



EUROPEAN COMMISSION  
DG Competition

**PUBLIC VERSION**

***Case M.8947 – NIDEC /  
WHIRLPOOL (EMBRACO  
BUSINESS)***

Only the English text is available and authentic.

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

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**Decision on the implementation of the commitments -  
Modification of the Commitments  
Date: 15.5.2020**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.



Brussels, 15.5.2020  
C(2020) 3118 final

**COMMISSION DECISION**

**of 15.5.2020**

**amending commitments in Case M.8947 – Nidec/Whirlpool (Embraco Business)**

**(Case M.8947 – NIDEC/WHIRLPOOL (EMBRACO BUSINESS))**

(Text with EEA relevance)

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# COMMISSION DECISION

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(Case M.8947 – NIDEC/WHIRLPOOL (EMBRACO BUSINESS))

(Text with EEA relevance)

(Only the English version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings<sup>1</sup>,

Having regard to the Commission's decision of 12 April 2019 declaring a concentration to be compatible with the internal market and the functioning of the EEA Agreement<sup>2</sup>,

Whereas:

## 1. INTRODUCTION

### 1.1. The clearance decision

(1) By decision of 12 April 2019 (the “Decision”), adopted in application of Article 8(2) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “Merger Regulation”), the Commission declared the operation by which Nidec Corporation (“Nidec”, Japan) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the refrigeration compressor business of Whirlpool Corporation (USA), Embraco (“Embraco”, Brazil) (hereinafter, the “Transaction”), compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by Nidec annexed to the Decision (the “Commitments”).

### 1.2. The competition concerns identified

(2) In the Decision, the Commission found that the household and light commercial refrigeration compressors constituted separate product markets and also that fixed

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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”) has 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> Commission decision of 12 April 2019 declaring a concentration to be compatible with the internal market and the EEA Agreement, C(2019) 2734 final.

speed and variable speed refrigeration compressors constituted separate product markets for each of household and light commercial refrigeration compressors.<sup>3</sup>

- (3) As regards the geographic scope of the household refrigeration compressors markets, the Commission recalls that, in the Decision, it found that the market definition of the fixed speed household refrigeration compressors could be considered as EEA-wide or worldwide in scope but could be ultimately left open since the Transaction did not give rise to any competition concerns under any plausible market definition. This finding was notably based on the circumstance that the Parties were not particularly close competitors in this segment, their low combined market share and the presence of sufficient alternative competitors.<sup>4</sup>
- (4) In contrast, the Commission found that the market for variable speed household refrigeration compressors was EEA-wide in its geographic scope or possibly worldwide, with strong regional differentiations, where the EEA had to be considered as a region that was highly differentiated from the others. Within this framework, the Decision found that the acquisition of Embraco by Nidec would significantly impede effective competition in this market, as it would have strengthened Embraco's dominant position in the EEA.<sup>5</sup>
- (5) Moreover, the Commission found a significant impediment to effective competition in the markets for fixed speed and variable speed light commercial applications, where Nidec and Embraco would have been the two leading players in the EEA, leading to a dominant position in the fixed speed light commercial market and to a monopoly in the variable speed light commercial market.<sup>6</sup>

### **1.3. The Commitments**

- (6) Pursuant to paragraph 2 of the Commitments, Nidec committed to divest Nidec's global refrigeration compressor business, with the exclusion of Nidec's battery-driven (mobile) compressor business (the "Divestment Business" or "Secop"). Additionally, pursuant to paragraph 10(d) of the Commitments, Nidec committed to make available to the purchaser funding in the amount of EUR [...].
- (7) The Divestment Business is comprised of the following legal entities:
  - (a) Nidec Global Appliance Austria GmbH, Fürstenfeld, Austria ("Nidec Austria"), including Nidec Austria's manufacturing plant located at the same address ("Austria Plant");
  - (b) Nidec Global Appliance Slovakia s.r.o., Zlaté Moravce, Slovak Republic, ("Nidec Slovakia"), including Nidec Slovakia's manufacturing plant located at the same address ("Slovakia Plant");
  - (c) Nidec Compressors (Tianjin) Co., Ltd., Tianjin, People's Republic of China ("Nidec China"), including Nidec China's manufacturing plant located at the same address ("China Plant");
  - (d) Nidec Global Appliance Italy Srl, Moncalieri, Italy ("Secop Italy");
  - (e) Nidec Global Appliance Germany GmbH, Flensburg, Germany and Nidec Global Appliance Compressors GmbH, Mads-Clausen-Str. 7, 24939 Flensburg, Germany ("Secop Germany");

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<sup>3</sup> Paragraphs 51-79 of the Decision.

<sup>4</sup> Paragraphs 152-163 of the Decision.

<sup>5</sup> Paragraphs 182-183 and 259 of the Decision.

<sup>6</sup> Paragraphs 264-303 of the Decision.

- (f) Nidec Global Appliance USA Inc., Roswell, USA (“Secop USA”).
- (8) The Divestment Business included:
- (a) Refrigeration compressor production lines to produce Nidec’s Delta Series (“Delta line”), Kappa Series (“Kappa line”), D-Series, F-Series, G-Series, N-Series, S-Series, T-Series and X-Series refrigeration compressors;
  - (b) All improvement projects regarding the Divestment Products and new refrigeration compressors that are currently in development by Nidec but are not yet sold on the market;
  - (c) The freehold title and the leasehold title to the site areas on which, respectively, the Austria Plant is located in Fürstenfeld, the Slovakia Plant is located in Zlaté Moravce and the China Plant is located in Tianjin;
  - (d) The leasehold titles to offices for Secop Germany, Secop Italy, and Secop USA;
  - (e) All of the patents and know-how owned by Nidec used by the Divestment Business to develop, manufacture and sell the Divestment Products subject to a non-exclusive license back to Nidec in relation to certain patents relevant to the battery-driven refrigeration compressors for use in mobile applications;
  - (f) The Secop brand and any associated trademarks and product names;
  - (g) To the extent legally possible, all Nidec-held data and relevant product registration/authorisations, and documents related thereto (if any), for all models of the Divestment Products, including those that relate to plant or product upgrades, quality certificates and approvals pertaining to the Divestment Business;
  - (h) All contracts, agreements, leases, commitments and understandings relating to the Divestment Business, including supply contracts, customer relationships, IT agreements and licenses;
  - (i) All personnel currently working in the Slovakia plant, the Austria plant and the China plant with the exclusion of personnel working on the battery-driven compressors business and motors for washing machines. The personnel includes [...] designated as personnel necessary to maintain the viability and competitiveness of the Divestment Business including the following, current functions in the Nidec organization: [...] (“Key Personnel”).
  - (j) Transitional service agreements, for a transitional period of up to one year, at cost, for the supply of IT services and for the supply of support services pertaining to the patents, know-how and other intellectual property rights used to develop, manufacture and sell the Divestment Products.
- (9) The funding Nidec committed to make available to the purchaser of the Divestment Business amounts to EUR [...], [for future investments for a certain period of time for the production lines in Nidec’s plants in Austria and Slovakia. The amount made available is equal to the capital expenditure that Nidec would have committed to the two plants without the transaction].
- (10) [...].

#### **1.4. Chronology of the implementation of the Commitments and related facts**

- (11) On 17 April 2019, Nidec Europe B.V. and Nidec Americas Holding Corporation entered into a share purchase and assignment agreement with Zerfree GmbH concerning the acquisition of the Divestment Business, as well as Nidec’s battery-

driven compressor business based in the Nidec China Plant.<sup>7</sup> The Commission considered that Zerfree GmbH is ultimately controlled by the Orlando group (“Orlando” or the “Purchaser”) pursuant to paragraph 15 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“Jurisdictional Notice”)<sup>8,9</sup>

- (12) On 26 June 2019, the Commission approved Orlando as the purchaser of the Divestment Business.
- (13) On 9 September 2019, Nidec transferred the Divestment Business to the Purchaser.
- (14) On 22 October 2019, Secop, under the ownership of the Purchaser, announced that it would discontinue the manufacture of compressors in the Austria Plant due to the poor financial performance of that plant and significant negative outlook for the household segment in the next years.<sup>10</sup>
- (15) On 18 November 2019, Nidec entered into a lease agreement with ITZ Innovations- und Technologiezentrum Fürstenfeld GmbH (“ITZ”)<sup>11</sup> for the property in Fürstenfeld Austria, which Secop uses for manufacturing and administrative purposes. [...].
- (16) As the Purchaser decided to relocate the Kappa line to the Slovakia plant and intends to focus Secop’s activities on the manufacture and commercialisation of light commercial compressors,<sup>12</sup> it engaged in a sales process for the Delta line, the discontinuation of the development of a variable speed model of the Delta household compressor (“Delta VSD”), and the sale of the Slovakia-based variable speed household XV line.<sup>13</sup>
- (17) Regarding the sale of the Delta line, negotiations between Nidec and the Purchaser led to a commercial understanding, summarized in a memorandum of understanding (“MoU”) dated 4 March 2020.
- (18) The MoU sets out that the parties will negotiate and enter into a binding sales agreement by 31 March 2020; the MoU’s term expires at the signing of a formal agreement or on 31 March 2020, whichever comes first.
- (19) On 31 March 2020, Nidec and Secop formally entered into an asset purchase agreement (the “APA”). The APA is complemented by the following ancillary agreements:
  - (a) IP License Agreement (“IPLA”);
  - (b) An agreement covering certain relevant customer and supplier contracts associated with Secop GmbH in Germany (“German APA”);
  - (c) Framework Supply Agreement (“FSA”);

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<sup>7</sup> [...].

<sup>8</sup> OJ C 95, 16.4.2008, page 1.

<sup>9</sup> See the Commission’s Purchaser Approval Decision in Case M.8947 Nidec / Whirlpool (Embraco Business), dated 26 June 2019, paras. 9-13.

<sup>10</sup> <https://www.secop.com/updates/news/news-show/restructuring-of-secop-austria-gmbh>, accessed on 1 April 2020, ID 5260 (2020/040931).

<sup>11</sup> ITZ Innovations- und Technologiezentrum Fürstenfeld GmbH is (indirectly) fully owned by various Austrian municipalities as limited partners and with the municipality Fürstenfeld as main limited partner.

<sup>12</sup> <https://www.secop.com/updates/news/news-show/production-lines-secop-european-plants>, accessed on 1 April 2020, ID 5261 (2020/040942).

<sup>13</sup> <https://www.secop.com/updates/news/news-show/production-lines-secop-european-plants>, accessed on 1 April 2020, ID 5261 (2020/040942) and Orlando’s reply to question 1 of RFI 10 dated 14 January 2020, ID 4875 (2020/004983).

- (d) Amendment to the Sub-Lease Agreement;
- (e) Transitional Services Agreement (“TSA”).

### 1.5. Nidec’s Waiver Request

- (20) By way of its reasoned request of 14 February 2020, as modified on 5 March 2020 and supplemented by its supplementary submission relating to the release of the Austria CAPEX funds dated 16 March 2020, Nidec requests the Commission to waive the non-reacquisition clause of the Commitments relating to the Delta line, pursuant to paragraph 5 and 46 of the Commitments (the “Waiver Request”).
- (21) [Part of the waiver request relating to the interpretation of the use of the CAPEX funds].
- (22) The Commission considers that the Waiver Request has to be assessed in conjunction with the MoU, the APA and its ancillary agreements. The MoU, the APA and its ancillary agreements cover the following:
  - (a) Sale of the Delta line assembly and production assets, as well as inventory assets relating to the Delta line by Secop to Nidec subject to a decision by the Commission to modify the Commitments;<sup>14</sup>
  - (b) [...] <sup>15</sup>
  - (c) Transfer of personnel including a limited number of Key Personnel as well as a non-hiring undertaking, binding upon Nidec, for [...] following closing;<sup>16</sup>
  - (d) The IPLA which grants Nidec a perpetual non-exclusive license on intellectual property rights related to the Delta line for *household* refrigeration applications;<sup>17</sup>
  - (e) The German APA which defines contracts associated with German Secop GmbH to be transferred to Nidec, as well as the applicable rules to the contractual relationships after closing of the transaction;
  - (f) The FSA which provides for the supply by Nidec of Delta compressors to Secop in accordance to specifications set by Secop;<sup>18</sup>
  - (g) The Amendment to the Sub-Lease Agreement which defines the area of the Austria Plant that will cease to be part of the initial sub-lease agreement described in recital (11) upon closing;
  - (h) The TSA which describes the services Secop is required to supply to Nidec for a transitional period to ensure continuity of the operations of the Delta line.

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<sup>14</sup> Section 2 and 8 of the APA.

<sup>15</sup> Section 15 of the APA.

<sup>16</sup> Section 6 of the APA.

<sup>17</sup> Clauses 1.1.2 and 1.1.5 of the IPLA.

<sup>18</sup> The Monitoring Trustee indicates in its reasoned opinion dated 10 April 2020 that, while not defined in the FSA, such supply covers the marketing by Secop of Delta compressors used for fixed speed light commercial applications. In fact, while Delta is a fixed speed household compressors line, there is also a smaller light commercial use in applications such as bottle coolers or beverage dispensers, which Secop sells to some of its light commercial customers; therefore, in order to allow Secop to keep on supplying these customers, at least for a transitional period, the parties found this agreement. The Monitoring Trustee does not find that the FSA will have any impact on competition, due to the very limited amount of Delta compressors covered by the agreement. For completeness, the Monitoring Trustee specifies that the Delta compressors cannot be used for variable speed light commercial applications and that, therefore, the FSA does not have any impact on this market either.

- (23) Against this background, the Waiver Request covers the transfer of the Delta line assembly and production assets, as well as inventory assets relating to the Delta line, transfer of personnel including the listed Key Personnel, intellectual property rights regarding the household refrigeration compressor segment and contractual relationships with customers and suppliers relating to the Delta line (the “Delta line and Related Assets”).

## **1.6. Procedure relating to the Waiver Request**

- (24) On 17 February 2020, the Commission gave the Purchaser the opportunity to comment on Nidec’s reasoned request dated 14 February 2020, and on 3 April 2020 the Commission gave the Purchaser the opportunity to comment on Nidec’s modified request dated 5 March 2020. The Purchaser provided its views on the proposed sale-back of the Delta line and Related Assets to Nidec in its response to the Commission’s request for information No 11 of 28 February 2020. The Purchaser did not provide any additional views in relation to Nidec’s modified request dated 5 March 2020.
- (25) In order to assess the Waiver Request, the Commission conducted a market investigation by sending questionnaires to Secop’s customers of compressors for household appliances, as well as to its competitors, including one company who formally raised concerns regarding the proposed reacquisition of the Delta line by Nidec. The market investigation was aimed at clarifying whether the market circumstances have changed to such an extent that the absence of influence over the Delta line is no longer necessary to render the acquisition of Embraco by Nidec compatible with the internal market. In this context, the Commission recalls that the Delta line was included in the Divestment Business in order to ensure the viability and competitiveness of the Divestment Business but, mostly, in order to address the Commission’s finding of competition concerns in the market for the manufacturing of compressors for variable speed household appliances, in light of Nidec’s project to upgrade the Delta fixed speed household line into Delta VSD (a variable speed household compressor), strengthening its position in the market for variable speed household compressors.
- (26) In its report of 10 April 2020, the Monitoring Trustee gave a positive opinion on Nidec’s revised reasoned request for the amendment of the Commitments. As further described below, the Monitoring Trustee considers that the amendment of the Commitments regarding the reacquisition of the Delta line creates no competition concerns and does not compromise the viability of the Divestment Business.

## **2. ASSESSMENT**

### **2.1. The applicable legal test**

- (27) Pursuant to paragraph 5 of the Commitments, *“In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 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.”*



- (28) Unlike extensions of divestment periods, which can be granted on the basis of "good cause" shown by Nidec, a waiver of the non-reacquisition clause under paragraph 5 of the Commitments requires in addition that the structure of the market has changed to such an extent that the absence of influence over the Delta line and Related Assets is no longer necessary to render the Transaction compatible with the internal market. In relation to this criterion, the Commission's assessment also covers the question whether the proposed transfer of certain Key Personnel to Nidec would infringe the non-solicitation clause under the Commitments<sup>19</sup> and hence require a modification of the Commitments, as well as a possible impact of the sale of the Delta line and Related Assets on the viability of the Divestment Business. The Commission conducts its assessment of the Waiver Request within the framework of the Decision and the Remedies Notice, in particular paragraph 43 of the latter.<sup>20</sup> In addition and in view of the foregoing, the assessment of the existence of a good cause, mentioned at paragraph 5 of the Commitments, is covered by the assessment of the criterion related to the change to the structure of the market.

## **2.2. Nidec's view**

- (29) Nidec argues that the Delta line concerns the production of fixed speed household compressors for which the Commission did not identify any competitive concerns during the investigation of the Transaction. In addition and most importantly, as of the adoption of the Decision, market conditions have changed since the Purchaser decided to discontinue production of household refrigeration compressors with a view to strengthen the commercial viability of the Divestment Business and, in particular, of the light commercial segment.

## **2.3. The Purchaser's view**

- (30) The Purchaser takes the view that a potential re-purchase of the Delta line by Nidec would have no negative impact in either of the household segments, i.e. fixed speed and variable speed household compressors. More specifically, regarding the competitiveness and viability of Secop, the re-purchase of the Delta line by Nidec would allow the Purchaser to focus the remainder of the Divestment Business on its core business, which is the manufacturing and supply of compressors for refrigeration appliances in light commercial and battery drive segments.<sup>21</sup> In addition, Nidec would take over Delta related employees and Secop would save employees reduction costs.<sup>22</sup>

## **2.4. Market feedback**

- (31) According to the general market feedback on the household compressors business segment, the main change in market structure, since the Decision, consists of the Purchaser's decision to refocus Secop's activities on the light commercial segment and discontinue certain household compressor lines.<sup>23</sup> Customers stated that Secop's prospected exit from the household compressor business would lead to a reduction in the number of suppliers of compressors for household appliances. In addition, Secop's customers complained regarding the disruption that Secop's exit from the

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<sup>19</sup> Commitments, para. 15.

<sup>20</sup> Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, C 267/1, 22.10.2008.

<sup>21</sup> 28 February 2020 Orlando/ESSVP IV response to RFI 11 dated 24 February 2020, question 5 and 6, ID 5189 (2020/025230).

<sup>22</sup> APA Section 6.1 and 6.2.

<sup>23</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 1, ID 5155 and ID 5183.

household business would cause on their activities, considering that they would need to find a replacement for Secop's supplies in a very short time frame, risking to be in the position to accept non-favourable market terms, such as higher prices.<sup>24</sup>

- (32) With regard to a possible impact of the sale-back of the Delta line on the viability of the Divestment Business, both customers and competitors either indicate not to have an opinion, or that there will be no impact on viability as Secop has decided to sell the Delta line.<sup>25</sup>
- (33) Moreover, customers and, to a more limited extent, competitors indicate they would not reckon with any negative impact in the EEA household compressor markets as a result of the sale-back of the Delta line.<sup>26</sup>
- (34) As regards the structure of the fixed speed household compressors segment, market participants observe no significant change with respect to the Commission's latest market test of the Commitments in February 2019 and some customers declare that the number of manufacturers has remained the same over time and prices have been reasonably stable.<sup>27</sup>
- (35) As regards the market for variable speed household compressors, some customers report that they are presently either sourcing household compressors from alternative suppliers, or are in ongoing negotiations with such suppliers and are, moreover, testing compressors offered by such suppliers.<sup>28</sup>
- (36) Additionally, on 18 December 2019, [a competitor] sent a letter to the Commission requesting to be consulted in the event of any request to waive the Commitments. The Commission sent a request for information to [a competitor] on 24 February 2020 to allow it to provide its view on the Waiver Request. [A competitor] provided a response on 28 February 2020.
- (37) Regarding the effect of granting the Waiver Request on the affected EEA markets, [a competitor] argues the following in its response:
- (a) The EEA market for variable speed household compressors is a key market to meet recent EU energy efficiency regulations;
  - (b) The EEA market for variable speed household compressors is already extremely concentrated, with Nidec and Secop as key players; and
  - (c) The approval of Nidec's request would result in a quasi-monopoly in the EEA market for variable speed household compressors.
- (38) [A competitor] also argues that Nidec's request resembles the initial commitments submitted by Nidec during the Transaction, which the Commission rejected, and that in addition, a Waiver Request would harm consumers. In [a competitor's] view Nidec's request should therefore be rejected.

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<sup>24</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 2 (ID 5154).

<sup>25</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 6 (ID 5155, ID 5170, ID 5164, ID 5183) and questionnaire sent to competitors following the submission of the Waiver Request, q. 6 (ID 5174, ID 5167).

<sup>26</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 4 (ID 5164, ID 5183, ID 5155, ID 5170).

<sup>27</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 1 (ID 5170, ID 5164) and reply to questionnaire sent to competitors following the submission of the Waiver Request, q. 1 (ID 5174).

<sup>28</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 3 (ID 5164, ID 5155, ID 5170).

- (39) On 3 April 2020, [a competitor] made an additional submission to the Commission. In this submission, [a competitor] reaffirms its position and informs the Commission that on 27 March 2020 the Tribunal of Venice declared the state of insolvency of Italia Wanbao-ACC S.r.l. (“**Wanbao-ACC**”), which according to [a competitor] is the only player active on the variable speed household refrigeration compressor market besides Nidec and Secop.
- (40) On 30 April 2020, [a second competitor] submitted observations with respect to the waiver, modification and/or substitution request(s) filed by Nidec in relation to the Commitments. The observations set out essentially the same concerns as those in [a competitor’s] submissions summarized in the previous paragraphs and bring up the additional concern that following the acquisition of the Delta line and Related Assets by Nidec, it “*would have a clear incentive to leverage its super-dominant position on the EEA market for variable speed household refrigeration compressors into the neighboring markets for fixed speed household refrigeration compressors and/or light commercial refrigeration compressors, or even into the markets for horizontal-axis washing machines and tumble dryers, engaging in practices such as bundling and tying with respect to those OEMS purchasing different types of products.*”
- (41) One other competitor indicates that the repurchase of the Delta line by Nidec “*would increase Nidec’s hold on household compressors. The impact of this would be in both household variable speed and household fixed speed, since, as we understand, the Delta product line is currently a strong competitor in fixed speed and has been developed into a variable speed product as well.*”<sup>29</sup>

## **2.5. The Commission’s assessment**

- (42) The Commission considers that the decision of the Purchaser (i) to focus the Divestment Business’ activities on the light commercial refrigeration compressor segment, (ii) to sell certain household compressor lines and (iii) to no longer pursue the development of the Delta VSD has resulted in a structural change in the markets for fixed and variable speed household compressors, as further explained below.

### *2.5.1. Fixed speed household refrigeration compressors*

- (43) As mentioned in recitals 152-163 of the Decision, the Commission found that the possible markets for fixed speed household compressors, both at EEA level and worldwide, were characterised by the presence of a sufficient number of alternative suppliers/competitors, in particular from Asia. Therefore, it concluded that the Transaction would not lead to a significant impediment to effective competition in these possible markets.
- (44) Nevertheless, since the Delta line, which is the subject of the Waiver Request, produces fixed speed household compressors, the Commission assesses the impact of the waiver on this possible market.

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<sup>29</sup> Reply to questionnaire sent to competitors following the submission of the Waiver Request, q. 4, ID 5174.

**Table 1: EEA fixed speed household refrigeration compressors market shares (2018 and 2019)**

EEA FIXED SPEED HOUSEHOLD REFRIGERATION COMPRESSORS MARKET SHARES (2018, 2019)				
Manufacturer	2018		2019	
	Share (%), by volume	Volume (000 units)	Share (%), by volume	Volume (000 units)
Embraco (Nidec)	[20-30]%	[...]	[20-30]%	[...]
Secop	[10-20]%	[...]	[5-10]%	[...]
Others	[60-70]%	[...]	[60-70]%	[...]
<b>Market total</b>	<b>100.0%</b>	[...]	<b>100.0%</b>	[...]

Source: Commission's Decision, Table 1, and Nidec response to RFI 35 dated 24 February 2020.

- (45) Based on the market share data provided by Nidec, shown in Table 1, and on the feedback provided by market participants, the structure of the fixed speed household compressors market does not appear to have changed significantly at EEA level, but for Secop's restructuring decision. The combined market share of Nidec/Embraco and Secop remains at [30-40]%,<sup>30</sup> while their competitors jointly hold around [60-70]% of the market.
- (46) Secop's market share in the EEA market for fixed speed household refrigeration compressors has, however, dropped by [0-5] percentage points within one year, which is in line with a reduction in order volumes by some of its customers.
- (47) In sum, based on the information available, the Commission finds that the market for fixed speed household compressors remained sufficiently competitive in 2019.
- (48) That being said, Secop's decision to refocus its manufacturing activities on the light commercial segment and to discontinue manufacturing fixed speed household compressors at the Austria Plant implies that affected customers have to switch their demand to alternative suppliers. Some of those customers have voiced some concern about this turn of events. For example, in its response to the Questionnaire sent to customers following the submission of the Waiver Request, one customer submitted that *"the decision to close the Fürstenfeld operation accelerate the volume reduction coming from Secop"* and that *"Due to the significant price increases from Secop the customers will intensify the actions to reduce the volumes sourced from Secop"*.<sup>31</sup>
- (49) Notwithstanding these concerns and in light of the structure of the market, the Commission considers that, while Secop's restructuring decision has resulted in a relevant change in the structure of the fixed speed household compressor market,<sup>32</sup> this market, however, remains competitive.
- (50) On the basis of (i) the volumes of fixed speed household compressors manufactured through the Delta line in 2018 and (ii) Embraco and Secop's market shares in the same year, it follows that a reacquisition of the fixed speed Delta line by Nidec would unlikely lead to any competition concerns, as the combined market share would remain below 30% in the EEA (Embraco: [20-30]%, Secop: [5-10]%, Delta

<sup>30</sup> If only Secop's Delta line is counted, the combined market share would be lower, see recital (50).

<sup>31</sup> Reply to questionnaire sent to customers following the submission of the Waiver Request, q. 1 and q.2, ID 5155.

<sup>32</sup> Recital (42) of this decision.

only: [0-5]%), with a significant number of third-party competitors present. On the basis of the 2019 figures, as shown in Table 1 above, and assuming that the volume of fixed speed household compressors manufactured through the Delta line would be the same (or very similar) in 2019 as in 2018, the situation in 2019 would be comparable.

- (51) In conclusion, the reacquisition of the Delta line by Nidec would thus unlikely create any competition concerns in the market for fixed speed household refrigeration compressors and Nidec's absence of influence over the Delta line and Related Assets is not necessary to render the Transaction compatible with the internal market as regards fixed speed household refrigeration compressors, as was also the case at the time of the Decision.

#### 2.5.2. *Variable speed household refrigeration compressors*

- (52) The Commission recalls the following:

- (a) In the Decision, the Commission found that the acquisition of Embraco by Nidec would significantly impede effective competition in the market for variable speed household compressors in the EEA and, potentially, globally. In the EEA, the market share of the merged entity in 2018 would have been approximately [90-100]% (Embraco: [80-90]%, Nidec (Secop) [10-20]%), therefore, the merged entity would have nearly become a monopolist. The remaining competitors would have had only a negligible presence in the market.
- (b) In addition, the Commission's market investigation carried out in the context of the Transaction showed that the variable speed technology had not yet been mastered by many suppliers, although customers confirmed a trend towards variable speed refrigerators compressors in the EEA in the following years, mainly due to energy efficiency regulations. Within this framework, the Commission found that the parties held very strong positions on the market for variable speed household refrigeration compressors as reflected in their combined EEA market shares and market participants perceived them as close competitors. Moreover, the Commission found that the close competition between Nidec and Embraco was likely going to intensify in view of Nidec's planned upgrade of its Delta production line including the new variable speed model Delta VSD.
- (c) In the Decision, the Commission found that [...].
- (d) After assuming ownership of Secop, the Purchaser decided to restructure Secop, focus on the light commercial segment and increase competitiveness in this respect by relocating the Kappa line from the Austria Plant to the Slovakia Plant. Moreover, the Purchaser decided to discontinue the development of the Delta VSD and offer the Delta line for sale. It also decided to offer its only actually marketed variable speed household compressor line, the XV line, for sale. The Commission notes that, based on the information available to it, the above-mentioned decisions of the Purchaser have been outside of Nidec's control.

##### 2.5.2.1. Increased market presence of alternative competitors to Nidec and Secop

- (53) Taking the above into consideration, the Purchaser's decision to discontinue the development of Delta VSD can be considered as a relevant change that occurred in

the variable speed household compressor market in 2019. The Commission recalls that pre-Decision Nidec was planning [...].<sup>33</sup>

- (54) In its reply to the Questionnaire sent to customers following the submission of the Waiver Request, one of the main household customers submits that, on the one hand, it is not clear whether the Delta VSD is on the market, since no information on technical performance and pricing are available, and that, on the other hand, the sale of the Delta line would not have any impact on the competitiveness and viability of Secop, since the latter has decided to sell this line in any event.<sup>34</sup>
- (55) Indeed, Secop decided not to compete in the household business and, more specifically, in the variable speed market any longer. It will only keep the Kappa line to strengthen its presence in the light commercial segment.
- (56) At the same time, the decision taken by the Purchaser has benefitted competitors to Secop, other than Embraco (Nidec), to whom customers started to divert some of their demand in 2019. While in its market reconstruction and forecast the Commission had assumed an increase in market presence of competitors to Secop and Embraco (Nidec) from [0-5%] in 2018 to [5-10%] in 2019,<sup>35</sup> in reality this trend has accelerated. Nidec's estimates, provided in Table 2, show that competitors of Secop and Embraco (Nidec) hold a market share of [10-20%] in 2019, approximately [1.5-3] times more than forecasted in the Commission's market reconstruction.<sup>36</sup>

**Table 2: EEA variable speed household refrigeration compressors market shares (2018 and 2019)**

<b>EEA VARIABLE SPEED HOUSEHOLD REFRIGERATION COMPRESSORS MARKET SHARES (2018, 2019)</b>				
<b>Manufacturer</b>	<b>2018</b>		<b>2019</b>	
	<b>Share (%), by volume</b>	<b>Volume (000 units)</b>	<b>Share (%), by volume</b>	<b>Volume (000 units)</b>
Embraco (Nidec)	[80-90]%	[...]	[70-80]%	[...]
Secop	[10-20]%	[...]	[10-20]%	[...]
Others	[0-5]%	[...]	[10-20]%	[...]
<b>Market total</b>	<b>100.0%</b>	[...]	<b>100.0%</b>	[...]

*Source: Nidec's estimates – reply to RFI 22 and Nidec response to RFI 35 dated 24 February 2020.*

- (57) In summary, the market shares provided in Table 2 show a significant change in market structure from the time of the Decision, with an increased presence of alternative suppliers to Secop and Embraco (Nidec). The Commission considers that Secop's decision to exit the variable speed household market is likely to have contributed to this accelerated trend and increased actual presence of alternative competitors.

<sup>33</sup> Decision, recital 220.

<sup>34</sup> Reply to Questionnaire sent to customers following the submission of the Waiver Request, q. 4 and q. 6, ID 5155.

<sup>35</sup> Replies to the Commission's Phase II market reconstruction.

<sup>36</sup> Based on the market investigation following the Waiver Request, the Commission understands these alternative competitors to mainly comprise Jiaxipera, Panasonic and Donper.

### 2.5.2.2. No market share increment in Nidec's variable speed household compressors

- (58) The Commission notes that the Delta line is a fixed speed household compressor manufacturing asset. The acquisition of the Delta line as such, therefore, does not lead to any change of concentration level in the market for variable speed household compressors. It does not bring about any increment in Nidec's market share in that market.
- (59) As mentioned above, the rationale for the inclusion of the Delta line in the Divestment Business was twofold: (i) to transfer the development project of the variable speed Delta VSD, and (ii) to ensure viability and competitiveness of the Divestment Business as a whole<sup>37</sup>.
- (60) In this context the Commission notes that, after significant delay, the development of the Delta VSD has been abandoned by the Purchaser.<sup>38</sup> The envisaged reacquisition of the fixed speed Delta line by Nidec therefore does not encompass the Delta VSD development project. Furthermore, [...]. In this context, the Commission additionally notes that the Purchaser confirmed that it was not aware of any alternative buyer of the Delta line with intentions to upgrade the Delta line into a variable speed compressor production line.<sup>39</sup>
- (61) In light of the above considerations, the concerns brought forward by some of Nidec's and Secop's competitors<sup>40</sup> who consider the intended sale of the Delta line to Nidec to result in further concentration of the variable speed household compressor market, are not pertinent. The Commission recalls that the Delta line is a fixed speed household compressor manufacturing asset. Thus, the acquisition of the Delta line does not lead to any change of concentration level in the market for variable speed household compressors and, therefore, does not bring about any increment in Nidec's market share.

### 2.5.2.3. No indirect strengthening of Nidec's position in the variable speed household market

- (62) The Commission also assessed whether the acquisition of the Delta line and Related Assets by Nidec could, absent any market share addition, indirectly enable Nidec to strengthen its position in the variable speed household market.
- (63) The Commission takes note that, [...].<sup>41</sup> In particular, Embraco's variable speed household compressor platform ("FMS model") has already been developed by Embraco and is currently being produced in Embraco's manufacturing facilities in Brazil and as such it is distinct from the envisaged Delta VSD model. [...].
- (64) In any event, the Commission understands that a considerable adaptation of the fixed speed Delta line would be necessary to ultimately produce Nidec's existing FMS model on that line. In this context, [...]. While the FMS model is different from the Delta VSD, in the Commission's view the amount initially foreseen to upgrade the

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<sup>37</sup> This element will be addressed in Section 2.1.2.5.

<sup>38</sup> The Commission notes Secop's reasoning for discontinuing manufacturing of household refrigeration compressors in Austria (including abandonment of development projects), namely its weak market and cost position and a significantly negative outlook for the household segment in the next years (<https://www.secop.com/updates/news/news-show/restructuring-of-secop-austria-gmbh>, accessed on 1 April 2020, ID 5260 (2020/040931)). The Commission understands that Secop has come to this conclusion under the ownership of the Purchaser and with expert advice.

<sup>39</sup> Response to the request for information, number 12 addressed to Orlando, dated 23 April 2020 (ID5341).

<sup>40</sup> See recitals (38) to (43).

<sup>41</sup> Nidec presentation to the Commission dated 24 January 2020.

Delta line to produce variable speed household compressors nevertheless shows that this is not a trivial adaptation.

- (65) In light of the above, considering that (i) [...] (ii) Nidec's variable speed platform, the FMS model, is existing and not derived from the Delta line, and (iii) considerable investments are required to convert the Delta line into a line suitable for production of Nidec's FMS model; the Commission considers that the sale of the Delta line constitutes the sale of a fixed speed compressors line and that this sale will not indirectly strengthen Nidec's position in the market for variable speed household compressors.
- (66) With regard to [a competitor]'s concern relating to Nidec's incentive to engage in practices such as bundling and tying variable speed household compressors with products from neighbouring markets, the Commission considers that this incentive, if it does exist, would not be specific to the sale back of the Delta line and Related Assets. Already today Nidec has a dominant position in the EEA market for variable speed household compressors – which, as set out in the foregoing paragraphs, is not strengthened by the sale back – so any incentive for such practices would be pre-existing the intended re-acquisition of the Delta line. In addition, to the Commission's knowledge, such practices do not take place today.

### 2.5.3. *Conclusion*

- (67) In conclusion, the Commission considers that the reacquisition of the Delta line and Related Assets by Nidec is unlikely to create any competition concerns in the market for variable speed household compressors in the EEA, as: (i) the market structure has changed and, in particular given the Purchaser's subsequent decision not to develop the Delta VSD, now shows increased presence of alternative suppliers to Secop and Nidec, (ii) the acquisition of the Delta line and Related Assets does not lead to an increased level of concentration in the variable speed household compressor market in the EEA and, in addition, to the Purchaser's knowledge no other bidders are interested to pursue the development of a variable speed model, and (iii) the re-acquisition of the Delta line and Related assets does not strengthen Nidec's position to expand its variable speed household production capacity. Therefore, the Commission considers that the structure of the market for variable speed household compressors has changed to such an extent on the geographically narrowest plausible market, namely on the EEA-wide level, that Nidec's absence of influence over the Delta line and Related Assets is no longer necessary to render the Transaction compatible with the internal market.

### 2.5.4. *No need for a modification of the non-solicitation clause under the Commitments in relation to the transfer of certain Key Personnel*

- (68) The Commission notes that the APA covers the transfer of certain Key Personnel, either directly upon closing ("Transferred Employees") or, in Nidec's discretion, following the end of the transitional service agreement ("Transitional Employees").<sup>42</sup> The employees concerned are [...] (Transferred Employees) and [...] (Transitional Employees).<sup>43</sup>
- (69) In relation to Key Personnel, the Commitments contain in paragraph 15 a non-solicitation clause, pursuant to which Nidec undertakes, subject to customary limitations, not to solicit the Key Personnel transferred with the Divestment Business for a period of [...] after closing of the sale of the Divestment Business.

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<sup>42</sup> APA Section 6.1 and 6.2.

<sup>43</sup> Annex 2.1(g) and 6.2 to the APA.



- (70) Considering that the specific Key Personnel that will be transferred is only relevant to either the household compressor markets, the Delta line or the Austria Plant, these Key Personnel will have lost their importance for the viability of the Divestment Business following the Purchaser's decisions to discontinue manufacturing at the Austria Plant, focus the Divestment Business on the light commercial markets and sell the Delta line.
- (71) This is evidenced by the fact that, in the present situation and against the background of the Purchaser's restructuring decision, Nidec and the Purchaser have mutually agreed upon the transfer of certain Key Personnel, namely the Transferred Employees and, in Nidec's discretion, the Transitional Employees – the current scenario does not represent a unilateral solicitation of Key Personnel by Nidec.
- (72) Hence, the Commission considers that the transfer of those Key Personnel would not fall under the non-solicitation clause. The transfer of the respective Key Personnel therefore does not require a specific modification of the non-solicitation clause, but would be covered by a partial waiver of the non-reacquisition clause as requested by Nidec.

#### 2.5.5. *Impact of the sale of the Delta line on the viability of the Divestment Business*

- (73) The Commission notes that the Purchaser decided to restructure the business activities with a focus on light commercial compressors. The decision to sell the Delta and the XV lines and to relocate the Kappa line from the Austria Plant to the Slovakia Plant form part of this wider restructuring decision.
- (74) While the unforeseen development, that this restructuring decision, covered in recital (19), represents, has an impact on the household compressor markets, the Commission considers that the Purchaser is best placed to judge the impact of the restructuring on the overall viability of the Divestment Business.
- (75) As mentioned in recital (30), the Purchaser took the view that the sale of the Delta line back to Nidec would allow the Purchaser to focus the remainder of the Divestment Business on its core, more profitable business. In addition, the sale of the Divestment Business to Nidec has the additional benefit that the Divestment Business avoids severance costs for personnel retained at the Austria Plant, which it would incur in case of an alternative buyer.
- (76) The Commission therefore considers that the sale of the Delta line to Nidec would not have a negative impact on the viability and competitiveness of the Divestment Business, as it emerges after the Purchaser's restructuring decision.

### **3. CONCLUSION**

- (77) Taking into account all information available to the Commission, including the opinion of the Monitoring Trustee, the Commission considers that, in light of the changed structure of the markets for fixed and variable speed refrigerator compressors on the geographically narrowest plausible markets, namely on the EEA-wide level, Nidec has satisfied the good cause criterion and Nidec's absence of influence over the Delta line and Related Assets is no longer necessary to render the Transaction compatible with the internal market. Hence, the partial waiver of the non-reacquisition clause under the Commitments as requested in the Waiver Request is appropriate. Therefore, the Commission decides to waive the non-reacquisition provision under paragraph 5 of the Commitments.

HAS ADOPTED THIS DECISION:

*Article 1*

In Commission decision C(2019) 2734 final of 12 April 2019 declaring the concentration to be compatible with the internal market and the EEA Agreement, the non-reacquisition clause is waived, pursuant to paragraph 5 of the Commitments, as far as it relates to the Delta line and Related Assets with effect from the date of the adoption of this decision.

The remainder of the Commitments remain in effect unchanged.

This Decision is addressed to:

Nidec Corporation  
338 Kuzetonoshiro-cho  
Minami-ku, Kyoto 601-8205  
Japan

Done at Brussels, 15.5.2020

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Executive Vice-President*