, water and other corrosive substances. Common Protecting fluids are rust preventives, which are applied to iron and steel. Protecting fluids are also used on non-ferrous metals such as copper, aluminium and brass. Protecting fluids sometimes have a dual function. In addition to providing corrosion protection, they are also used as a prelube for stamping operations.
- (84) According to the information submitted by the Notifying Party, the following sub-segments may be identified within the Protecting fluids category: (i) prelubes and (ii) other Protecting fluids.
- (i) Prelubes are Protecting fluids which are used by steel mill operators primarily for the preservation of sheet metal. Prelubes are particularly relevant for the production of steel sheets for automotive OEMs.
- (ii) All other Protecting fluids have the same function: to protect a surface against rust and/or corrosion.
- (85) According to the Notifying Party, the manufacturing of Protecting fluids is not different from the manufacture of any other industrial lubricant. The Notifying Party continues that most suppliers of Protecting fluids provide all types and categories of Protecting fluids.
- (86) The market investigation shows that the vast majority of competitors consider that Protecting fluids constitute a separate product segment within the market of

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<sup>56</sup> Replies to Q1 – questionnaire to competitors, question 16.

<sup>57</sup> Replies to Q1 – questionnaire to competitors, question 21.7 and sub-questions and 22.2.

<sup>58</sup> Replies to Q2 – questionnaire to customers, question 9.



MWF<sup>59</sup>. The results of the market investigation with competitors are mixed when it comes to plausible further segmentations of the market for Protecting fluids<sup>60</sup>, indicating plausible sub-segments based on the chemical composition of the Protecting fluid, the end-industry or the duration of the protection.

- (87) According to the results of the market investigation with customers of metal working fluids, the majority of customers consider Protecting fluids a separate product segment of the market for MWF<sup>61</sup>. Further indication that Protecting fluids form a separate market segment within MWF is provided by the fact that, as for all other MWF, the majority of customers consider it impossible to substitute Protecting fluids with another type of MWF<sup>62</sup>.
- (88) The market investigation with customers also suggests that prelubes form a further sub-segment of the market of Protecting fluids. Several respondents indicated that a switch from a prelube to any other Protecting fluid is not straightforward and requires customer approval (in particular for the automotive industry)<sup>63</sup>. Indeed, before a steel mill can decide to switch its prelube (either for another prelube, or for a different type of Protection fluid), it needs to obtain the qualification and approval of its own customers. The market investigation also indicated that the majority of customers would not switch from using a prelube to a different Protecting fluid if the prices of the former would increase by 5-10% on a permanent base.
- (89) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, (i) Protecting fluids constitute a relevant product market; and (ii) the question of whether the market for Protecting fluids should be segmented between prelubes and other Protecting fluids can be left open, since the notified concentration does not raise serious doubts as to its compatibility with the internal market, regardless of the exact product market definition.

#### 5.1.2. Hydraulic fluids

- (90) HF are used for hydraulic machining operations and serve the main purpose to transfer the power within the hydraulic system. In addition, HF also serve the purpose – similar to MWF – to lubricate, to reduce heat, to remove contamination and to seal the hydraulic machine.
- (91) According to the Notifying Party, the segment for HF could possibly be further segmented into (i) synthetic/fire resistant HF and (ii) mineral-based HF. The Notifying Party submits that both types of HF are completely interchangeable with respect to their intended use, the only difference being that one type is resistant to flame and the other is not. Because of the claimed complete interchangeability of the HF, the Notifying Party submits that it is not appropriate to sub-segment HF.

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<sup>59</sup> Replies to Q1 – questionnaire to competitors, question 5.

<sup>60</sup> Replies to Q1 – questionnaire to competitors, questions 6 and 84 (including sub-questions).

<sup>61</sup> Replies to Q2 – questionnaire to customers, questions 5 and 5.1.

<sup>62</sup> Replies to Q2 – questionnaire to customers, question 7.

<sup>63</sup> Replies to Q2 – questionnaire to customers, question 65 and sub-questions.

- (92) However, the Parties have provided a further sub-segmentation of synthetic/fire resistant HF: (i) HFA, (ii) HFB, (iii) HFC and (iv) HFD-U.
- (93) According to the market investigation, the vast majority of the competitors agree that there are two main types of HF, namely synthetic/fire resistant HF and mineral HF<sup>64</sup>. The results of the market investigation are not clear on the costs and time needed to enter either one of the possible markets for a company that was not previously active on the market. One respondent indicated it would take 3-5 years to enter the markets, while another respondent considered it straightforward with little to no special know-how needed. Another respondent indicated that it depends on the type of HF and even distinguished between the different types of synthetic/fire resistant HF.<sup>65</sup>
- (94) The competitors replying to the market investigation indicated that the market for synthetic/fire resistant HF can be segmented further to the level of HFA, HFB, HFC and HFD-U.<sup>66</sup>
- (95) The results of the market investigation with customers of HF are balanced in relation to the possibility to substitute mineral HF with synthetic/fire resistant HFs and vice versa. Half of the respondents consider both products are substitutable with one another, while the other half considers that it is not possible<sup>67</sup>. However, when asked whether a permanent increase in price of approximately 5-10% for either type of HF would lead them to switch between the types of fluids, the majority of customers indicated that they would not do so<sup>68</sup>, suggesting that the products are not easily substitutable.
- (96) The majority of customers do not consider the above mentioned types of synthetic/fire resistant HF as interchangeable. This is due to the different chemical components, but also due to the requirements imposed on them by the manufacturers of their production equipment.<sup>69</sup>
- (97) In light of the results of the market investigation and taking account of all evidence available to it, the Commission considers that, for the purpose of this Decision, (i) HF constitute a relevant product market; and (ii) the question of whether the market for HFs should be segmented between synthetic/fire resistant and/or to the level of HFA, HFB, HFC, HFD-U and mineral HF can be left open, since the notified concentration does not raise serious doubts as to its compatibility with the internal market, regardless of the exact product market definition.

### 5.1.3. Industrial surface treatment products

- (98) Industrial surface treatment products are used to make the treated substrate more uniform and better suited for coating as well as to enhance corrosion protection. The information submitted by the Notifying Party indicates that in the EEA, the

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<sup>64</sup> Replies to Q1 – questionnaire to competitors, question 105.

<sup>65</sup> Replies to Q1 – questionnaire to competitors, question 107.

<sup>66</sup> Replies to Q1 – questionnaire to competitors, question 108 and sub-questions.

<sup>67</sup> Replies to Q2 – questionnaire to customers, question 90 and sub-questions.

<sup>68</sup> Replies to Q2 – questionnaire to customers, question 90.3.

<sup>69</sup> Replies to Q2 – questionnaire to customers, question 92 and sub-questions.

Parties' activities in this respect overlap only to a limited extent. The Notifying Party's estimates indicate that the Parties' combined market share on a potential EEA market for industrial surface treatment products or on the possible narrower market segments of metal finishing and metal cleaning products does not exceed 5%.<sup>70</sup> In light of the information submitted by the Notifying Party in relation to the overlapping activities of the Parties in the EEA regarding industrial surface treatment products and the fact that no substantiated concerns were raised in this regard by the Commission's market investigation, this Decision does not discuss this market further.

## 5.2. Geographic market definition

### 5.2.1. Metal working fluids

- (99) In *Exxon/Mobil*<sup>71</sup>, the Commission left open the geographic market definition for industrial lubricants, including MWF, but assessed market participants' market shares at EEA level.
- (100) The Notifying Party submitted that the relevant geographic scope of the markets for the supply of industrial lubricants, including MWFs, is at least EEA-wide. In particular, the Notifying Party noted that all major producers of MWFs sell their products within the entire EEA, regardless of the particular product considered, and that products travel easily and at low cost (with transport costs representing between [0-10]% of the total costs).<sup>72</sup>
- (101) Competitors having responded to the market investigation indicated that they are generally able to supply MWFs across the EEA. Although suppliers may optimise logistics by serving customers from plants which are as close as possible to customers' premises, they indicated that there are no substantial barriers to ship MWFs across the EEA.<sup>73</sup> As one major player of MWF explained, "*even higher transport cost to end customers would not justify investments in additional plants even if they are closer to customers.*"<sup>74</sup> Overall, it emerged that major suppliers of MWFs do sell lubricants across the EEA.
- (102) In addition, competitors explained that using warehouses and/or distributors may allow them to ensure just-in-time deliveries to customers if they do not possess manufacturing facilities which are relatively close to customers' premises, at least in relation to those products that have a commodity nature.<sup>75</sup> Overall, competitors

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<sup>70</sup> In its decision in case COMP/M.8136 - *BASF/Chemetall* dated 28 October 2016, the Commission considered all surface treatment products together but also looked into surface treatment products by end-application. In that decision, the Commission found that the geographical market for surface treatment products and services is at least EEA-wide. The Parties hold the view that Metal Finishing Products and Metal Cleaning Products belong to the product market for the manufacture and sale of Industrial Surface Treatment Products and that the market should not be segmented further. The Parties activities in Metal Finishing Products and Metal Cleaning Products are a small business line for the Parties.

<sup>71</sup> Commission decision in case IV/M.1383 - *Exxon/Mobil* dated 29 September 1999.

<sup>72</sup> Form CO, paragraph 279.

<sup>73</sup> Replies to Q1 – questionnaire to competitors, questions 33, 66 and 88.

<sup>74</sup> One competitor's reply to Q1 – questionnaire to competitors, question 33.

<sup>75</sup> Replies to Q1 – questionnaire to competitors, questions 33, 66 and 88.

indicate that transport costs for MWFs generally range between 5% and 10% of the total price to customers.<sup>76</sup>

- (103) Although many customers indicated that it is more convenient to source MWFs from suppliers located relatively close to their plants, the majority confirmed that, within the EEA, there is generally no maximum distance above which it would be inefficient to source MWFs from a supplier, as long as providers are able to guarantee an adequate lead time at reasonable costs.<sup>77</sup> Overall, while the geographic proximity of suppliers was identified as a relevant criterion when choosing a supplier by some respondents, the majority identified more important criteria, such as the quality of products and related technical support.<sup>78</sup>
- (104) The market investigation further revealed that imports of MWFs from outside the EEA do not play a significant role, with the vast majority of customers indicating that they do not import any MWFs from outside the EEA.<sup>79</sup>
- (105) On balance, the Commission considers that the evidence gathered in the context of the market investigation did not differ substantially on the basis of the type of MWF considered, and that such evidence point to EEA-wide markets.
- (106) For the reasons set out above, the Commission considers that, for the assessment of this case, the markets for MWFs, as defined in Section 5.1.1 are EEA-wide in scope.

#### 5.2.2. Hydraulic Fluids

- (107) According to the results of the market investigation, the majority of customers of HF organises its purchases on a national level, irrespective of the type of HF<sup>80</sup>. The results of the market investigation with customers also indicate that customers do not import HF from outside the EEA<sup>81</sup>. According to the customers, the decision to source locally is not based on transport costs, but on security of supply (steady supply flow)<sup>82</sup>. However, when asked about potential price differences within the EEA, the vast majority of customers indicated that prices are comparable throughout the EEA.<sup>83</sup>
- (108) According to the results of the market investigation with competitors, customers organise their purchasing decisions on multiple geographic levels, depending on the size of the customer and its supply-needs (1 plant or multiple plants throughout a specific region)<sup>84</sup>. The majority of competitors also indicated that (at least part of) their commercial staff is organised at both national and international (EEA or even wider) levels<sup>85</sup>. The results of the market investigation with competitors also indicated that the majority of competitors make use of

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<sup>76</sup> Replies to Q1 – questionnaire to competitors, questions 36, 67 and 89.

<sup>77</sup> Replies to Q2 – questionnaire to customers, questions 16, 46 and 71.

<sup>78</sup> Replies to Q2 – questionnaire to customers, questions 19, 49 and 74.

<sup>79</sup> Replies to Q2 – questionnaire to customers, questions 15, 45 and 70.

<sup>80</sup> Replies to Q2 – questionnaire to customers, question 96.

<sup>81</sup> Replies to Q2 – questionnaire to customers, question 97.

<sup>82</sup> Replies to Q2 – questionnaire to customers, question 98.

<sup>83</sup> Replies to Q2 – questionnaire to customers, question 99 and sub-questions.

<sup>84</sup> Replies to Q1 – questionnaire to competitors, question 110.

<sup>85</sup> Replies to Q1 – questionnaire to competitors, question 111.

warehouse facilities, effectively addressing the customer's questions of security of supply and proximity.<sup>86</sup> Competitors also indicated that transport costs are generally low (between 1 and 10% of the total price of HF).

- (109) For the purpose of the present Decision, and in light of the evidence gathered in the market investigation and in particular the comparability of prices throughout the EEA and the use of warehouses to ensure security of supply, the Commission considers that the geographic scope of the market for HF is EEA-wide, irrespective of the type of HF.

### 5.2.3. Industrial Surface Treatment Products

- (110) In its decision in case COMP/M.8136 - BASF/Chemetall dated 28 October 2016, the Commission found that the geographical market for surface treatment products and services is at least EEA-wide.
- (111) The Notifying Party submits that the relevant geographic scope of the market for Industrial Surface Treatment Products is at least EEA-wide, taking into account that customers frequently source Industrial surface treatment products on an EEA-wide scale and that the Parties and their competitors supply customers all throughout the EEA from one of their production plants.
- (112) For the purpose of the present Decision, the Commission considers that the market for Industrial surface treatment products can be considered as EEA-wide.

## 5.3. **Competitive assessment**

### 5.3.1. Horizontal non-coordinated effects

#### 5.3.1.1. *Framework for the assessment*

- (113) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (114) In this respect, horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.<sup>87</sup>
- (115) For the assessment of the Transaction, it should in particular be recalled that the Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: *"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some*

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<sup>86</sup> Replies to Q1 – questionnaire to competitors, question 112.

<sup>87</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

*sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"<sup>88</sup>

- (116) Under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition. This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".<sup>89</sup>
- (117) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects.
- (118) Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.<sup>90</sup>
- (119) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

#### 5.3.1.2. *Overview of the affected markets*

- (120) The Transaction gives rise to the following horizontally affected markets in the EEA:<sup>91</sup>

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<sup>88</sup> Horizontal Merger Guidelines, paragraph 24.

<sup>89</sup> Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

<sup>90</sup> Horizontal Merger Guidelines, paragraph 26.

<sup>91</sup> In relation to vertical relationships, while Quaker [...] certain raw materials (synthetic esters) used in the production of different types of MWFs and HF, Houghton [...]. In light of the fact that (i) Houghton's demand for these products represents less than [0-10]% of the consumption of synthetic esters used in the market for lubricants in the EEA, and that (ii) suppliers of synthetic esters also provide these products to other significant consuming markets such as food, cosmetics or coatings, the Transaction is unlikely to give rise to customer foreclosure effects. Given that Quaker [...], no input

- (a) In relation to MWFs:
- Removal fluids, and its possible segments: Emulsifiable and Neat oils;
  - Within Forming fluids: (i) AHRO; (ii) SHRO; (iii) SCRO (including TRO and Pickle oils); (iv) Wet Temper fluids; and (v) Can Copper fluids;
  - Within Protecting fluids: Prelubes.
- (b) In relation to HFs:
- Synthetic/fire resistant HFs and its possible sub-segment of HFC fluids.

5.3.1.3. MWF - Removal fluids

- (121) According to the information provided by the Notifying Party, illustrated in the table below, the Transaction will result in an affected market at the overall level of Removal fluids, but also at the further segmented markets of Neat oils and Emulsifiable.

**Table 1 – Market shares for the Removal fluids market (and its possible segments) in the EEA (2017)**

	Removal fluids		Neat oil		Emulsifiable	
	Share (Value)	Share (Volume)	Share (Value)	Share (Volume)	Share (Value)	Share (Volume)
Quaker	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Houghton	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>Combined</b>	<b>[10-20]-[20-30]%</b>	<b>[20-30]%</b>	<b>[10-20]-[20-30]%</b>	<b>[20-30]%</b>	<b>[10-20]-[20-30]%</b>	<b>[20-30]%</b>
BP Castrol	N/A	[10-20]%	N/A	[10-20]-[20-30]%	N/A	[10-20]%
Fuchs	N/A	[5-10]%	N/A	[10-20]-[20-30]%	N/A	[10-20]%
Other	N/A	[0-5]%	N/A	[0-5]%	N/A	[0-5]%

- (122) The Notifying Party submits that they do not consider themselves as close competitors, but rather perceive BP Castrol and Fuchs as their main competitors. The Notifying Party also submits that customers in general multi-source Removal

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foreclosure would arise from the Transaction. Therefore, vertical relationships will not be further discussed in this Decision.

fluids, both to reduce supply risk and to allow for a perfect fit between the fluid and the production circumstances in their plants.

- (123) Parties' competitors having responded to the market investigation indicated that the Transaction is likely to have an impact on the market in general and more precisely on their business due to the reduction of one competitor, which is assumed to reduce the options of the consumers. However, other respondents suggested that the Transaction could have a positive effect by increased price competition between the suppliers of Removal fluids due to the strengthened portfolio of the combined Parties. The competitors also argue that the Parties will become the market leader.<sup>92</sup>
- (124) However, the vast majority of the customers having responded to the questionnaire consider the Transaction will have no impact on their business on the market of Removal fluids (and its plausible sub-segments Neat oils and Emulsifiables). Some respondents go even further and consider the Transaction will have a positive impact, such as an increase in the range of offered products and innovation<sup>93</sup>. The market investigation with customers also indicated that only a minority of the respondents consider the Parties to be close competitors. The Commission considers that the impact of the Transaction on the market is relatively minor, taking into account that the market shares remain modest (only slightly above [20-30]%). According to recital 32 of the Preamble to the Merger Regulation, "*Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the internal market. Without prejudice to Articles [101] and [102] of the Treaty, an indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25%, either in the common market or in a substantial part of it.*"
- (125) Moreover, while some competitors have noted that the Transaction would remove one supplier from the market, the Commission considers that this does not mean that the Transaction would remove an important competitive constraint. Firstly, as said above, the combined market shares are relatively limited. Secondly, the customers indicated that the Parties are not close competitors and that the notified concentration would have no impact on their business. Finally, some customers and competitors actually seem to suggest that the notified concentration will have a positive effect on the market.
- (126) For the reasons set out above, the Commission concludes that the notified concentration does not raise serious doubts as to its compatibility with the internal market in the markets for Removal fluids (including on the possible narrower markets of Emulsifiables and Neat oils) in the EEA.

#### 5.3.1.4. MWF - Forming fluids

##### i. Rolling oils

- (127) The Transaction leads to affected markets in relation to the EEA markets for the supply of (a) AHRO, (b) SHRO, and (c) SCRO (including TRO and Pickle oils).

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<sup>92</sup> Replies to Q1 - questionnaire to competitors, question 82.

<sup>93</sup> Replies to Q2 - questionnaire to customers, question 63.



a) AHRO

*Market structure*

(128) The table below shows the Parties' and their competitors' market shares, as submitted by the Notifying Party, on the EEA market for AHRO in 2017. As can be seen from the table, the Parties' combined market share would amount to about [60-70]%, with an increment brought by the Transaction in the order of [10-20]%

**Table 2 - Market shares for the AHRO market in the EEA (2017)<sup>94</sup>**

Competitor	Value		Volume	
	EUR million	Share	Kilotons	Share
Quaker	[0-5]	[5-10]%	[0-5]	[10-20]%
Houghton	[5-10]	[50-60]%	[0-5]	[50-60]%
<b>Combined</b>	<b>[5-10]</b>	<b>[60-70]%</b>	<b>[0-5]</b>	<b>[60-70]%</b>
Alfe Foundry Chem	N/A	N/A	[0-5]	[10-20]%
Lubritalia	N/A	N/A	[0-5]	[5-10]%
Morris	N/A	N/A	[0-5]	[0-5]%
Other	N/A	N/A	[0-5]	[10-20]%
<i>Total</i>	<i>[10-20]</i>	<i>100%</i>	<i>[0-5]</i>	<i>100%</i>

*Source: Annex 6.3.(3)(1) to Form CO*

*The Notifying Party's view*

(129) The Notifying Party considers that the Transaction does not create or enhance market power in the market for AHRO in the EEA. First, the Notifying Party argued that switching costs for customers are low. Although AHRO customers need to change the fluid in the entire lubrication system (and thus cleaning operations are needed) and customers need to test new products (which generally takes up to six months), such process generally does not take a long time.<sup>95</sup> Second, customers of AHRO are large aluminium mills that are able to exercise strong countervailing buyer power.<sup>96</sup> Third, barriers to entry are relatively low.

(130) While the Notifying Party recognised that product formulation development requires time and expertise, it also considered that the relevant know-how could be sourced on the market, at least to some extent, notably from private label companies.<sup>97</sup>

*The Commission's assessment*

The Transaction further strengthens Houghton's market positioning, leading to a combined market share of over 50%

<sup>94</sup> The Notifying Party submitted that it was unable to provide estimates on sales and market shares in value for the Parties' competitors. However, according to the data provided by the Notifying Party, the market shares of the Parties and their competitors did not materially differ in the period 2015-2017: the Parties' market shares for AHRO in the EEA have been consistently above 50% in the past three years.

<sup>95</sup> Form CO, paragraphs 654 and 656.

<sup>96</sup> Form CO, paragraph 659.

<sup>97</sup> Form CO, paragraph 864.

- (131) Starting the assessment by looking at the market shares of the Parties as a proxy of their likely market power, the Commission notes that the Parties' combined market shares post-Transaction will be about [60-70]% both in value and volume, raising a presumption of dominance. The market investigation results confirmed that, besides the Parties, there are only a limited number of alternative players active on this market and that their activities are either limited or not comparable to the Parties'.<sup>98</sup>

Quaker and Houghton are close competitors

- (132) AHRO customers having responded to the market investigation indicated that the most relevant criteria they consider when selecting a supplier are the quality of the product and the technical expertise / support provided.<sup>99</sup> AHRO represents a critical input for customers since it directly affects the characteristics and the quality of the metal produced. Quaker and Houghton are consistently ranked as the top two suppliers active in the EEA by customers of AHRO, with some of them actually stating that the Parties are the only suitable suppliers active in the EEA.<sup>100</sup> The Parties are perceived as the closest competitors by both customers and competitors responding to the market investigation.<sup>101</sup> Therefore, the Parties exert important competitive constraints on each other, as well as on the few remaining players active on the market. The Transaction would result in the removal of such constraint.

Customers have limited possibilities of switching supplier

- (133) Contrary to the Notifying Party's views, the market investigation revealed that customers have limited possibility of switching supplier. The vast majority of customers of AHRO responding to the market investigation believe that switching supplier is not easy, due to the time and costs involved in such switching.<sup>102</sup>
- (134) AHRO is generally adapted to the needs of the specific mills where it is used. Before being able to switch supplier, customers need to test the new product, first in laboratory and then in the production facility, which can take several months (even up to three years, according to one customer). In addition, certain end-customers (for example, in the automotive sector) may need to test the metal produced by their suppliers with the new lubricant.<sup>103</sup> Only a very small number of customers of AHRO reported to have switched their supplier in the past five years, which constitutes further evidence that switching is difficult and thus does not occur often.<sup>104</sup>
- (135) As explained above, customers have generally identified Quaker and Houghton as the main credible suppliers active on the EEA market for AHRO, and many of them have actually identified the Parties as the only available alternatives to them.

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<sup>98</sup> Replies to Q1 – questionnaire to competitors, question 20.

<sup>99</sup> Replies to Q2 – questionnaire to customers, question 19.

<sup>100</sup> Replies to Q2 – questionnaire to customers, question 21. For example, one customer stated that "*[besides Quaker and Houghton] no alternative [has been] found at the moment.*"

<sup>101</sup> Replies to Q1 – questionnaire to competitors, question 48 and replies to Q2 – questionnaire to customers, question 22.

<sup>102</sup> Replies to Q2 – questionnaire to customers, question 23.

<sup>103</sup> Replies to Q2 – questionnaire to customers, questions 23 and 24.

<sup>104</sup> Replies to Q2 – questionnaire to customers, question 24.

The critical reduction in the number of suitable suppliers brought about by the concentration further limits customers' possibility to switch provider.

- (136) In view of the above, and also in light of the fact that the profit margins on the AHRO market are high for both Parties ([...] % for Quaker and [...] % for Houghton)<sup>105</sup>, the Parties are likely to profit from increasing pricing on a larger sales base, post-Transaction. Overall, a significant number of customers of AHRO, including large aluminium mills, believe that the Transaction will have a negative impact on competition in the market. Notably, customers believe that the number of suitable suppliers active on the market will be critically reduced, which is likely to lead to increases in prices and to a worsening of the quality of services provided by suppliers.<sup>106</sup>

#### Lack of countervailing factors

- (137) As regards countervailing factors, the Commission makes the following considerations. First, the bargaining power of customers purchasing AHRO appears to be relatively limited. While customers of AHRO may be large aluminium producers (and thus relatively concentrated in number), many of these customers believe that their bargaining power will decrease as a result of the Transaction.<sup>107</sup> While customers may use the threat to change supplier to increase their negotiation power, this threat appears not to be credible in view of the high switching costs that characterise the AHRO market. Besides this, even if one were to consider that customers hold a certain degree of bargaining strength in commercial negotiations due to their size, the possibilities for customers to switch suppliers will be significantly reduced post-merger, in light of the loss of a key supplier.
- (138) Second, customers explained that they could not start producing AHRO in-house due to the lack of the necessary equipment, know-how and expertise.<sup>108</sup> For the same reasons, many of them would not be in the position to sponsor the entry of a new supplier in the market.<sup>109</sup>
- (139) Third, as explained in Section 5.1.1.3, significant barriers to entry exist in relation to the AHRO market. In this respect, many competitors pointed to the need to build the necessary know-how, which requires long development periods (up to several years) and might entail substantial costs, as well as to the difficulties arising in securing a trial with customers, which are generally considered to be conservative and risk-adverse. In addition, many competitors believe that formulations cannot be easily sourced from third parties on the market; while general formulas could be in principle provided by third party suppliers, such as private label companies, the adjustments of these formulas to the specific mills (which are key to compete) cannot be provided off the shelf and require specialised knowledge and expertise.<sup>110</sup> Customers responding to the market investigation do not report any recent entry in the market and do not expect any

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<sup>105</sup> Form CO, paragraphs 501-503.

<sup>106</sup> Replies to Q2 – questionnaire to customers, question 37.

<sup>107</sup> Replies to Q2 – questionnaire to customers, question 38.

<sup>108</sup> Replies to Q2 – questionnaire to customers, question 26.

<sup>109</sup> Replies to Q2 – questionnaire to customers, question 34.

<sup>110</sup> Replies to Q1 – questionnaire to competitors, question 24.

entry to occur in the short term.<sup>111</sup> The same holds true for competitors responding to the market investigation.<sup>112</sup>

- (140) For these reasons, the Commission considers that entry and buyer power are unlikely to countervail the anticompetitive effects likely to arise from the concentration.

*Conclusion*

- (141) For the reasons set out above, the Commission concludes that the concentration raises serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects in the market for AHRO in the EEA.

b) SHRO

*Market structure*

- (142) The table below shows the Parties' and their competitors' market shares, as submitted by the Notifying Party, on the EEA market for SHRO in 2017. As can be seen from that table, the Parties' combined market share would amount to about [70-80]%, with an increment brought by the Transaction of about [20-30]%.

**Table 3 - Market shares for the SHRO market in the EEA (2017)<sup>113</sup>**

Competitor	Value		Volume	
	EUR million	Share	Kilotons	Share
Quaker	[0-5]	[50-60]%	[0-5]	[50-60]%
Houghton	[0-5]	[10-20]%	[0-5]	[10-20]%
<b>Combined</b>	<b>[0-5]</b>	<b>[60-70]%</b>	<b>[0-5]</b>	<b>[60-70]%</b>
Fuchs	N/A	N/A	[0-5]	[10-20]%
Henkel	N/A	N/A	[0-5]	[5-10]%
Fratelli Ricci	N/A	N/A	[0-5]	[0-5]%
Condoroil	N/A	N/A	[0-5]	[0-5]%
Lubritalia	N/A	N/A	[0-5]	[0-5]%
<i>Total</i>	<i>[0-5]</i>	<i>100%</i>	<i>[0-5]</i>	<i>100%</i>

*Source: Annex 6.3.(3)(1) to Form CO*

*The Notifying Party's view*

<sup>111</sup> Replies to Q2 – questionnaire to customers, questions 31 and 33.

<sup>112</sup> Replies to Q1 – questionnaire to competitors, questions 53 and 55.

<sup>113</sup> The Parties' market shares in the EEA have been consistently above 50% in the past three years. In 2016, the Parties' market shares amounted to about [60-70]% (in volume), with an increment of about [20-30]%. In 2015, the Parties' market shares amounted to about [70-80]% (in volume), with an increment of about [20-30]%. The estimates provided by the Notifying Party regarding market shares in value are in the range of data provided in volume. Although the Notifying Party did not submit a detailed reasoned explanation for the variations of the shares over time, the Commission notes that the market for SHRO in the EEA is relatively small, which means that small variations in customers sales from one year to another, may results in non-negligible changes in market shares. The Notifying Party submitted that it was unable to provide estimates on sales and market shares in value for the Parties' competitors.

- (143) The Notifying Party considers that the Transaction does not create or enhance market power in the market for SHRO in the EEA. First, the Notifying Party argued that switching costs for customers are low. In relation to SHRO, the customer does not need to change the fluid in the entire lubrication system (no cleaning needed) and testing a new product generally takes up to six months.<sup>114</sup> Second, customers of SHRO are large steel mills that are able to exercise strong countervailing buyer power.<sup>115</sup> Third, barriers to entry are relatively low.
- (144) While the Notifying Party recognised that product formulation development requires time and expertise, it also considered that the relevant know-how could be sourced on the market, notably from private label companies.<sup>116</sup>

*The Commission's assessment*

The Transaction further strengthens Quaker's large market share, leading to a combined market share of over 50%

- (145) Starting the assessment by looking at the market shares of the Parties as a proxy of their likely market power, the Commission notes that the Parties' combined market shares post-Transaction will be close to [70-80]% both in value and volume, raising a presumption of dominance. In addition, the market investigation revealed that the Parties' market shares are likely to be underestimated and that the market is even more concentrated. Notably, two competitors indicated by the Parties as being active on the EEA market for SHRO, actually explained that they do not enjoy sales on such market.<sup>117</sup> Therefore, the Parties' combined market shares post-Transaction are likely to be even higher than those submitted by the Notifying Party, and likely to be close to [80-90]%.

Quaker and Houghton are close competitors

- (146) SHRO customers indicated that the most relevant criteria they consider when selecting a supplier are the quality of the product and the technical expertise / support provided, followed by price.<sup>118</sup> SHRO represents an important input for its customers in light of its effects on the quality of the produced steel. Customers explained that if the quality of the steel is not sufficient, the metal has to be downgraded and sold for a lower price, which negatively impacts their activities. Quaker and Houghton are consistently ranked as the top two suppliers active in the EEA by customers of SHRO<sup>119</sup> and competitors<sup>120</sup>, and are perceived as the closest competitors by both sets of respondents.<sup>121</sup> Therefore, the Parties appear to exert important competitive constraints on each other, as well as on the remaining players active on the market; and this would be removed by the Transaction.

Customers have limited possibilities of switching supplier

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<sup>114</sup> Form CO, paragraphs 654 and 656.

<sup>115</sup> Form CO, paragraph 659.

<sup>116</sup> Form CO, paragraph 866.

<sup>117</sup> Replies to Q1 – questionnaire to competitors, question 20.

<sup>118</sup> Replies to Q2 – questionnaire to customers, question 19.

<sup>119</sup> Replies to Q2 – questionnaire to customers, question 21.

<sup>120</sup> Replies to Q1 – questionnaire to competitors, question 45.

<sup>121</sup> Replies to Q1 – questionnaire to competitors, question 48 and replies to Q2 – questionnaire to customers, question 22.

- (147) Contrary to the Notifying Party's views, the market investigation revealed that customers have limited possibility of switching supplier. All customers of SHRO responding to the market investigation believe that switching supplier is not easy, due to the time and costs involved in such switching.<sup>122</sup> SHRO is generally adapted to the needs of the specific mills where it is used. Before being able to switch supplier, customers need to test the new product, first in laboratory and then in the production facility, which can take several months.<sup>123</sup> Virtually no customer of SHRO reported to have switched its supplier in the past five years.<sup>124</sup> This is also confirmed by the data submitted by the Notifying Party on the Parties' trends as regards losing and winning customers in the past years: while Houghton reported [...] customers' switching to/from itself, Quaker reported [...] existing customer switching to it from another supplier in 2015.<sup>125</sup>
- (148) Customers have generally identified as credible suppliers active on the EEA market for SHRO: Houghton, Quaker and Fuchs. Therefore, post-Transaction, only one main credible supplier, beside the merged entity, will remain active on the market. In addition, most customers of SHRO do not allocate 100% of their demand to a single supplier, but rather have multiple suppliers, for security of supply and for leveraging purposes in the negotiation process. In general, this multi-sourcing strategy is organised at the company level, whilst each mill / plant is generally served by the same supplier, since products need to be adapted to the specific needs of the mill / plant and products of different suppliers cannot be mixed.<sup>126</sup> This means that post-Transaction, the choice of alternative sources of supply will be severely reduced in this market.
- (149) In view of the reasons set out above, and also in light of the fact that the profit margins on the SHRO market are high for both Parties (around [...]%)<sup>127</sup>, the Parties are likely to profit from increasing pricing on a larger sales base, post-Transaction. Overall, a significant number of customers of SHRO, including large steel mills, believe that the Transaction will have a negative impact. Notably, customers believe that they the number of suitable suppliers active on the market will be critically reduced, which is likely to lead to increases in prices and to a worsening of the quality of services provided by suppliers.<sup>128</sup>

#### Lack of countervailing factors

- (150) As regards countervailing factors, the Commission makes the following considerations. First, the bargaining power of customers purchasing SHRO appears to be relatively limited. While customers of SHRO are generally large steel producers (and thus relatively concentrated in number), many of these customers believe that their bargaining power will decrease as a result of the Transaction.<sup>129</sup> While customers may use the threat to change supplier to increase their negotiation power, this threat appears not to be credible in view of the high

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<sup>122</sup> Replies to Q2 – questionnaire to customers, question 23.

<sup>123</sup> Replies to Q2 – questionnaire to customers, questions 23 and 24.

<sup>124</sup> Replies to Q2 – questionnaire to customers, question 24.

<sup>125</sup> See Annex 8.2(c) to Form CO.

<sup>126</sup> Replies to Q2 – questionnaire to customers, questions 27 and 28.

<sup>127</sup> Form CO, paragraphs 501-503.

<sup>128</sup> Replies to Q2 – questionnaire to customers, question 37.

<sup>129</sup> Replies to Q2 – questionnaire to customers, question 38.

switching costs that characterise the SHRO market. As one large steel producer explained: "[The threat to change supplier is] used in price negotiations, however suppliers are well aware that a change of supplier is not easily possible."<sup>130</sup> Besides this, even if one were to consider that customers hold a degree of bargaining strength in commercial negotiations due to their size, the possibilities for customers to switch suppliers will be significantly reduced post-Transaction, in light of the loss of a key supplier.

- (151) Second, customers responding to the market investigation explained that they could not start producing SHRO in-house due to the lack of the necessary equipment, know-how and expertise.<sup>131</sup> For the same reasons, they would not be in the position to sponsor the entry of a new supplier in the market.<sup>132</sup>
- (152) Third, as explained in Section 5.1.1.3, significant barriers to entry exist in relation to the SHRO market. In this respect, many competitors pointed to the need to build the necessary know-how, which requires long development periods (up to several years) and might entail substantial costs, as well as to the difficulties arising in securing a trial with customers, which are generally considered to be conservative and risk-adverse. In addition, many competitors believe that formulations cannot be easily sourced from third parties on the market; while general formulas could be in principle provided by third party suppliers, such as private label companies, the adjustments of these formulas to the specific mills (which are key to compete) cannot be provided off the shelf and require specialised knowledge and expertise.<sup>133</sup> Customers responding to the market investigation do not report any recent entry in the market and do not expect any entry to occur in the short term.<sup>134</sup> The same holds true for competitors responding to the market investigation.<sup>135</sup>
- (153) For these reasons, the Commission considers that entry and buyer power are unlikely to countervail the anticompetitive effects likely to arise from the concentration.

#### *Conclusion*

- (154) For the reasons set out above, the Commission concludes that the concentration raises serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects in the market for SHRO in the EEA.

#### c) SCRO

##### *Market structure*

- (155) The table below shows the Parties' and their competitors' market shares, as submitted by the Notifying Party, on the EEA market for SCRO (including TRO and Pickle oils) in 2017. As can be seen from the table, the Parties' combined

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<sup>130</sup> Replies to Q2 – questionnaire to customers, question 25.

<sup>131</sup> Replies to Q2 – questionnaire to customers, question 26.

<sup>132</sup> Replies to Q2 – questionnaire to customers, question 34.

<sup>133</sup> Replies to Q1 – questionnaire to competitors, question 24.

<sup>134</sup> Replies to Q2 – questionnaire to customers, questions 31 and 33.

<sup>135</sup> Replies to Q1 – questionnaire to competitors, questions 53 and 55.

market share would amount to about [60-70]%, with an increment brought by the Transaction of about [20-30]%.

**Table 4 - Market shares for the SCRO market in the EEA (2017)<sup>136</sup>**

Competitor	Value		Volume	
	EUR million	Share	Kilotons	Share
Quaker	[20-30]	[30-40]-[40-50]%	[10-20]	[40-50]%
Houghton	[10-20]	[10-20]%	[5-10]	[10-20]%
<b>Combined</b>	<b>[40-50]</b>	<b>[50-60]-[60-70]%</b>	<b>[10-20]</b>	<b>[50-60]%</b>
Henkel	N/A	N/A	[5-10]	[10-20]-[20-30]%
Fuchs	N/A	N/A	[0-5]	[5-10]-[10-20]%
Lubritalia	N/A	N/A	[0-5]	[0-5]%
Fratelli Ricci	N/A	N/A	[0-5]	[0-5]%
BP Castrol	N/A	N/A	[0-5]	[0-5]%
Condoroil	N/A	N/A	[0-5]	[0-5]%
<i>Total</i>	<i>[60-70]-[70-80]</i>	<i>100%</i>	<i>[30-40]</i>	<i>100%</i>

*Source: Annex 6.3.(3)(1) to Form CO*

(156) In the hypothetical EEA markets for TRO and Pickle oils, the Parties would have a combined market share of about [70-80]% and [60-70]%, respectively. The market investigation has indicated that the dynamics of these potentially narrower markets reflect in full the dynamics for the broader SCRO market including TRO and Pickle oils, in terms of closeness of competition, customer switching, entry and buyer power. Taking this into account, and considering that the assessment related to the potential narrower markets would mirror the assessment related to the broader SCRO market, TRO and Pickle oils are considered part of the SCRO market for the purpose of the competitive assessment in the present Decision.

*Notifying Party's view*

(157) The Notifying Party considers that the Transaction does not create or enhance market power in the market for SCRO in the EEA. First, the Notifying Party argued that switching costs for customers are low. Although SCRO customers need to change the fluid in the entire lubrication system (and thus cleaning operations are needed) and although customers need to test new products (which generally takes up to six months), such process generally does not take a long

<sup>136</sup> The Notifying Party submitted that it was unable to provide estimates on sales and market shares in value for the Parties' competitors. However, according to the data provided by the Notifying Party, the market shares of the Parties and their competitors did not materially differ in the period 2015-2017. Therefore, the Parties' market shares for SCRO in the EEA have been consistently above 50% in the past three years.



time.<sup>137</sup> Second, customers of SCRO are large steel mills that are able to exercise strong countervailing buyer power.<sup>138</sup> Third, barriers to entry are relatively low.

- (158) While the Notifying Party recognised that product formulation development requires time and expertise, it also considered that the relevant know-how could be sourced on the market at least to a certain extent, notably from private label companies.<sup>139</sup>

*Commission's assessment*

The Transaction further strengthens Quaker's large market share, leading to a combined market share of over 50%

- (159) Starting the assessment by looking at the market shares of the Parties as a proxy of their likely market power, the Commission notes that the Parties' combined market shares post-Transaction will be close to [60-70]% (both in value and volume), raising a presumption of dominance. On the one hand, the market investigation revealed that there are a few additional competitors present on the market, namely petrol companies, which however only supply very specific types of SCRO (e.g. for stainless steel) and currently have limited activities in this field. On the other hand, the market investigation showed that the Parties are likely to have overestimated the sales of some of their competitors, in a few cases quite substantially.<sup>140</sup> As a result of this, the Parties' market shares are likely to be underestimated. Therefore, post-Transaction, the Parties' combined shares will likely be above [60-70]%.

Quaker and Houghton are close competitors

- (160) SCRO customers responding to the market investigation indicated that the most relevant criteria they consider when selecting a supplier are the quality of the product and the technical expertise / support provided, followed by price.<sup>141</sup> In fact, SCRO represents a critical input since it has direct effects on the quality of the steel produced. Quaker and Houghton are consistently ranked among the top suppliers active in the EEA by customers of SCRO<sup>142</sup> and competitors<sup>143</sup>, together with Henkel and, to a lesser extent, Fuchs. Overall, customers and competitors believe that Quaker, Houghton and Henkel closely compete with each other on the market for SCRO in the EEA, and that they compete to a lesser extent with Fuchs.<sup>144</sup> In particular, customers consider SCRO products of Quaker, Houghton and Henkel to be of high quality and to be provided with adequate technical support.<sup>145</sup> Only very few customers responding to the market investigation

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<sup>137</sup> Form CO, paragraphs 654 and 656.

<sup>138</sup> Form CO, paragraph 659.

<sup>139</sup> Form CO, paragraph 865.

<sup>140</sup> Replies to Q1 – questionnaire to competitors, question 20.

<sup>141</sup> Replies to Q2 – questionnaire to customers, question 19.

<sup>142</sup> Replies to Q2 – questionnaire to customers, question 21.

<sup>143</sup> Replies to Q1 – questionnaire to competitors, question 45.

<sup>144</sup> Replies to Q1 – questionnaire to competitors, question 48 and replies to Q2 – questionnaire to customers, question 22.

<sup>145</sup> Replies to Q2 – questionnaire to customers, question 21.

mentioned other companies as real alternatives to the top four suppliers currently active on the market.<sup>146</sup> As regards specialised suppliers like Fratelli Ricci and Lubritalia, it appears that these companies are mainly active in Italy, and thus do not fully compete with pan-European players like the Parties on the whole EEA market.<sup>147</sup> This is in line with the internal documents submitted by the Parties. For example, when assessing its position on primary metals products, Quaker positions itself as [...] and [...]."<sup>148</sup>

- (161) Therefore, the Parties appear to exert important competitive constraints on each other, as well as on the remaining players active on the market; and this would be removed by the Transaction.

Customers have limited possibilities of switching supplier

- (162) Contrary to the Notifying Party's views, the market investigation revealed that customers have limited possibility of switching supplier. Almost all customers of SCRO believe that switching supplier is not easy, due to the time and costs involved.<sup>149</sup> As for SHRO, SCRO needs to be adapted to the needs of the specific mills where it is used. Before being able to switch supplier, customers need to test the new product, first in laboratory and then in the production facility, which can take several months.<sup>150</sup>
- (163) Some customers explicitly mentioned that switching is risky due to the impact that the oil may have on the final product, that is to say the steel being produced.<sup>151</sup> Some customers of SCRO reported that they have never switched their supplier in the past five years. Others explained that some switching occurred on an occasional basis, when the product performance needed to be improved, but generally only in relation to specific mills within the company.<sup>152</sup> This is also confirmed by the data submitted by the Notifying Party on the Parties' trends as regards losing and winning customers in the past years: both Houghton and Quaker reported [...] losses / gains of customers, mostly related to specific mills. For example, [...]. In particular, [...]. This further shows that the three top suppliers, which closely compete with each other on the market, are Quaker, Houghton and Henkel.<sup>153</sup>
- (164) As it is the case for SHRO, most customers of SCRO do not allocate 100% of their demand to a single supplier, but rather have multiple suppliers, for security of supply and for leveraging purposes in the negotiation process. In general, this multi-sourcing strategy is organised at the company level, whilst each mill / plant is generally served by the same supplier, since products need to be adapted to the specific needs of the mill / plant and products of different suppliers cannot be

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<sup>146</sup> Replies to Q2 – questionnaire to customers, question 21.

<sup>147</sup> Replies to Q1 – questionnaire to competitors, question 33.

<sup>148</sup> Annex 5.4(ii)(a)(27) to Form CO, [*Reference to internal documents*].

<sup>149</sup> Replies to Q2 – questionnaire to customers, question 23.

<sup>150</sup> Replies to Q2 – questionnaire to customers, questions 23 and 24.

<sup>151</sup> Replies to Q2 – questionnaire to customers, question 23. For example, one customer mentions that a relevant barrier to switch is "[... ] the fear of the influence of a new oil on the surface aspect of the finished product [...]."

<sup>152</sup> Replies to Q2 – questionnaire to customers, question 24.

<sup>153</sup> See Annex 8.2(c) to Form CO.

mixed.<sup>154</sup> Given that, as explained above, most customers consider as credible suppliers active on the market, beyond the merged entity, only Henkel and, to a lesser extent, Fuchs, the choice of alternative sources of supply will be severely reduced post-Transaction in this market.

- (165) In view of the above, and also in light of the fact that the profit margins on the SCRO market are very high for both Parties (around [...]%)<sup>155</sup>, the Parties are likely to profit from increasing pricing on a larger sales base, post-Transaction. Overall, as significant number of customers of SCRO, including large steel mills, believe that the Transaction will have a negative impact. Notably, customers believe that they the number of suitable suppliers active on the market will be critically reduced, which is likely to lead to increases in prices and to a worsening of the quality of services provided by suppliers.<sup>156</sup>

#### Lack of countervailing factors

- (166) As regards countervailing factors, the Commission refers to the assessment made in paragraphs (150) to (153) of this Decision in relation to SHRO, which fully applies to the market for SCRO as well. In view of that, the Commission considers that entry and buyer power are unlikely to countervail the anticompetitive effects likely to arise from the Transaction.

#### *Conclusion*

- (167) For the reasons set out above, the Commission concludes that the concentration raises serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects in the market for SCRO (including TRO and Pickle oils) in the EEA.

#### ii. Wet Temper fluids

- (168) On the market for Wet Temper fluids in the EEA, to combined market share of the Parties is about [40-50]%, with a negligible increment of [0-5]% brought by Houghton's business.
- (169) Other competitors on the market include Exxon, Total, Henkel, Chemetal, Condoroil, Shell, Petrofer, Lubrigrup, Burgdorf, Lubrix and Fuchs<sup>157</sup>.
- (170) The market investigation has indicated that the Parties will face competition from alternative suppliers post-Transaction and that they are not considered as close competitors<sup>158</sup>. The majority of customers do not foresee an impact on the market for Wet Temper fluids in general, or for the Wet Temper fluids they purchase<sup>159</sup>.
- (171) In light of the above, and in particular in view of the minor increment and the presence of alternative Wet Temper fluid suppliers, the Commission concludes

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<sup>154</sup> Replies to Q2 – questionnaire to customers, questions 27 and 28.

<sup>155</sup> Form CO, paragraph 501-503.

<sup>156</sup> Replies to Q2 – questionnaire to customers, question 37.

<sup>157</sup> Replies to Q2 – questionnaire to customers, questions 21 and 29.3.

<sup>158</sup> Replies to Q2 – questionnaire to customer, question 22.

<sup>159</sup> Replies to Q2 – questionnaire to customer, question 37.

that the concentration does not raise serious doubts as to its compatibility with the internal market for Wet Temper fluids in the EEA.

iii. Can Copper fluids

- (172) For Can Copper fluids in the EEA, based on the Notifying Party's estimate, the Transaction leads to an affected market. The combined market share of the Parties is [20-30]% and the increment brought by Houghton is small ([0-5]%).
- (173) Other competitors for Can Copper fluids include the market leader Henkel (60-70% estimated market share), Kluthe, Fuchs, Chemtool and Chemetal.<sup>160</sup>
- (174) According to the Parties, the Transaction will have little to no effect on the market for Can Copper fluids in the EEA. Henkel is considered as a clear market leader and the remaining market participants will continue to exert competitive pressure on one another. The Parties further submit that the downstream market for Can Copper fluids is a concentrated market, with only 5 big customers.
- (175) The results of the market investigation indicate that the majority of Can Copper fluids customers are neutral to the Transaction. One respondent indicated that since Houghton was already only a small player on the market, the Transaction would not have an impact. Another customer indicated that the Transaction might even have a positive impact on innovation.<sup>161</sup>
- (176) In light of the above, and in particular in view of the small increment and the presence of alternative Can Copper fluid suppliers such as market leader Henkel, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market for Can Copper fluids in the EEA.

5.3.1.5. MWF - Protecting fluids

- (177) According to the information provided by the Notifying Party, the Transaction strengthens the Parties market shares. As can be seen from the table below, the Transaction will only result in an affected market at the level Prelubes.

**Table 5 - Market shares for the Protecting fluids market in the EEA (2017)**

Competitor	Protecting fluids		Prelubes		Other Protecting fluids	
	Share (Value)	Share (Volume)	Share (Value)	Share (Volume)	Share (Value)	Share (Volume)
Quaker	[5-10]%	[5-10]%	[20-30]- [30-40]%	[20-30]%	[0-5]%	[0-5]%
Houghton	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
<b>Combined</b>	<b>[10-20]%</b>	<b>[10-20]%</b>	<b>[20-30]- [30-40] %</b>	<b>[20-30]%</b>	<b>[5-10]%</b>	<b>[5-10]%</b>

Source: Annex 6.3.(3)(1) to Form CO

<sup>160</sup> Replies to Q2 – questionnaire to customers, questions 18 and 21.

<sup>161</sup> Replies to Q2 – questionnaire to customers, question 37.

- (178) As can be seen from the table, the impact of the Transaction on the market is minimal, with an increment of only [0-5]% and a combined market share of [20-30]% in volume (or [20-30]-[30-40]% in value).
- (179) Other competitors on the market include Fuchs, Zeller & Gmelin, Wedolit, Henkel, Repsol, Avista, Brugarolas and BP Castrol.<sup>162</sup>
- (180) The market investigation has indicated that the Parties will face competition from alternative suppliers post-Transaction and that they are not considered as close competitors<sup>163</sup>. The majority of customers does not foresee an impact on the market for prelubes in general, or on the prelubes they purchase from the market.<sup>164</sup>
- (181) In light of the above, and in particular in view of the minor increment and the presence of alternative prelubes suppliers, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market for prelubes in the EEA.

#### 5.3.1.6. Hydraulic fluids

- (182) According to the information provided by the Notifying Party, the Transaction strengthens the Parties market shares in HF and in the different plausible sub-segments. As can be seen from the table below, the Transaction will result in affected markets at the levels of HF, synthetic/fire resistant HF fluids and HFC.

**Table 6 - Market shares (in volume) for the Hydraulic fluids market (and its possible segments) in the EEA (2017)**

Competitor	All HF	Mineral-based HF	Synthetic / Fire resistant HF	HFA	HFB	HFC	HFD-U
Quaker	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]	[0-5]%	[10-20]%
Houghton	[0-5]%	[0-5]%	[20-30]%	[10-20]%	[0-5]	[30-40]%	[0-5]%
<b>Combined</b>	<b>[0-5]%</b>	<b>[0-5]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	[0-5]	<b>[30-40]%</b>	<b>[10-20]%</b>
Shell	[20-30]%	[20-30]%	[0-5]-[5-10]%	N/A	N/A	[0-5]-[10-20]%	[0-5]-[10-20]%
ExxonMobil	[10-20]%	[10-20]%	[0-5]-[5-10]%	N/A	N/A	[0-5]-[10-20]%	[0-5]-[10-20]%
BP Castrol	[10-20]%	[10-20]%	[0-5]-[5-10]%	N/A	N/A	[0-5]-[10-20]%	[0-5]-[10-20]%

<sup>162</sup> Replies to Q2 – questionnaire to customers, questions 76 and 77.

<sup>163</sup> Replies to Q2 – questionnaire to customers, questions 76 and 77.

<sup>164</sup> Replies to Q2 – questionnaire to customers, question 88.

Fuchs	[10-20]%	[10-20]%	[20-30]%	[30-40]%	N/A	[30-40]%	[10-20]%
Petrofer	N/A	N/A	[20-30]%	[30-40]%	N/A	[30-40]%	[10-20]%
Bechem	N/A	N/A	[0-5]- [10-20]%	[0-5]- [10-20]%	N/A	[0-5]- [10-20]%	[0-5]- [10-20]%

*Source: Annex 6.3.(4) to Form CO*

- (183) Quaker and Houghton are both active in the manufacture and supply of synthetic/fire resistant HF and its sub-segment of HFC fluids.
- (184) As can be seen from the table, the combined market share on the market of synthetic/fire resistant HF is limited [20-30]%, with an increment of [5-10]%. Other competitors on the market include Fuchs, Petrofer, Total, Condat, Shell, Brugrolas, Henkel, Verkol, BP Castrol, CEPSA, and ENI.<sup>165</sup>
- (185) The market investigation has indicated that the Parties will face competition from alternative suppliers post-Transaction and that they are not considered as close competitors<sup>166</sup>. The majority of the customers also indicated that if the Parties would increase the prices of synthetic/Fire resistant HF by 5 – 10% on a permanent basis, they would allocate all or part of their purchases to one of the alternative suppliers.<sup>167</sup>
- (186) The majority of customers does not foresee any impact on the market for synthetic/fire resistant HF in general, or on the synthetic/fire resistant HF they purchase from the market.<sup>168</sup>
- (187) In light of the above, and in particular in view of the presence of alternative HF suppliers and the customers' neutral position to the impact of the Transaction, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market for synthetic/Fire resistant HF in the EEA.
- (188) As can be seen from the table, the impact of the Transaction on the market of HFC is minimal, with an increment of only [0-5]%. According to the market investigation with competitors of the Parties, several alternative suppliers remain active on the market (CEPSA, BP PLC, ExxonMobil, Fuchs, MOL Nyrt, Petrofer, Petronas and Total).<sup>169</sup>
- (189) In light of the above, and in particular in view of the negligible increment in the market share and the presence of alternative HFC suppliers, the Commission concludes that the notified concentration does not raise serious doubts as to its compatibility with the internal market for HFC in the EEA.

<sup>165</sup> Replies to Q2 – questionnaire to customers, questions 100 and 103.

<sup>166</sup> Replies to Q2 – questionnaire to customers, question 104.

<sup>167</sup> Replies to Q2 – questionnaire to customers, question 107.4.

<sup>168</sup> Replies to Q2 – questionnaire to customers, question 115.

<sup>169</sup> Replies to Q1 – questionnaire to competitors, question 115.

### 5.3.2. Non-horizontal effects: conglomerate effects

- (190) Customers of industrial lubricants purchase different types of products for their manufacturing process. Therefore, the Commission has considered whether the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practice.<sup>170</sup>
- (191) In particular, the Parties have a significant degree of market power in the EEA markets for AHRO, SHRO and SCRO, as discussed in Section 5.3.1.4. These rolling oils are purchased by aluminium and steel producers, which also buy other types of lubricants produced by the Parties (e.g. protecting fluids, hydraulic fluids, etc.). AHRO, SHRO and SCRO are viewed as critical inputs by customers in light of their critical effect on the quality of the produced aluminium and steel, respectively. In relation to all three markets, there are very few, if any, relevant alternatives for customers and switching costs are very high.
- (192) Therefore, the merged entity might have the ability and the incentive to foreclose competitors in other markets by conditioning sales in a way that links products belonging to separate markets together, that is to say by conditioning sales of AHRO, SHRO and SCRO to the purchase of other lubricants (e.g. protecting fluids or hydraulic fluids).
- (193) In any event, the remedies proposed in relation to the EEA markets for AHRO, SHRO and SCRO would also remedy any hypothetical conglomerate effects arising from the notified concentration. Therefore, the Commission considers that there is no need to conclude as to whether the notified concentration raises serious doubts as to its compatibility with the internal market with regard to conglomerate effects.

## **6. COMMITMENTS**

- (194) In order to render the notified concentration compatible with the internal market, the Notifying Party formally submitted commitments to the Commission on 25 October 2018 (the “Initial Commitments”) and subsequently submitted a revised version of those commitments on 3 December 2018 (the “Final Commitments”). The proposed Final Commitments are annexed to the present Decision and form an integral part thereof.

### **6.1. Framework for the assessment of the Commitments**

- (195) Where the Commission finds that a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the Parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.<sup>171</sup>

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<sup>170</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 93.

<sup>171</sup> Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “Remedies Notice”), OJ 2008/C 267/01, para 5.

- (196) Under the Merger Regulation, it is the responsibility of the Commission to show that a concentration would significantly impede effective competition. The Commission then communicates its competition concerns to the parties to allow them to formulate appropriate and corresponding remedies proposals. It is then for the parties to the concentration to put forward commitments.<sup>172</sup> The Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment of effective competition in all relevant markets where competition concerns were identified.<sup>173</sup> To this aim, the commitments have to eliminate the competition concerns entirely<sup>174</sup> and have to be comprehensive and effective from all points of view.<sup>175</sup>
- (197) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Notifying Party and other participants on the market.<sup>176</sup>
- (198) In order for the commitments to comply with these principles, commitments must be capable of being implemented effectively within a short period of time.<sup>177</sup> Where, however, the Notifying Party submits remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.<sup>178</sup> The requisite degree of certainty concerning the implementation of the proposed commitments may in particular be affected by risks in relation to the transfer of a business to be divested.<sup>179</sup>
- (199) Commitments in Phase I can only be accepted where the competition concerns are readily identifiable and can be easily remedied. The remedies need to be so clear-cut that it is not necessary to enter into an in-depth investigation as to whether they are sufficient to rule out 'serious doubts' within the meaning of Article 6(1)(c) of the Merger Regulation.<sup>180</sup>
- (200) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite

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<sup>172</sup> Remedies Notice, para 6.

<sup>173</sup> Remedies Notice, para 9.

<sup>174</sup> See also Case C-202/06 *P Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, para 54.

<sup>175</sup> Remedies Notice, paras 9 and 61.

<sup>176</sup> Remedies Notice, para 12.

<sup>177</sup> Remedies Notice, para 9.

<sup>178</sup> Remedies Notice, paras 13, 14 and 61.

<sup>179</sup> Remedies Notice, para 11.

<sup>180</sup> Remedies Notice, para 81.



standard.<sup>181</sup> In general structural commitments are the best way to eliminate competition concerns resulting from horizontal overlaps.

- (201) In this regard divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern.<sup>182</sup> Normally, a viable business is a business that can operate on a stand-alone-basis, which means independently of the merging parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.<sup>183</sup> The Commission has a clear preference for an existing stand-alone business. In proposing a viable business for divestiture, it is necessary to take into account the uncertainties and risks related to the transfer of a business to a new owner. These risks may limit the competitive impact of the divested business, and, therefore, may lead to a market situation where the competition concerns at stake will not necessarily be eliminated.<sup>184</sup>
- (202) While divested businesses should in principle contain all tangible assets including manufacturing assets which contribute to its current operation<sup>185</sup>, carve out of manufacturing assets may be acceptable only exceptionally in very specific circumstances if their workability is fully ensured by effective implementation and monitoring.<sup>186</sup> A divestiture consisting of a combination of certain assets which did not form a uniform and viable business in the past creates risks as to the viability and competitiveness of the resulting business. In such circumstances, the package must be sufficient to allow the Commission to conclude that the resulting business will be immediately viable in the hands of a suitable purchaser.<sup>187</sup>
- (203) It is against this background that the Commission assessed the viability, the workability, the effectiveness and the ability of the proposed commitments to entirely eliminate the competition concerns identified.

## 6.2. Proposed Commitments

### 6.2.1. Initial Commitments

- (204) The Initial Commitments consist in the global divestment, under an upfront buyer provision, of all know-how and IP rights in relation to Houghton's AHRO, SHRO and SCRO businesses in the EEA (the "Divestment Business"). More specifically, such know-how and IP rights include all unpatented product formulations constituting trade secrets, Houghton's US patent in relation to NOA technology,

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<sup>181</sup> Case T-177/04, *EasyJet v Commission* [2006] ECR II-1913, para 197: "Article 6(2) of Regulation No 4064/89 provides that the Commission may authorise a merger if the commitments proposed by the parties dispel the serious doubts as to the compatibility of the merger with the common market. Regulation No 4064/89 thus lays down the objective to be achieved by the Commission, but leaves it a wide discretion as to the form which the commitments in question may take."

<sup>182</sup> Remedies Notice, para 23.

<sup>183</sup> Remedies Notice, para 32.

<sup>184</sup> Remedies Notice, para 24.

<sup>185</sup> Remedies Notice, para 25-27.

<sup>186</sup> Remedies Notice, para 17.

<sup>187</sup> Remedies Notice, para 37.

brand names<sup>188</sup> and R&D capabilities. The divested know-how includes both formulations of products that are currently produced by Houghton's businesses, as well as formulations of former products produced by Houghton. In addition, such know-how includes all the relevant formulation adjustments and products in development related to the divested businesses. Under the proposed commitments, the merged entity will benefit from a non-exclusive license-back for use exclusively outside the EEA and outside any geographic areas where the Federal Trade Commission ("FTC") in the United States may require a remedy.<sup>189</sup>

- (205) With this respect, the Initial Commitments include the transfer of [20-40] Houghton employees active in sales, technical servicing and R&D<sup>190</sup> and who are to a large extent, if not entirely, dedicated to the Divestment Business, as well as [10-30] product support engineers from Houghton's EEA fluidcare services related to steel rolling oils. The Initial Commitments also provide that the merged entity cannot solicit the personnel transferred with the Divestment Business for a period of [...]. In addition to this transfer of personnel, the remedy package also contains specific tangible assets such as laboratory equipment necessary for the continuation of R&D activity related to divested products.
- (206) The Initial Commitments further provide for the divestment of the entirety of Houghton's existing customer contracts and records in relation to the Divestment Business and under a [...] non-solicitation clause. Similarly, all of Houghton's relationships with its existing suppliers of raw materials as well as any inventory of finished goods, packaging and raw materials related to the Divestment Business are included in the divested package. Moreover, in order to facilitate the technology transfer, the Initial Commitments provide for transitional services and toll-manufacturing agreements for a transitional period of up to [...], extendable twice with [...] extensions, on terms and conditions equivalent to those currently afforded by Houghton to the Divestment Business. At the option of the purchaser, the Initial Commitments also include a commitment for the Notifying Party to provide technical training services for R&D.
- (207) The Parties explicitly proposed Total S.A. ("Total", France) as remedy buyer. Given Total's pre-existing activities in neighbouring lubricant markets and its manufacturing footprint in the EEA, the Initial Commitments do not provide for the divestment of any production facility in the EEA.
- (208) While the Initial Commitments do not provide for the divestment to Total of Houghton's formulations used in regions outside the EEA and outside any geographic areas where the FTC may require a remedy, the divested package

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<sup>188</sup> The following brand names are included in the Initial Commitments: NOA, Tandemol, Rodshield, ARC, Roll Collar, Rollshield, Fenella, Rolkleen, Rollub, Tempershield and MWR. Following the transfer of these brand names, the merged entity will have a [...] usage right for these brand names for existing products that do not compete with the Divestment Business. Conversely, the purchaser will have a [...] usage right for Houghton's brand name Houghto Roll for products relying in whole or in part on the divested know-how. Following such [...] period, the merged entity commits to abstain from any use of this brand for products competing with the Divestment Business for a further blackout phase of [...].

<sup>189</sup> In fact, the Initial Commitments provide for a licence-back to the merged entity "for all areas outside the EEA to the extent permitted by the US FTC in its proceedings".

<sup>190</sup> [1-10] business leaders, [10-30] sales/technical services/assistance personnel and [5-15] R&D staff members.

nevertheless enables Total to use the acquired know-how and IP rights on a global basis, i.e. without any geographic restriction. In other words, under the Initial Commitments, Total is in the position to supply rolling oils, for instance, in Asia, should it decide to do so.

- (209) In addition, the undertakings concerned have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee.

#### 6.2.2. Results of the market test

- (210) The Commission launched a market test on 5 November 2018 to assess the suitability and viability of the Initial Commitments.
- (211) Results of the market test indicate that the Initial Commitments are in general sufficient to address the competition concerns raised by the Commission on the EEA markets for AHRO, SHRO and SCRO.<sup>191</sup> Several market participants nevertheless identify some implementation risks and suggest a number of improvements to help mitigate such risks. Only a small minority of customers and competitors express negative views on the remedy package, but such concerns remain isolated and are not in line with the views expressed by the majority of market participants.
- (212) Both customers and competitors are confident that the proposed remedy would be viable and that Total could effectively compete on the EEA markets for AHRO, SHRO and SCRO.<sup>192</sup> Moreover, the majority of respondents agree that the Initial Commitments include all necessary tangible and intangible assets, such as equipment, know-how and pipeline products necessary for Total to viably and competitively run the Divestment Business on a lasting basis in the EEA.<sup>193</sup> More specifically, market participants have consulted the list of products included in the Divestment Business and generally confirm that no additional Houghton's products are required in the Divestment Business for viability purposes, with the exception of a limited number of specific HFs which are technically compatible with Houghton's divested rolling oils (in particular, AHRO).<sup>194</sup>
- (213) Results of the market test also generally confirm the adequacy of the toll-manufacturing and servicing arrangements envisaged for the transitional period<sup>195</sup> as well as the appropriateness and sufficiency of the Parties' commitment not to solicit any transferred personnel, customer or distributor included in the Divestment Business for a period of five years.<sup>196</sup>

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<sup>191</sup> Replies to R1 – questionnaire to competitors, question 15, and to R2 – questionnaire to customers, question 14.

<sup>192</sup> Replies to R1 – questionnaire to competitors, question 3, and to R2 – questionnaire to customers, question 4.

<sup>193</sup> Replies to R1 – questionnaire to competitors, question 4.

<sup>194</sup> Replies to R1 – questionnaire to competitors, question 17.1, and to R2 – questionnaire to customers, question 16.1.

<sup>195</sup> Replies to R1 – questionnaire to competitors, question 8, and to R2 – questionnaire to customers, question 8.

<sup>196</sup> Replies to R1 – questionnaire to competitors, questions 11 and 12.

- (214) While market participants largely acknowledge the need for requalification of the divested products once transferred to Total (notably in light of the change in the manufacturing facilities where the products will be produced), they also generally indicate that this situation would not substantially differ from general industry practice and that estimated re-qualification delays would require between 3 to 18 months, depending on the different end-use application of aluminium and steel products.<sup>197</sup> Similarly, a smaller number of customers indicate that their company would need to requalify the products in the event that Total were to source certain input raw materials from alternative suppliers,<sup>198</sup> but generally consider such requalification step could be accomplished within the timeframe of the initial transitional period of [...].<sup>199</sup>
- (215) A sizable proportion of customers and competitors, however, also consider that the Initial Commitments involve certain implementation and operational risks.<sup>200</sup> First of all, market participants stress the importance of a sufficiently long transitional period in order to enable Total to replicate Houghton's service and product quality after the technology transfer, and to provide sufficient time for customers to complete all necessary re-qualification steps, with a buffer for unforeseeable events.<sup>201</sup> Second, some respondents stress that, during the transitional period, Houghton may not supply Total with sufficient volumes of toll-manufactured products<sup>202</sup> and raise doubts that, under the Initial Commitments, Houghton may not be bound to offer the same level of services and products to Total during the transitional period, including the two possible extension periods.<sup>203</sup> Third, some market participants highlight the risk that a few key employees of Houghton are not transferred with the Divestment Business.<sup>204</sup> Fourth, customers consider the availability to Total of the same raw materials as used by Houghton pre-Transaction to be crucial in order to enable Total to replicate the same quality and performance level of the divested products. Finally, a small minority of competitors raise the observation that global customers may require globally consistent technology and products.<sup>205</sup> However, with respect to the latter observation, none of the global customers of Houghton raised similar concerns during the market test.
- (216) In terms of mitigation proposals to the above risks, some customers suggest the possibility to extend the transitional period by an additional six months in order to provide for greater reassurance and flexibility in case of unforeseen issues related to the technology transfer.<sup>206</sup> The vast majority of competitors and customers further consider that the Initial Commitments would need to be amended in order to explicitly enable Total to increase the volume of its purchases of toll-

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<sup>197</sup> Replies to R1 – questionnaire to competitors, question 5, and to R2 – questionnaire to customers, question 5.

<sup>198</sup> Replies to R2 – questionnaire to customers, question 10.

<sup>199</sup> Replies to R2 – questionnaire to customers, question 10.2.

<sup>200</sup> Replies to R1 – questionnaire to competitors, question 3.2, and to R2 – questionnaire to customers, questions 4.2, 6 and 15.

<sup>201</sup> Replies to R2 – questionnaire to customers, questions 4.2.1 and 6.1.

<sup>202</sup> Replies to R2 – questionnaire to customers, question 4.2.1., 7.1., 8.1.

<sup>203</sup> Replies to R2 – questionnaire to customers, question 8.1.

<sup>204</sup> Replies to R1 – questionnaire to competitors, question 16.1, and to R2 – questionnaire to customers, question 6.1.

<sup>205</sup> Replies to R1 – questionnaire to competitors, question 3.

<sup>206</sup> Replies to R2 – questionnaire to customers, question 9.1.

manufactured products in order to meet potential increases in customer demand during the transitional period.<sup>207</sup>

- (217) Concerning the risks associated to the identification of key personnel and given that names of specific members of personnel to be transferred to Total could not be disclosed to market participants for the purpose of the market test, the Commission asked Houghton's customers to identify all Houghton's employees that they consider essential for the viability of the Divestment Business. In this context, replies to the market test largely confirm the relevance of the [20-40] key employees proposed by the Parties in the Initial Commitments. Nevertheless, customers also mentioned a limited number of Houghton's employees that were not part of the remedy package as being necessary for the viability of the Divestment Business. Out of these employees,<sup>208</sup> however, most (i) are only marginally active in the EEA, or (ii) changed role within the company a few years ago, or (iii) are identified on an isolated basis and without justification as to why their position could not be taken over by existing Total employees (e.g. administrative personnel or non-specialised commercial personnel). Only one of the said employees, a technical sales manager active in the EEA, is consistently considered as crucial for the viability of the Divestment Business in the replies of Houghton's customers.
- (218) The Commission also obtained the views of customers and competitors as to the suitability of Total as a potential purchaser during the market test. Most market participants believe that Total would be able to compete effectively and on a lasting basis on the EEA markets for AHRO, SHRO and SCRO.<sup>209</sup> Although a small minority of respondents expressed concerns that Total does not currently have sufficient knowledge of the specific chemistry and market dynamics related to the divested products,<sup>210</sup> most respondents stressed Total's relevant experience and know-how in the lubricants industry.<sup>211</sup>
- (219) In view of the above, although the overall remedy concept and specific purchaser proposed by the Parties in the Initial Commitments positively resonated with market participants, the responses to the market test identified some risks and mitigation possibilities in order to ensure the continued viability and competitiveness of the Divestment Business in the EEA.

### 6.2.3. *Final Commitments*

- (220) Taking into account the results of the market test as well as certain considerations being commercially negotiated with Total, the Parties submitted the Final Commitments, which incorporate several improvements to the Divestment Business. As described in Section 6.2.2, market participants identified some implementation risks in relation to: (i) the need to include in the remedy package

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<sup>207</sup> Replies to R1 – questionnaire to competitors, question 8.2, and to R2 – questionnaire to customers, question 8.2.

<sup>208</sup> Replies to R2 – questionnaire to customers, questions 11.1 and 12.

<sup>209</sup> Replies to R1 – questionnaire to competitors, question 18, and to R2 – questionnaire to customers, question 17.

<sup>210</sup> Replies to R1 – questionnaire to competitors, questions 3 and 18.1, and to R2 – questionnaire to customers, question 17.1.

<sup>211</sup> Replies to R1 – questionnaire to competitors, question 18.1, and to R2 – questionnaire to customers, question 17.1.

certain products which are technically complementary to some of the divested products, (ii) the duration of the transitional period, (iii) the flexibility for Total to increase its purchases of toll-manufactured products during the transitional period, (iv) the quality level of products and services offered by the merged entity during the transitional period, (v) key personnel, and (vi) the safeguard of Total's access to Houghton's raw material suppliers. Compared to the Initial Commitments, the Final Commitments have been adapted so as to effectively mitigate the identified implementation risks in practice.

- (221) First, the Final Commitments provide for the divestment of hydraulic fluids which are technically compatible with the divested products, namely "Vital Fluid", "Vital Fluid NOA" and "Hydro Drive", as identified by market participants.<sup>212</sup> The products included in the Divestment Business relate to both current formulations and formulations used in the past. "Vital Fluid" and "Vital Fluid NOA" products are respectively water-based and mineral oil based hydraulic fluids developed either with the same raw materials used in the divested AHRO products or with specific additives that do not mix with the divested AHRO products. In case of leakage of these hydraulic fluids, the performance of the AHRO rolling oil is therefore not impacted. Similarly, the "Hydro Drive BM 46" is a mineral oil based hydraulic fluid the components of which are more easily separable from divested products in case of a leakage. In line with the addition of these products to the divestment package, the Final Commitments also provide for the addition of the "Vital Fluid" and "Hydro Drive" brand names to the divested brands already included in the Initial Commitments.
- (222) Second, in order to ensure a seamless technology transfer to Total, the Final Commitments proposed by the Parties provide for the possibility of extending the transitional arrangements for an additional period of [...]. More specifically, while the Initial Commitments offer the possibility of two separate [...] extensions at the option of Total and subject to agreement of the monitoring trustee, the Final Commitments extend the first extension [...]. In total, the maximum duration of the transitional period therefore increases [...], as suggested by market participants in the market test. While the Final Commitments offer more flexibility in case of unforeseen complications during the technology transfer, they also include a revised pricing formula for the toll-manufactured products purchases during the last potential extension [...]. This means that the price for the toll-manufactured products will be higher during the last possible extension (compared to the price offered during the initial [...] and the first [...] extension), while remaining non-punitive for Total in case such ultimate extension were to be necessary. This way, Total will have more flexibility to implement the technology transfer and to perform all the necessary customers' qualifications, while being incentivised to terminate the transitional arrangements with the merged entity as soon as practicable. In addition, the Final Commitments provide that during the transitional period strict ring-fencing obligations will be in place, so that the merged entity will obtain and use confidential information from the Divestment Business for the sole purpose of providing toll-manufacturing

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<sup>212</sup> Following products have been added to the divestment package: VITAL FLUID AG 46, VITAL FLUID HS 320, VITAL FLUID L 46 AL, VITAL FLUID NOA 46, VITAL FLUID NOA 68, VITAL FLUID NOA 150, VITAL FLUID NOA 220, VITAL FLUID NOA 320, VITAL FLUID NOA 460, HYDRO DRIVE BM 46 (to become VITAL FLUID BM 46).

services, and will be subject to the obligation not to retain nor use any such information after the termination of the toll manufacturing arrangement.

- (223) Third, compared to the Initial Commitments, the Final Commitments explicitly mention that no volume cap shall apply for the volumes of toll-manufactured products to be provided to Total during the transitional period, including during possible extensions. Nevertheless, quantities ordered by Total remain subject to verification by the monitoring trustee and to commercial justification.
- (224) Fourth, under the Final Commitments, the Parties formally commit to offer quality levels for transitional services and toll-manufactured products equivalent to those performed and manufactured by Houghton pre-Transaction throughout the transitional period, including during possible extensions.
- (225) Fifth, in the Final Commitments, the Parties commit to use reasonable best efforts not only to facilitate, but also to *incentivise* the transfer of key personnel. Moreover, concerning specific key employees, the Final Commitments provide for the replacement of one technical service manager for non-ferrous products. In fact, the added employee corresponds to one of the key personnel identified during the market test by Houghton customers, while the removed employee was identified as being [...] and active in a geographic region already covered by another technical service manager. Eventually, the Final Commitments include provisions whereby the Parties undertake that any personnel currently involved directly in the research, development, and commercialization of divested products, but that are not part of the personnel transferred to the Divestment Business (notably because they do not play a key role and/or they only spend a negligible part of their time working on the divested products), will not, for a period of [...] after the Effective Date, engage directly or indirectly in any R&D for or commercialization of products which compete with the products comprising the Divestment Business.
- (226) Finally, the Parties also commit, for a period of [...], to offer to Total back-to-back agreements for the supply of raw materials used in the production of the divested products. Under the Final Commitments, such agreement may only be requested by Total in case it were not able to conclude supply contracts with the relevant third party suppliers.
- (227) The full description of the assets and obligations of the Final Commitments is contained in the schedule thereof.

### **6.3. Overall assessment of the Final Commitments**

#### *6.3.1. Scope of the Final Commitments and their suitability to remove identified concerns*

- (228) As explained in the present Decision, the serious doubts as to the compatibility of the Transaction with the internal market reside in the combination of Quaker's and Houghton's activities in relation to the manufacture and supply of AHRO, SHRO and SCRO products in the EEA.
- (229) The Final Commitments consist of the divestment of Houghton's activities in AHRO, SHRO and SCRO products in the EEA, representing more than the horizontal overlap between the Parties as regards such products. The Final

Commitments therefore ensure that the markets in question continue to be populated by different credible suppliers.

- (230) In light of the above, the Commission considers that the Final Commitments proposed by the Parties are suitable to address the competition concerns that the Transaction would otherwise lead to on the EEA markets for AHRO, SHRO and SCRO.

### 6.3.2. *Viability and competitiveness of the Divestment Business*

- (231) The Commission considers that the Divestment Business is a viable and competitive business, despite the fact that it is not currently operated on a stand-alone basis by Houghton. The volumes of the AHRO, SHRO and SCRO products currently manufactured by Houghton suggest that the products could be produced at existing plants owned by Total in the EEA. Total has several plants that are capable of producing industrial lubricants in the EEA and, according to its preliminary business plan, the EEA Divestment Business is expected to be transferred to at least three of such lubricant plants, in order to cover the markets for AHRO, SHRO and SCRO.
- (232) Despite the limited volumes represented by the divested products in the EEA, the Divestment Business achieves sales of EUR [...] in 2017<sup>213</sup>, and is a highly profitable business as illustrated by Houghton's profit margins achieved in the EEA in 2016 ([...] % for AHRO, [...] % for SHRO, and [...] % for SCRO products<sup>214</sup>).
- (233) The Commission considers that the transitional period [...], extendable twice by a [...] and a [...] extension respectively, up to a maximum duration of [...] in total, as provided for in the Final Commitments, is sufficient to ensure that Total can transfer and acquire the necessary know-how in order to (i) be able to successfully take over the production of Houghton's AHRO, SHRO and SCRO products, and (ii) allow sufficient time for transferred customers to requalify the products.
- (234) In light of the results of the market test and the identity of the proposed purchaser, the Commission considers that the Divestment Business includes the necessary personnel needed to be run viably and competitively. In addition, the Commission notes that the Final Commitments include adequate provisions to incentivise the relevant personnel to be transferred to the Divestment Business.
- (235) In light of the above, the Commission considers that the Final Commitments are adequate to ensure the viability and competitiveness of the Divestment Business.

### 6.3.3. *Ability of the Final Commitments to be implemented in practice*

- (236) The Parties must enter into a final binding sale and purchase agreement for the sale of the Divestment Business with a purchaser approved by the Commission before the Transaction can be closed.

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<sup>213</sup> Including revenues generated by Houghton's services to EEA customers of steel rolling oils. See Annexes 6 and 7 of the Final Commitments.

<sup>214</sup> Table 19 of the Form CO.



- (237) The Commission considers that the criteria set out in the Final Commitments are adequate to ensure the suitability of the purchaser. In particular, the Final Commitments stipulate that, besides being independent from the Parties and having sufficient financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in the EEA, the purchaser is required to be a well-established lubricant supplier with activities in the EEA. Moreover, the purchaser must have (i) a proven track record in lubricant markets, (ii) manufacturing capabilities in the EEA, (iii) capability of sourcing raw materials at competitive terms, and (iv) sufficient resources, including those acquired with the Divestment Business, in order to effectively carry out R&D activity for the Divestment Business, produce divested products at the same quality as Houghton, market these products cost-effectively throughout the EEA and provide all necessary technical support to customers.
- (238) The Commission also notes that the purchaser proposed by the Notifying Party in the Final Commitments, Total, appears to meet the criteria set out above without prejudice to the outcome of the assessment of Total as suitable buyer at a later stage of the procedure. The Commission will formally assess the suitability of Total as a purchaser in a separate decision. Nonetheless, the identity of the proposed purchaser, Total, removes concerns about the viability of the remedy that the Commission may otherwise have had at this stage. In particular, Total's experience in neighbouring markets and lubricants production assets located in the EEA contribute to reducing implementation risks that might have otherwise endangered the transfer of Houghton's AHRO, SHRO and SCRO products.
- (239) In light of the above, the Commission considers the Final Commitments to be sufficient in scope and suitable to remove the serious doubts that would otherwise result from the Transaction on the EEA markets for AHRO, SHRO and SCRO.

#### 6.3.4. *Conclusion on Final Commitments*

- (240) For the reasons outlined above, and in view of the results of the market test and the ensuing improvements to the Initial Commitments, the Commission considers the Final Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

### **6.4. Conditions and obligations**

- (241) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into *vis-à-vis* the Commission with a view to rendering a notified concentration compatible with the internal market.
- (242) 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 internal 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(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

- (243) In accordance with the distinction described above, this Decision is conditioned on the full compliance with the requirements set out in Section B of the Final Commitments (including the Schedule), which constitute conditions. The remaining requirements set out in the other Section of the Final Commitments constitute obligations on Quaker.
- (244) The detailed text of the Final Commitments is annexed to this Decision. The full text of the final Commitments forms an integral part of this Decision.

## **7. CONCLUSION**

- (245) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the Final 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 the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission  
(Signed)*

*Margrethe VESTAGER  
Member of the Commission*

## COMP/M. 8492 – QUAKER/GLOBAL HOUGHTON COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Quaker Chemical Corporation (the “*Notifying Party*”) and Houghton International Inc. hereby enter into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition of Global Houghton Limited (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 and/or by the ultimate parents of 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*”).

**AHRO:** Aluminium Hot Rolling Oils (see also “**Houghton EEA AHRO Business**”)

**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, paragraph 6 (a), (b), (c) and (d) and described more in detail in the Schedule.

**Closing:** the transfer of the Divestment Business to the Purchaser.

**Closing Period:** the period of [...] 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 Period:** the period of [...] from the Effective Date.

**Effective Date:** the date of adoption of the Decision.

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

**Houghton:** Houghton International Inc., incorporated under the laws of the Commonwealth of Pennsylvania, with its registered office at Madison and Van Buren Avenues, Valley Forge, PA 19482, USA.

**Houghton EEA AHRO Business:** the Houghton business relating to the development, manufacture and sale of AHRO products in the EEA.

**Houghton EEA Steel Rolling Oil Business:** collectively (1) the Houghton SCRO business relating to the development, manufacture and sale of SCRO products, including Pickle Oils and TPRO, in the EEA, and (2) the Houghton SHRO business relating to the development, manufacture and sale of SHRO products in the EEA.

**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 Quaker, and who has/have the duty to monitor Quaker's compliance with the conditions and obligations attached to the Decision.

**Parties:** the Notifying Party and Houghton.

**Personnel:** all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business and shared personnel, as identified 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 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

**Quaker:** Quaker Chemical Corporation, incorporated under the laws of the Commonwealth of Pennsylvania, with its registered office at One Quaker Park, 901 Hector Street, Conshohocken, PA 19428, USA.

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

**SCRO:** Steel Cold Rolling Oils (see also "**Houghton EEA Steel Rolling Oil Business**")

**SHRO:** Steel Hot Rolling Oils (see also "**Houghton EEA Steel Rolling Oil Business**")

**Technical Expert:** one or more natural or legal person(s), appointed by and reporting to the Monitoring Trustee, who has/have expertise relevant to the Divestment Business. The Technical Expert will, if this is deemed necessary by the Monitoring Trustee, assist and advise the Monitoring Trustee with regard to all technical aspects related to the Divestment Business. All information provided to the Monitoring Trustee may also be exchanged with the Technical Expert. The Technical Expert will be independent of and will not have or be exposed to any conflict of interest in relation to the Parties. If the Monitoring Trustee has the necessary technical expertise, the Monitoring Trustee and Technical Expert can be the same natural or legal person. Quaker and the Purchaser shall have the right to be heard with any reasoned objections against technical expert candidates, e.g., lack of competence or conflict of interest. In cases of controversy between Quaker and the Monitoring Trustee, and/or Purchaser and the Monitoring Trustee as to the suitability of the technical expert candidate, the Commission will decide on the matter.

**TOTAL:** TOTAL MARKETING SERVICES SA, incorporated under the laws of France, with its registered office at 24, cours Michelet - La Défense 10, 92069 Paris La Défense Cedex, and registered with the Trade and Companies Register at Nanterre under number 542 034 921 16871.

**TPRO:** Tinplate Rolling Oils (see also "**Houghton EEA Steel Rolling Oil Business**")

**Trustee:** the Monitoring Trustee.

## **Section B. The commitment to divest and the Divestment Business**

### Commitment to divest

2. In order to maintain effective competition, Quaker commits to divest, or procure the divestiture of the Divestment Business by the end of the Divestiture Period as a going concern to TOTAL and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, Quaker commits to enter into a final binding sale and purchase agreement for the sale of the Divestment Business with TOTAL within the Divestiture Period.
3. The proposed concentration shall not be implemented before Quaker has entered into a final binding sale and purchase agreement for the sale of the Divestment Business with TOTAL and the Commission has approved TOTAL and the terms of sale in accordance with paragraph 17.

4. Quaker shall be deemed to have complied with this commitment if:
  - (a) by the end of the Divestiture Period, Quaker has entered into a final binding sale and purchase agreement with TOTAL and the Commission has approved TOTAL and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and
  - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, the Parties 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 38 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

6. The Divestment Business consists of the Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business, the latter comprising the Houghton EEA SCRO business, including Pickle Oils and TPRO, and the Houghton EEA SHRO business. The Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business are currently operational business lines at Houghton and will be carved-out prior to the divestment. 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, know-how and other information used in connection with the Divestment Business) of the Divestment Business; provided however that manufacturing plants currently used by Houghton shall not be included in the Divestment Business.
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
  - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

7. In addition, the Divestment Business includes the benefit, for a transitional period of up to [...] after Closing, with a [...] extension and an additional [...] extension at the option of the Purchaser and subject to agreement of the Trustee, and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Houghton or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. The Purchaser shall use reasonable best efforts to complete the transition to the purchasing of such products or services from other sources as quickly as possible within the initial [...] period. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the Houghton operations supplying the products or services.
8. In order to ensure a seamless transfer of the Divestment Business to the Purchaser, the Parties commit to provide toll-manufacturing services of the products of the Divestment Business for the Purchaser in accordance with the hold-separate obligations under paragraphs 11 and 12 of the Commitments and the ring-fencing obligations under paragraph 13 of the Commitments for a time period of up to [...] after Closing, with a [...] extension and an additional [...] extension at the option of the Purchaser and subject to agreement of the Trustee. The Purchaser shall use reasonable best efforts to complete the transition to its own manufacturing as quickly as possible within the initial [...] period. The remuneration of the Parties for such toll-manufacturing to be paid by the Purchaser is detailed in **Annex 9** to the Schedule. The Parties commit to provide the Purchaser with the same commercial terms with respect to the material / services (including but not limited to packaging and transport) for which costs are passed through as applicable to the retained activities of the Parties. No cap shall apply for the volumes to be provided by the Parties under the toll-manufacturing services obligation. Upon reasoned request of Quaker, the Monitoring Trustee shall verify the commercial justification of the quantities ordered by the Purchaser.
9. To facilitate integration of the Divestment Business into the Purchaser's operation, the Parties further commit to provide to the Purchaser, at its option, training services for its personnel (employees and/or contractors) for a period of [...] from Closing in relation to engineering and R&D, recipe formulation and know-how.

### **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 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; and
- (c) to use reasonable best efforts to the extent permitted by law, to incentivise and facilitate the transfer of Personnel. The Parties shall provide relevant contact details for the Personnel, or otherwise make such Personnel available to the Purchaser subject to compliance with applicable laws. The Parties shall facilitate interviews between such Personnel and the Purchaser, shall not discourage such Personnel from participating in such interviews, and shall not interfere in employment negotiations between such Personnel and the Purchaser. The Parties shall document all reasonable best efforts undertaken in order to incentivize and facilitate the transfer of such Personnel to the Purchaser.
- (d) 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 Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Quaker's remaining business. In particular, with respect to such Personnel who receive an offer of employment from the Purchaser (conditional on or following the Closing), the Parties shall do the following: (i) not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the Personnel from being employed by the Purchaser, and not offer any incentive to the Personnel to decline employment with the Purchaser; (ii) if the Personnel accepts such offer of employment from the Purchaser, the Parties shall cooperate with the Purchaser in effecting transfer of the Personnel to the employ of the Purchaser and the Parties shall amend or waive the relevant provisions of employment agreements, stock options and other employee benefit arrangements of Personnel so that they do not suffer adverse consequences as a result of their negotiations with, or acceptance of an offer from, the Purchaser.

Where, nevertheless, individual members of the Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties 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 Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

- (e) to use reasonable best efforts to the extent permitted by law, to facilitate the transfer of know-how in connection with the Divestment Business, including but not limited to through the appropriate training of the Purchaser staff and contractors and disclosure of technical documentation.

#### Hold-separate obligations

11. The Parties commit, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the businesses that the Notifying Party will be retaining and, after closing of the notified transaction to keep the Divestment Business separate from the business that the Notifying Party is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Quaker 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 Quaker 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 Quaker is retaining. Immediately after the Effective Date, Quaker 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 businesses retained by Quaker. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(d) of these Commitments. The Commission may, after having heard Quaker, require Quaker 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 Quaker before the Effective Date will be disclosed to the Purchaser and then eliminated and not be used by Quaker. This includes measures vis-a-vis Quaker's appointees on the supervisory board and/or board of directors of the Divestment Business. 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 is required by law. The Parties undertake that any personnel of the Parties currently involved directly in the research development, and or commercialization (comprising technical support, sales and after-sales) of the products comprising the Divestment Business but not listed in 2 (f) and (g) of the Schedule will not, for a period of [...] after the Effective Date, engage directly or indirectly in any R&D for or commercialization of products which compete with the products comprising the Divestment Business. The Parties shall implement all necessary measures to ensure that they do not, after the Effective Date, obtain any know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business from that personnel.

#### Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of [...] after Closing.
15. The Parties undertake not to solicit, and to procure that Affiliated Undertakings do not solicit, for a period of [...] after Closing, any of Houghton's distributors or customers for the products of the Divestment Business currently supplied by Houghton at the plants or mills of the respective customer as listed in Schedule 2(e) attached to these Commitments for the purpose of selling products which compete with the products manufactured on the basis of the formulations divested via the Divestment Business.

#### Due diligence

In order to enable TOTAL to continue 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 TOTAL sufficient information as regards the Divestment Business; and
- (b) provide to TOTAL sufficient information relating to the Personnel and allow TOTAL reasonable access to the Personnel.

#### **Section D. The Purchaser**

16. 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 Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

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

(c) The Purchaser shall be a well-established lubricant supplier with activities in the EEA which fulfils the following criteria:

- (1) has a proven track record in related industrial lubricants markets;
- (2) has manufacturing capabilities for industrial lubricants in the EEA;
- (3) is capable of sourcing the key raw materials at competitive terms; and
- (4) has the necessary resources (in combination with the personnel and assets included in the Divestment Business) to
  - effectively carry out R&D work for the products of the Divestment Business;
  - produce the products of the Divestment Business at the same quality as Houghton;
  - sell / distribute the products of the Divestment Business cost-effectively throughout the EEA; and
  - provide the necessary technical support to customers.

(d) 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.

17. 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 Quaker has reached an agreement with TOTAL, 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. Quaker must be able to demonstrate to the Commission that TOTAL 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 TOTAL 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. 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 TOTAL.

**Section E. Trustee**

I. Appointment procedure

18. Quaker shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee. The Monitoring Trustee may be assisted by the Technical Expert with regard to all technical questions related to the Divestment Business. The Technical Expert shall be appointed by and report to the Monitoring Trustee (with Quaker and the Purchaser having the right to be heard as to their suitability). In cases of controversy between Quaker and the Monitoring Trustee, and/or Purchaser and the Monitoring Trustee as to the suitability of the technical expert candidate, the Commission will decide on the matter.

19. The Trustee shall:

- (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
- (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
- (iii) neither have nor become exposed to a Conflict of Interest.

20. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by Quaker*

21. No later than two weeks after the Effective Date, Quaker shall submit the names of two natural or legal persons whom Quaker proposes to appoint as the Monitoring 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 19 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; and
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

*Approval or rejection by the Commission*

22. 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, Quaker 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, Quaker 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 Quaker*

23. If all the proposed Trustees are rejected, Quaker 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 18 and 22 of these Commitments.

*Trustee nominated by the Commission*

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

II. Functions of the Trustee

25. 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 Quaker, 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*

26. 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, 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:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 11 of these Commitments;

- (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments;
- (c) with respect to Confidential Information:
  - determine all necessary measures to ensure that Quaker does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
  - in particular strive for the severing of the Divestment Business’ participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
  - make sure that any Confidential Information relating to the Divestment Business obtained by Quaker before the Effective Date is eliminated and will not be used by Quaker, and
  - decide whether such information may be disclosed to or kept by Quaker as the disclosure is reasonably necessary to allow Quaker to carry out the divestiture or as the disclosure is required by law; and
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Quaker or Affiliated Undertakings;
- (iii) 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;
- (iv) review and assess TOTAL as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
  - (a) TOTAL receives 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
  - (b) TOTAL are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in relation to the Commitments;

- (vi) provide to the Commission, sending Quaker 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;
- (vii) promptly report in writing to the Commission, sending Quaker a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending Quaker a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of TOTAL 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; and
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### III. Duties and obligations of the Parties

27. The Parties shall provide and shall cause their 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 Quaker'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 Quaker and the Divestment Business shall provide the Trustee upon request with copies of any document. Quaker 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.
28. 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 their advisors to provide the Monitoring Trustee, on request, with the information submitted to TOTAL, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to TOTAL in the due diligence procedure.

29. Quaker 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 Quaker 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.
30. At the expense of Quaker, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Quaker’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 Quaker refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Quaker. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 of these Commitments shall apply *mutatis mutandis*.
31. Quaker agrees that the Commission may share Confidential Information proprietary to Quaker 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*.
32. 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.
33. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

34. 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 Quaker, require Quaker to replace the Trustee; or
  - (b) Quaker may, with the prior approval of the Commission, replace the Trustee.
35. If the Trustee is removed according to paragraph 34 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 18-24 of these Commitments.

36. Unless removed according to paragraph 24 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**

37. The Commission may extend the time periods foreseen in the Commitments in response to a request from Quaker or, in appropriate cases, on its own initiative. Where Quaker 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 Quaker be entitled to request an extension within the last month of any period.
38. 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**

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

**Place and date:** [...]

**Signature:** [...]

**Name and position:** [...]

**On behalf of:** Quaker Chemical Corporation

**Signature:** [...]

**Name and position:** [...]

**On behalf of:** Houghton International Inc.

## SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

The Divestment Business consists of the Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business, the latter comprising the Houghton EEA SHRO business and the Houghton EEA SCRO business (including Pickle Oils and TPRO):

- a) The Houghton EEA AHRO Business comprises all activities of Houghton relating to the development, production and sale of AHRO products, starting from R&D through to production, sales and after-sales.
- b) The Houghton EEA Steel Rolling Oil Business comprises all activities of Houghton relating to the development, production and sale of SHRO products and SCRO products, starting from R&D through production, sales and after-sales:

The Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business are currently operational business lines at Houghton. Both business lines can be operated by the Purchaser on a standalone basis and independently from the business that Quaker will be retaining. The relevant assets and personnel of both businesses will be carved out and transferred to the Purchaser as part of the Divestment Business.

Know-how (general know-how with regard to lubricants and the aluminium and steel industries and the Divestment Business as well as specific know-how with regard to formulations, processes, methods, manufacturing information, etc and specific customer demands relating to the Divestment Business), R&D capabilities (including for the development/improvement of products according to the demands of customers, the supply of after-sales services and the conduct of research) as well as strong customer relations are critical elements for the competitive strength of the Divestment Business.

The Divestment Business therefore includes

- (1) Know-how in the form of the formulations, processes, methods and other information to develop, manufacture or sell the products of the Divestment Business (as described in detail in the section below on “Assets and personnel included in the Divestment Business”).
- (2) Key Personnel in the areas of sales/technical services and R&D dedicated exclusively or to a large extent to the Divestment Business, who have the necessary know-how, industry experience, R&D capabilities and customer contacts (as described in detail in the section below on “Assets and personnel included in the

Divestment Business”). This includes an experienced management team, which has a proven track record of integrating businesses following transactions and of successfully developing business and R&D operations, as well as personnel experienced in training new employees.

To further strengthen the capabilities of the Divestment Business in the areas of sales/technical services and R&D, further Key Personnel, who are currently not (fully) dedicated to the Divestment Business, have also been included in the Divestment Business.

In total, the Divestment Business includes [20-40] full-time key personnel compared to [20-40] full-time FTE key personnel who are currently dedicated to the Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business.<sup>1</sup>

- (3) To ensure that the Purchaser will be able to maintain the service quality currently offered by Houghton, [10-30] product support engineers (fluidcare) employed at customer plants have also been included in the Divestment Business.
- (4) Furthermore, the Divestment business includes brand names for the Divestment Business (transfer or usage rights), specific R&D lab equipment, as well as an offer to enter into supply agreements with the Purchaser for products and services.

These divested assets and personnel will form a viable and competitive business in the hands of the Purchaser. A transfer of production facilities or of personnel performing general functions (such as production, commercial or back office functions) to the Purchaser is not required. However, the Parties commit to offer, at the option of the Purchaser

- Technical training services for R&D personnel, sales/technical services personnel and technical support personnel (such as quality chemists and product support engineers).

To guarantee continuity of operations and to facilitate the transfer of the Divestment Business, the Parties further commit to provide transitional services and a toll manufacturing services to the Purchaser.

### **Assets and personnel included in the Divestment Business**

2. In accordance with paragraph 6 of the Commitments, the Divestment Business includes, but is not limited to:

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<sup>1</sup> Personnel which is partly dedicated to the business is partly considered in the calculation (Example: a position, which is dedicated 50% to a business, is counted as 0.5 FTE).

(a) the following main intangible assets:

(i) *Intangible assets relating to the Houghton EEA AHRO Business*

- Houghton's brand names NOA, Tandemol, Rodshield, Vital Fluid, Hydro Drive and ARC, which are currently used for the Houghton EEA AHRO Business. Following the transfer of these brand names, Quaker will have a [...] usage right for these brand names for those already existing products not competing with the Divestment Business, i.e.: for (i) AHRO outside of the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125 and (ii) for all non-AHRO products (including the EEA and North America). The Parties shall use reasonable best efforts to re-brand any products using these brand names as quickly as possible.
- The know-how (including but not limited to trade secrets) in the form of the formulations, processes, method, and information to develop, manufacture or sell the products as listed in **Annex 1, i.e. the products currently produced** in the Houghton EEA AHRO Business as well as other lubricants. The Purchaser may use these rights (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back for all areas outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125. The Parties undertake not to sell products relying on the transferred know-how which are the subject matter of that license, or on any know-how derived therefrom, in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.
- The know-how (including but not limited to trade secrets) in the form of the formulations, processes, method, and information to manufacture or sell the product RODSHIELD 90 E, which is primarily a rod drawing product but is used by [...] of Houghton's AHRO customers in the EEA for aluminum rolling. The Purchaser may use these rights (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back to use the formulation to manufacture products outside the Divestment Business, i.e. for (i) AHRO applications outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125 and (ii) for all non-AHRO applications (including the EEA and North America). The Parties undertake not to sell products relying on the transferred know-how which are the subject matter of that license, or on any know-how derived

therefrom, in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.

- The know-how (including but not limited to trade secrets) in the form of the formulations, processes method, and information for former products produced in the Houghton EEA AHRO Business as well as predecessor versions of the other lubricants as identified in Annex 1 to this Schedule. The Purchaser may use these rights (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back for all areas outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125. The Parties undertake not to sell products relying on the transferred know-how which are the subject matter of that license, or on any know-how derived therefrom, in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.
- The transfer of the formulations will include the full transfer of
  - any formulation adjustments, including but not limited to those adjustments for particular customers and samples of products under development, and
  - preliminary or final documentation or results of any current or past R&D. This includes any results obtained from tests or trials.
- The U.S. patent no. 6,818,609 ("**NOA patent**"). The Purchaser may use this patent (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back to use the NOA patent to manufacture products outside the Divestment Business, i.e. for (i) AHRO outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125 and (ii) for all non-AHRO products (including the EEA and North America). The Parties undertake not to sell AHRO products relying on the NOA patent which is the subject matter of that license in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.
- The Parties confirm that all products listed in **Annex 1, i.e.** the products currently produced by the Houghton EEA AHRO and the other lubricants identified in Annex 1 to this Schedule, as well as RODSHIELD 90 E are

all REACH compliant. The Parties also undertake to transfer ownership over all files related to the REACH registration of these products and inputs to the Purchaser.

(ii) *Intangible assets relating to the Houghton EEA Steel Rolling Oil Business*

- Houghton's brand names Roll Collar, Rollshield, Fenella, Rolkleen, Rollub, Tandemol, Tempershield and MWR, which are currently used for the Houghton EEA Steel Rolling Oil Business. Following the transfer of these brand names, Quaker will have a [...] usage right for these brand names for those already existing products not competing with the Divestment Business, i.e. for (i) Steel Rolling Oil outside of the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125 and (ii) for all non-Steel Rolling Oil products (including the EEA and North America). The Parties shall use reasonable best efforts to re-brand any products using these brand names as quickly as possible.
- A [...] usage right for Houghton's brand name Houghto Roll solely for the products relying (whether in whole or in part) on the know-how being divested via the Divestment Business. Following this [...] period, The Parties commit to abstain from any use of this brand for products competing with the Divestment Business for a further period of [...] (blackout phase).
- The know-how (including but not limited to trade secrets) in the form of the formulations, processes, method, and information to develop, manufacture or sell the products currently produced in the Houghton EEA Steel Rolling Oil Business as listed in **Annex 2** to this Schedule. The Purchaser may use these rights (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back for all areas outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125. The Parties undertake not to sell products relying on the transferred know-how which are the subject matter of that license, or on any know-how derived therefrom, in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.
- The know-how (including but not limited to trade secrets) in the form of the formulations, processes, method, and information for former products produced in the Houghton EEA Steel Rolling Oil Business. The Purchaser

may use these rights (for example, for research, development, production, manufacture and sale) globally and without any restriction whatsoever, but at the request of Quaker, must grant a non-exclusive, royalty free license back for all areas outside the EEA to the extent permitted by the U.S. Federal Trade Commission in the proceedings with file no. 171-0125. The Parties undertake not to sell products relying on the transferred know-how which are the subject matter of that license, or on any know-how derived therefrom, in the EEA and (if/as applicable) in any other areas not permitted by the U.S. Federal Trade Commission as a result of the proceedings with file no. 171-0125.

- The transfer of the know-how mentioned above will include the full transfer of:
  - any formulation adjustments, including but not limited to those adjustments for particular customers and samples of products under development; and
  - any existing preliminary or final documentation or results of any current or past R&D. This includes any results obtained from tests or trials.
- The Parties confirm that all products currently produced by the Houghton EEA Steel Business as listed in Annex 2 to this Schedule are REACH compliant. The Parties also undertake to transfer ownership over all files related to the REACH registration of these products and inputs to the Purchaser.

(b) the following main tangible assets:

(i) *Lab equipment*

All laboratory equipment necessary for researching, developing, testing and customizing (both pre-sales and after-sales) the products comprising the Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business as set out in Annex 3 to this Schedule.

(ii) *Inventory*

Finished goods inventory, associated packaging assets, and other working capital (raw material/WIP inventory) for the Houghton EEA AHRO Business and the Houghton EEA Steel Rolling Oil Business.



- (c) the following main contracts, agreements, leases, commitments and understandings:
- Houghton's relationships with all of its current suppliers of raw materials for its EEA AHRO Business as indicated in **Annex 4** to this Schedule ([...]), including all contact details, product specifications, information on lead times, pricing and any other information related to the past [...] years required for the Purchaser to have full access to Houghton's supplier base.
  - Houghton's relationships with all of its current suppliers of raw materials for its EEA Steel Rolling Oil Business as indicated in **Annex 5** to this Schedule ([...]), including all contact details, product specifications, information on lead times, pricing and any other information related to the past [...] years required for the Purchaser to have full access to Houghton's supplier base.
- (d) the following customer, credit and other records:
- Houghton's customer, credit and other records for all of its current AHRO customers in the EEA as set out in **Annex 6** to this Schedule with respect to the mills and the AHRO products currently supplied by Houghton as specified under (e). [...]. The Parties shall transfer all assignable contracts with customers and shall use its best efforts to facilitate the transfer of the (remaining) customer relations to the Purchaser. Should the contracts be concluded on a global basis, the Parties shall use their best effort to assign the relevant portion of the existing contract to the Purchaser.
  - For the avoidance of doubt, in case of supplies to end customers only the specific mills currently supplied by Houghton shall constitute the customer relation.
  - Houghton's customer, credit and other records for all of its current EEA Steel Rolling Oil customers in the EEA as set out in **Annex 7** to this Schedule with respect to the mills and the Steel Rolling Oil products currently supplied by Houghton as specified under (e). [...]. The Parties shall transfer all assignable contracts with customers and shall use its best efforts to facilitate the transfer of the (remaining) customer relations to the Purchaser. Should the contracts be concluded on a global basis, the Parties shall use their best effort to assign the relevant portion of the existing contract to the Purchaser.
  - For the avoidance of doubt, in case of supplies to end customers only the specific mills currently supplied by Houghton shall constitute the customer relation.

- (e) **Annex 8** contains a list which specifies all plants or mills in the EEA currently served by Houghton with AHRO, SHRO or SCRO.
- (f) the following Personnel:

- Key personnel ([20-40] personnel)

- Business leaders ([1-10] personnel)

	Name	Position
[...]	[...]	[...]

- Sales teams + technical services and assistance personnel ([10-30] personnel including [1-5] contractors<sup>2</sup>)

	Name	Position
[...]	[...]	[...]

- R&D staff ([5-15] personnel)

	Name	Position
[...]	[...]	[...]

- Staff currently responsible for Houghton's fluidcare services for its EEA Steel Rolling Oil Business ([10-30] personnel)

	Name	Location
[...]	[...]	[...]

### **Transitional Services**

The Parties commit to provide the Purchaser with the products or services currently supplied in-house by Houghton, or its Affiliated Undertakings to the Divestment Business for a transitional period of up to [...] after Closing, with a [...] extension and an additional [...] extension at the option of the Purchaser and subject to agreement of the Trustee, and on current terms and conditions at least equivalent to those at present afforded to the Divestment Business.

### **Toll manufacturing**

In order to ensure a seamless transfer of the Divestment Business, the Parties commit to provide toll-manufacturing services of the products of the Divestment Business for the Purchaser for a time period of up to [...] after Closing, with a [...] extension and an

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<sup>2</sup> Personnel marked with (\*) are contractors.

additional [...] extension at the option of the Purchaser and subject to agreement of the Trustee, until the Purchaser has set up and successfully tested production as well as received the necessary customer approval for the respective product (where applicable). The Purchaser shall use reasonable best efforts to complete the transition to its own manufacturing as quickly as possible within the initial [...] period. The quality level of toll-manufacturing services and products offered to the Purchaser must be equivalent to the quality level of the services performed and products manufactured, respectively, by the Divestment Business prior to Closing and must remain the same during the toll-manufacturing period, including its possible extensions. The toll-manufacturing services must be rendered from the same factories or another factory the relevant customer has duly qualified to produce the product in question during this time period. In case of unavailability, a back up solution must be provided. The remuneration of the Parties for such toll-manufacturing to be paid by the Purchaser is detailed in **Annex 9**. The Parties commit to provide the Purchaser with the same commercial terms with respect to the material / services (including but not limited to packaging and transport) for which cost are passed through as applicable to the retained activities of the Parties. No cap for the volumes to be provided by the Parties under the toll-manufacturing services obligation shall apply. Upon reasoned request of Quaker, the Monitoring Trustee shall verify the commercial justification of the quantities ordered by the Purchaser.

For the avoidance of doubt and without prejudice to paragraph 13 of the Commitments, the Parties may obtain, keep or use information related to the Divestment Business which is reasonably necessary for the sole purpose of providing toll-manufacturing services to the Purchaser. The Parties shall implement all necessary measures not to retain nor use any such information after the termination of the toll manufacturing arrangement.

### **Training offer**

To facilitate integration of the Divestment Business into the Purchaser's operation, the Parties further commit to provide to the Purchaser, at its option, training services for its personnel for a period of [...] from Closing in relation to engineering and R&D, recipe formulation and transfer of know-how in relation to the Divestment Business. Training will be offered on a reasonable cost basis to be agreed with the Purchaser and subject to the approval of the Trustee.

### **Supply of raw materials**

In case the Purchaser should not be able to conclude supply agreements or other arrangements for any of the raw materials listed in **Annex 4** and **Annex 5** for the purpose of the production of the products included in the Divestment Business, the Parties commit for a period of [...] from Closing and following the submission of a reasoned request from the Purchaser and accompanied by a report from the Monitoring Trustee to enter into

back-to-back agreements for the supply of the respective raw material, i.e. to source the respective raw material for account of the Purchaser.

3. The Divestment Business shall not include:

Any production facilities currently used for the production of the products of the Divestment Business.

4. If there is any asset or personnel which is not covered by paragraph 2 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, personnel, or adequate substitute will be offered to the Purchaser.

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<b>Annex 1</b>	<b>Houghton's current AHRO products in the EEA and other lubricants</b>
<b>Annex 2</b>	<b>Houghton's Steel Rolling Oil products in the EEA</b>
<b>Annex 3</b>	<b>List of lab equipment</b>
<b>Annex 4</b>	<b>Houghton's raw material suppliers for its EEA AHRO products</b>
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**M.8492 QUAKER / GLOBAL HOUGHTON**

**ANNEX 1**

**Houghton's AHRO products in the EEA:**

- ARC 1 LV
- ARC 15 EU
- ARC 16
- ARC 18
- ARC 25
- ARC 30 M
- ARC 375
- ARC 380
  
- NOA AG 8314 A
- NOA AG 8314 B
- NOA AS 8356
- NOA AS 8356 A
- NOA CA 8341
- NOA HD 8701 ADDITIVE G
- NOA HD 8701 H
- NOA HD 8701 I
- NOA HH 8102 D
- NOA HHT 8712 D
- NOA K 8501 A
- NOA K 8501 HV
- NOA KF 8323 A
- NOA KG 8120
- NOA PK 8305
- NOA SHT 8107
- NOA SHT 8107 B
- NOA SHT 8737 B
- NOA TLM 8330
  
- TANDEMOL 2078
- TANDEMOL 99 EL 5
- TANDEMOL 99 EL 5 BF
- TANDEMOL ADDITIVE 24
- TANDEMOL ADDITIVE 3524
- TANDEMOL ADDITIVE 3524 EM
- TANDEMOL ADDITIVE 3561
- TANDEMOL ADDITIVE 5581

- TANDEMOL ADDITIVE 5594
- TANDEMOL ADDITIVE 849
- TANDEMOL ADDITIVE ACL 2
- TANDEMOL ADDITIVE B 45
- TANDEMOL ADDITIVE B 5
- TANDEMOL ADDITIVE EM 1
- TANDEMOL ADDITIVE O 35 D
- TANDEMOL ADDITIVE O 60-A
- TANDEMOL ADDITIVE R
- TANDEMOL ADDITIVE T
- TANDEMOL AG 298 G
- TANDEMOL AG 298 I
- TANDEMOL AG 298 J
- TANDEMOL ALIN 93
- TANDEMOL H 105 R
- TANDEMOL H 105 R HV
- TANDEMOL H 105 R ST
- TANDEMOL H 674 F ST
- TANDEMOL H 674 G LV
- TANDEMOL H 674 H LV
- TANDEMOL K 291 B
- TANDEMOL K 291 C
- TANDEMOL K9 F2 L
- TANDEMOL K9 IM 2
- TANDEMOL K9 SR GM
- TANDEMOL KG 292 C
- TANDEMOL KG 292 D
- TANDEMOL NT 291
- TANDEMOL O 105 H

**Other lubricants:**

- VITAL FLUID AG 46
- VITAL FLUID HS 320
- VITAL FLUID L 46 AL
- VITAL FLUID NOA 46
- VITAL FLUID NOA 68
- VITAL FLUID NOA 150
- VITAL FLUID NOA 220
- VITAL FLUID NOA 320
- VITAL FLUID NOA 460
- HYDRO DRIVE BM 46 (to become VITAL FLUID BM 46)

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### ANNEX 2

#### *Houghton's Steel Rolling Oil products in the EEA:*

- FENELLA CSS 200 / COLD ROLL SHEET
- FENELLA FLUID SRH 103 / HOT ROLLING LUBRICANTS
- FENELLA FLUID SRH 105 / HOT ROLLING LUBRICANTS
- FENELLA FLUID SRH 132 / HOT ROLLING LUBRICANTS
- FENELLA FLUID SRH 24 / HOT ROLLING
- FENELLA FLUID SRH 300 / HOT ROLLING LUBRICANTS
- FENELLA FLUID SRH 80 / HOT ROLLING LUBRICANTS
- FENELLA FLUID SRH 87 HOT ROLLING LUBRICANTS
- FENELLA SRC 832 T COLD ROLL TIN PLATE
- FENELLA SRC 849 S COLD ROLL SHEET
- FENELLA SRC 911 S COLD ROLL SHEET
- FENELLA SRC X 025 COLD ROLL SHEET
- FENELLA SRC X 026-1 COLD ROLL SHEET
- FENELLA SRC X 027 COLD ROLL SHEET
- FENELLA SRC X 031 COLD ROLL SHEET
- FENELLA SRC X 034 COLD ROLL SHEET
- FENELLA SRC X 035 COLD ROLL SHEET
- HOUGHTO ROLL AB 2000 COLD ROLL SHEET
- HOUGHTO ROLL ARDC PICKLE LINE LUBRICANT
- HOUGHTO ROLL CH COLD ROLL SHEET
- HOUGHTO ROLL HF 100 COLD ROLL SHEET
- HOUGHTO ROLL KL 11 SK HOT ROLLING LUBRICANTS
- HOUGHTO ROLL KL 4 SK HOT ROLLING
- HOUGHTO ROLL PK 1 COLD ROLL SHEET
- HOUGHTO ROLL PK 2 COLD ROLL SHEET
- HOUGHTO ROLL SPF 16 COLD ROLL SHEET
- HOUGHTO ROLL WX 4505 COLD ROLL SHEET
- MWR ADDITIVE AD 015 COLD ROLL SHEET
- ROLKLEEN 1375 COLD ROLL TIN PLATE
- ROLKLEEN 3070 COLD ROLL SHEET
- ROLKLEEN 1573 ROLL TIN PLATE
- ROLKLEEN 2290 A 122 COLD ROLL SHEET
- ROLKLEEN 3570 ORB COLD ROLL SHEET
- ROLKLEEN CC 2 COLD ROLL TIN PLATE
- ROLKLEEN CSS 200 AG 5 COLD ROLL SHEET
- ROLKLEEN DP 1410 COLD ROLL TIN PLATE
- ROLKLEEN DP 1553 E COLD ROLL TIN PLATE
- ROLKLEEN DP 1703 COLD ROLL TIN PLATE
- ROLKLEEN DP 1704 COLD ROLL TIN PLATE
- ROLKLEEN DP 2062 4M COLD ROLL SHEET
- ROLKLEEN DP 2361 HS COLD ROLL SHEET



- ROLKLEEN DR 1807 COLD ROLL TIN PLATE
- ROLKLEEN DR 1832 COLD ROLL TIN PLATE
- ROLKLEEN EP 2125 AME COLD ROLL SHEET
- ROLKLEEN EP 2126 COLD ROLL SHEET
- ROLKLEEN EP 2205 TLA COLD ROLL SHEET
- ROLKLEEN EP 2290 I22 COLD ROLL SHEET
- ROLKLEEN EP 2340 COLD ROLL SHEET
- ROLKLEEN EP 2473 HFP COLD ROLL SHEET
- ROLKLEEN EP 2473 MAR COLD ROLL SHEET
- ROLKLEEN EP 2710A AMG COLD ROLL SHEET
- ROLKLEEN EP 3032 COLD ROLL SHEET
- ROLKLEEN EP 3420 ORB COLD ROLL SHEET
- ROLKLEEN HR 5200 E HOT ROLLING
- ROLKLEEN LP0 T5 PICKLE LINE LUBRICANT
- ROLL COLLAR VS 20 COLD ROLL SHEET
- ROLLSHIELD 630 PL HOT ROLLING LUBRICANTS
- ROLLSHIELD HM 100 AME HOT ROLLING
- ROLLSHIELD HM 650 HOT ROLLING
- ROLLUB 1202 COLD ROLL SHEET
- ROLLUB 1207 COLD ROLL SHEET
- ROLLUB 1210 COLD ROLL SHEET
- ROLLUB 1215 COLD ROLL SHEET
- ROLLUB 1216 COLD ROLL SHEET
- ROLLUB 1219 COLD ROLL SHEET
- ROLLUB 1263 COLD ROLL SHEET
- ROLLUB 948 COLD ROLL SHEET
- ROLLUB 948 M COLD ROLL SHEET
- ROLLUB 949 HFP A COLD ROLL SHEET
- ROLLUB 981 E COLD ROLL SHEET
- ROLLUB 982 E COLD ROLL SHEET
- ROLLUB 982 R-C COLD ROLL SHEET
- ROLLUB 982 WB B COLD ROLL SHEET
- ROLLUB 982 WR A COLD ROLL SHEET
- ROLLUB 984 COLD ROLL SHEET
- ROLLUB 988 A AR COLD ROLL SHEET
- ROLLUB 988 AR COLD ROLL SHEET
- ROLLUB 988 B A COLD ROLL SHEET
- ROLLUB 988 MUB B COLD ROLL SHEET
- ROLLUB 988 MUB C COLD ROLL SHEET
- ROLLUB 988 NF COLD ROLL SHEET
- ROLLUB 989 COLD ROLL SHEET
- ROLLUB 989 WC COLD ROLL SHEET
- ROLLUB 990 WWS D COLD ROLL SHEET
- ROLLUB 990 WWS D2 COLD ROLL SHEET
- ROLLUB 990 WWS D3 COLD ROLL SHEET
- ROLLUB 990 WWS E / COLD ROLL SHEET
- ROLLUB 995 W / COLD ROLL SHEET

- ROLLUB 996 / COLD ROLL SHEET
- ROLLUB HR 49 / HOT ROLLING
- ROLLUB HR 49 A / HOT ROLLING
- ROLLUB PO 53 / PICKLE LINE LUBRICANT
- ROLLUB SRC X 030 / COLD ROLL SHEET
- ROLLUB WH 68 120 / COLD ROLL SHEET
- TANDEMOL LP 200 / COLD ROLL SHEET
- TEMPERSHIELD 6019

## M.8492 QUAKER / GLOBAL HOUGHTON

## ANNEX 3

Lab equipment for AHRO, SHRO, and SCRO

Tests & Equipment	Used in Product Group		
	AHRO	SHRO	SCRO
pH meters	x	x	x
Conductivity meters	x	x	x
Titration units (glass burette or automatic unit)	x	x	x
Sartorius dry balance	x	x	x
Balance (Moisture balance)	x	x	x
Oven			
Corrosion tests (standard aluminum panels, or customer material)	x		x
Recirculation tests (pump/spray rig for recirculating pump test)	x		x
Particle size equipment	x	x	x
Plate out equipment and standard aluminum panels	x	x	x
Falex lubrication test	x		
Dispersion test		x	
Plint lubrication test		x	x
Filtration test		x	
Foam test (recirculation test)			x
Mini traction machine			x
Interferometer			x
High shear mixer	x	x	x
Load carrying /friction tester	x	x	x
Assorted glassware for blending and emulsion stability index tests	x	x	x
Viscometer	x	x	x
Infrared machine	x		

**M.8492 QUAKER / GLOBAL HOUGHTON**

**ANNEX 4**

**Houghton's raw material suppliers for its AHRO products in the EEA:**

Supplier Name	Category	Description
[...]	[...]	[...]

**M.8492 QUAKER / GLOBAL HOUGHTON**

**ANNEX 5**

**Houghton's raw material suppliers for its Steel Rolling Oil products in the EEA:**

Supplier Name	Category	Description
[...]	[...]	[...]

**M.8492 QUAKER / GLOBAL HOUGHTON****ANNEX 6****Houghton's customers for AHRO in the EEA in 2017**

AHRO		
Customer	Turnover in 2017 (EUR)	Percentage of turnover to total turnover of Houghton's AHRO Business in the EEA 2017
[...]	[...]	[...]

**M.8492 QUAKER / GLOBAL HOUGHTON****ANNEX 7****Houghton's customers for SHRO in the EEA in 2017 (including only product revenue)**

SHRO		
Customer	Turnover in 2017 (EUR)	Percentage of turnover to total turnover of Divestment Business
[...]	[...]	[...]

**Houghton's customers for SCRO in the EEA in 2017 (including only product revenue)**

SCRO		
Customer	Turnover in 2017 (EUR)	Percentage of turnover to total turnover of Divestment Business
[...]	[...]	[...]

**Houghton's customers for Steel Rolling Services in the EEA in 2017**

Steel Rolling Services		
Customer	Turnover in 2017 (EUR)	Percentage of turnover to total turnover of Divestment Business
[...]	[...]	[...]

**M.8492 QUAKER / GLOBAL HOUGHTON****ANNEX 8****I. Specification of all plants, mills or distributors in the EEA currently served by Houghton with SHRO or SCRO:**

Sales Parent	Customer Name	City	Country	Product Type	Plant/Mill/Distributor
[...]	[...]	[...]	[...]	[...]	[...]

**II. Specification of all plants, mills or distributors in the EEA currently served by Houghton with AHRO**

Sales Parent	Customer Name	City	Country	Product Type	Plant/Mill/Distributor
[...]	[...]	[...]	[...]	[...]	[...]



**M.8492 QUAKER / GLOBAL HOUGHTON**

**ANNEX 9**

**Pricing formula for toll-manufacturing services rendered by Quaker**

- 1) Pricing formula applicable during the initial [...] period and a possible first extension period of up to [...]

Tolling cost = [...].

- 2) Pricing formula applicable to a possible second extension period of up to [...]

Tolling cost = [...].