



EUROPEAN COMMISSION
DG Competition

***Case M.9820 – DANFOSS / EATON
HYDRAULICS***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments
Purchaser approval
Date: 14/07/2021



EUROPEAN COMMISSION

Brussels, 14.7.2021
C(2021) 5398 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Danfoss A/S
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6430 Nordborg
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**Subject: Case M.9820 – DANFOSS / EATON HYDRAULICS
Approval of Interpump Group S.p.A. as purchaser of the Divestment
Business following your letter of 4 June 2021 and the Trustee’s opinion of
11 June 2021**

Dear Sir or Madam,

1. FACTS AND PROCEDURE

- (1) By decision of 18 March 2021 (the ‘Decision’) based on Article 8(2) of the Merger Regulation, the Commission declared the concentration by which Danfoss A/S (Denmark, hereinafter referred to as ‘Danfoss’ or the ‘Notifying Party’) intended to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Eaton Hydraulics¹ (Ireland, hereinafter referred to as ‘Eaton’) by way of purchase of stocks and assets (hereinafter referred to as the ‘Transaction’) compatible with the internal market, subject to conditions and obligations (the ‘Commitments’²).

¹ Eaton is a business of the Eaton Group that includes (i) the shares of Eaton Hydraulics LLC as well as (ii) several other entities belonging to the hydraulics division of the Eaton Group and certain assets from the Eaton Group, excluding its golf trips and filtration businesses.

² Annex 3 to the Decision.

- (2) In particular, the Commitments provide that Danfoss will divest certain assets and staff that contribute to the development, manufacture, and sale of Orbital Motor, HSU, ESV, and Priority Valve products (jointly, the ‘Divestment Business’). Under the terms of the Commitments, the Divestment Business includes:
- (a) the Danfoss’ Business Unit Motors (the “BU Motors”), comprising Danfoss’ global business relating to the development, manufacture, and sale of Orbital Motors, including all tangible assets (including, but not limited to, two (2) entire state-of-the-art manufacturing sites located in Wroclaw (Poland) and in Hopkinsville (USA)), intangible assets (including patents, and other know-how), Orbital Motor products, customer contracts, credit and other records, functions, and personnel;³
 - (b) additional tangible assets (including, but not limited to, one (1) production line) and intangible assets (including, but not limited to, patents, and other know-how) necessary for the manufacture and sale of Eaton’s HP and VIS orbital motor products;
 - (c) Danfoss’ entire hydraulic steering unit (‘HSU’), electro-hydraulic steering valve (‘ESV’), and Priority Valve business located at, run out of, and including the plants located in Parchim (Germany) and Wroclaw (Poland), including all tangible and intangible assets, customer contracts, customer, credit and other records, functions, and personnel;
 - (d) additional tangible and intangible assets, currently located in Zhenjiang (China) and necessary and predominantly used for the manufacture of Danfoss’ “S70” HSU and the “PV160” Priority Valve;
 - (e) additional tangible assets (including, but not limited to, one (1) production line) and intangible assets (including, but not limited to, patents, and other know-how) necessary for the manufacture and sale of certain Eaton HSU and ESV products, as specified in the Commitments, Annex_20 of Schedule 1;
 - (f) the technology related to Eaton’s “Series 20” HSU, including all intangible assets related to that technology and necessary to manufacture the "Series 20" HSU;
 - (g) trademark rights and internet domain names, in particular relating to the White Drive products brand;
 - (h) transfer of or, if not legally possible, access to all licences, permits, and authorisations issued by any governmental organisation necessary to develop, manufacture, and sell the products of the Divestment Business;
 - (i) all customer contracts to the extent they pertain to the products of the Divestment Business;
 - (j) all customer, credit, and other records of the Divestment Business (including a list of existing customers and copies of customer records);

³ As explained in the Commitments, a part of Danfoss’ orbital motor business (i.e. the “Danfoss Orbital Motor Retained Business”) is retained by Danfoss.

- (k) the personnel necessary to operate and ensure the viability of the Divestment Business, including the key personnel identified in the Commitments, Annex_8 of Schedule 1.
- (3) In accordance with the Commitments,⁴ at the option of the purchaser of the Divestment Business, Danfoss commits to offer to the buyer of the Divestment Business the following transitional services to be performed at cost:
- (a) the supply of [...] for certain components of the orbital motors and of the steering products of the Divestment Business manufactured at the [...], up until the Divestment Business will be able to conduct [...];
 - (b) the supply of [...] for the [...] product line manufactured in [...], up until the Divestment Business will be able to conduct similar [...];
 - (c) the supply of [...] for the [...] product line in [...], up until the Divestment Business will be able to conduct similar [...];
 - (d) the supply of shafts for the [...] product line in [...], up until the Divestment Business will be able to conduct similar [...];
 - (e) the supply of the current IT/systems support for a period [...], but limited to a maximum period of [...] from the Divestment Business Closing, which can be extended by [...];
 - (f) the supply of the current financial and payroll accounting for a period [...], but limited to a maximum period of [...] from the Divestment Business Closing, which can be extended by [...];
 - (g) the provision, at its own expense, of training with respect to Eaton's products that are part of the Divestment Business;
 - (h) to supply under an offtake agreement for a period of up to [...] the [...] and [...].
- (4) In order to support the purchaser of the Divestment Business in replacing certain transitional service agreements Danfoss commits to establish an escrow account with a funding of [...].
- (5) Lastly and as a safeguard, Danfoss commits to make available [...] and subsequently to [...].
- (6) By letter of 4 June 2021, the Notifying Party proposed Interpump Group S.p.A ('Interpump') for approval by the Commission as purchaser of the Divestment Business ('Reasoned Proposal') and submitted the proposed Equity Purchase Agreement and related exhibits (the 'Proposed Agreement'). Simultaneously, ING Bank N.V (the 'Trustee') has submitted an assessment of Interpump's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in paragraph 30 of the Commitments attached to the Decision ('Reasoned Opinion'). In this assessment, the Trustee also indicated that, on the

⁴ Commitments, Schedule 1, paragraphs 9 (a)-(h)

basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

- (7) Pursuant to paragraph 30 of the Commitments, the Commission shall verify that the proposed purchaser fulfils the purchaser criteria and that Divestment Business is being sold in a manner consistent with the Commitments.
- (8) According to paragraph 30 of the Commitments, in its assessment of the proposed purchaser, the Commission shall verify in particular that:
- (a) The purchaser is independent of and unconnected to Danfoss and its Affiliated Undertakings⁵ (this being assessed having regard to the situation following the divestiture);
 - (b) The purchaser shall have sufficient experience of and capability to manufacture and sell products that are marketed in the mobile hydraulics sector in the EEA such as, by way of example and not limited to, an existing customer base in the EEA, or access to distribution in the EEA, or a manufacturing footprint in the EEA;
 - (c) The purchaser shall have the financial resources, R&D capabilities, proven expertise, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Danfoss and other competitors;
 - (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.

2.1. The proposed purchaser

- (9) Interpump, headquartered near Reggio Emilia, Italy, is a multinational group of industrial manufacturing companies active in the development, manufacture and sale of mechanical components including high pressure pumps, power take-offs, hydraulic pumps and cylinders, for use within a variety of industrial applications and end user markets. Founded in 1977 as a manufacturer of plunger pumps, Interpump has been listed on the Milan Stock Exchange since 1996 and has a market capitalisation of EUR 5.5 billion.
- (10) Interpump has manufacturing facilities in five Member States (Bulgaria, Spain, Italy, Romania and Slovakia) and a direct presence (in particular sales offices) in further

⁵ Affiliated Undertakings: undertakings controlled by Danfoss and/or by its ultimate parent, 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.

seven Member States (Denmark, Germany, France, Netherlands, Austria, Poland and Sweden). Interpump serves its customers, or is otherwise capable to do so, in the entire EEA, either from the countries where it has sales offices or through distributors.

- (11) In 2020, Interpump generated a net revenue of EUR 1.3 billion and an EBITDA of EUR 294 million.⁶
- (12) Interpump operates through a number of brands (including Interpump Hydraulics, Walvoil, Hydrocontrol, GS Hydro, Muncie Power Products, Panini, Contarini and IMM) across two business sectors: (i) Hydraulics and (ii) Water Jetting. The Hydraulics sector is the most relevant sector for the present decision as it produces a range of components for mobile and non-mobile hydraulics applications across a variety of industries including construction, agriculture and manufacturing. This sector operates through a number of businesses including Walvoil, American Mobile Power, PZB, Hypress and Hydralok, and has operations in Europe, North America, South America, Africa, Australia and Asia.

2.2. Interpump's independence from Danfoss

- (13) Pursuant to paragraph 30 (a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to Danfoss and its Affiliated Undertakings.
- (14) According to the information provided by Danfoss⁷ and by the Trustee,⁸ there are no cross-shareholdings or material common shareholdings between Danfoss and Interpump, and Danfoss does not share any board directors with Interpump.
- (15) Moreover, there are no joint ventures in which Danfoss and Interpump both participate.⁹
- (16) Interpump can therefore be considered as independent from, and unconnected to, Danfoss in terms of ownership and investments.
- (17) Moreover, the Trustee considers that pre-existing commercial relationships in place between Danfoss and Interpump should not impede Interpump's independence from Danfoss as they are not material for the following reasons:¹⁰
 - (a) Interpump's sales to Danfoss ([...]) represent substantially less than [...] % of Interpump's annual sales and of Danfoss' annual costs of sales. Danfoss' and Eaton's sales to Interpump ([...]) represent substantially less than [...] % of Interpump's annual cost of sales and of Danfoss' annual sales. Further, parts of this sales and purchase relationship will be internalised by the acquisition of the Divestment Business, as for example Interpump sources [...] from Danfoss, which belong to the products of the Divestment Business and will thus be acquired by Interpump;

⁶ Reasoned Proposal, Table 9.

⁷ Reasoned Proposal, paragraph 13.

⁸ Reasoned Opinion, Section 4.1.

⁹ E-mail of the Trustee to the case team on 29 June 2021 at 18:03.

¹⁰ Reasoned Opinion, Section 4.1.

- (b) An existing license agreement between Eaton Hydraulics LLC (which will be transferred to Danfoss after the Transaction) and a part of Interpump's [...] subsidiary is expected to generate royalty payments of about USD [...] annually from [...] to [...].
- (18) Moreover, the Trustee considers that the links between Danfoss and Interpump post-closing will be transitional in nature and within the limits provided for in the Commitments.¹¹
- (19) On the basis of the information provided by Danfoss and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Interpump is, and will continue to be, independent from, and unconnected to, Danfoss and its Affiliated Undertakings.

2.3. Interpump's experience and capability in relation to mobile hydraulics

- (20) Pursuant to paragraph 30 (b) of the Commitments, a suitable purchaser shall have sufficient experience of and capability to manufacture and sell products that are marketed in the mobile hydraulics sector in the EEA.
- (21) The mobile hydraulics sector pertains to all products relevant for hydraulic power systems which can be used in vehicles driven on-road or off-road. The main customers of such products are OEMs and distributors, active in the production of agricultural machineries (for example tractors and harvesters) or construction machineries (for example excavators and lifts).¹²
- (22) First, Interpump has significant sales in the mobile hydraulics industry. Interpump's Hydraulics Division offers a large number of mobile hydraulic components such as power take-offs and directional control valves for a variety of industries including construction, agriculture and manufacturing. Furthermore, Interpump sells oil tanks, cylinders, gear pumps, high-pressure hoses and fittings. Interpump generates approximately [...] % of its turnover from sales in the hydraulics sector. In particular, Interpump's largest subsidiary, Walvoil, generates approx. [...] % of its revenue from the mobile hydraulics industry.¹³
- (23) Second, Interpump has a significant manufacturing footprint in the EEA. More than [...] of Interpump's total production capacity is based in the EEA with a particular focus on Italy. Interpump's Hydraulics Division has further production sites in Spain, Romania, Bulgaria and Slovakia.¹⁴
- (24) Third, Interpump has a significant sales presence in the EEA. Interpump's hydraulics products are sold in every country within the EEA, and the company has a direct presence in 12 Member States. Interpump has over [...] customers in the EEA to which it sold hydraulics products for over EUR 1 million each in 2020 and has existing relationships with 14 of the top 20 OEM customers and 15 of the top

¹¹ Reasoned Opinion, Section 4.1.

¹² Decision, recitals 41 and 42.

¹³ Reasoned Opinion, section 2.2.3.

¹⁴ Reasoned Proposal, paragraph 38.

20 distributors of the Divestment Business.¹⁵ In particular, Interpump has relationships with some of the largest customers of the Divestment Business.

- (25) Fourth, Interpump will be able to leverage its existing experience and capabilities to the benefit of the Divestment Business. While Interpump's subsidiary companies are run largely independently and in a decentralised way, they are encouraged collaborate, for example by identifying new opportunities and customers for other subsidiary businesses. According to the Reasoned Opinion, Interpump's subsidiary companies are encouraged to introduce another Interpump subsidiary as an alternative supplier to third party products. Another example of the collaboration of Interpump's subsidiary companies are joint R&D activities.¹⁶
- (26) On the basis of the information provided by Danfoss and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Interpump has sufficient experience and capability to manufacture and sell products that are marketed in the mobile hydraulics sector in the EEA.

2.4. Financial resources, R&D capabilities, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitive force

- (27) Pursuant to paragraph 30 (c) of the Commitments, a suitable purchaser shall have the financial resources, R&D capabilities, proven expertise, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Danfoss and other competitors.

2.4.1. Financial resources

- (28) First, as mentioned in paragraph (9), Interpump has been listed on the Milan Stock Exchange since 1996 and has a market capitalisation of EUR 5.5 billion. During the last 5 years, Interpump's share price has increased by 294% outperforming the both the FTSE Italy mid-cap (+52%) and the FTSE Italy STAR (+125%) benchmark indices. Interpump's auditors, EY, provided unqualified opinions on the financial statements for the corresponding last 5 years.
- (29) Second, operating performance is solid as Interpump revenue grew at a compound annual growth rate ('CAGR') of 8.8% from 2016 to 2020, driven by growth in both the hydraulics (+10.2%) and water jetting (+6.1%) sectors from 2016-2019, with 2020 impacted by a decline in demand due to the Covid-19 pandemic. (Hydraulics revenues declined by 2.3%). Gross profit over the same period increased largely in line with revenue at a CAGR of 8.2%. Operating profit grew at a CAGR of 7.8% from 2016 to 2020 also in line with revenue and gross profit.
- (30) Overall, Interpump's EBITDA margin is relatively high and above most of its peers with 23%¹⁷ in 2020 compared to the [...] % average based on 7 comparable companies including [...].

¹⁵ Reasoned Proposal, paras. 36 and 37.

¹⁶ Reasoned Opinion, section 2.9.

¹⁷ Interpump published its financial performance in the first quarter of 2021 on 14 May 2021. EBITDA in the first quarter of 2021 was EUR91.5m, an increase of 23% on the equivalent period for 2020,

- (31) Third, considering Interpump’s financial structure, Interpump is principally funded by equity, and does not hold any publicly listed bonds. The current net debt to EBITDA leverage ratio is 0.92x [...].
- (32) Fourth, the Trustee view is that “*Interpump has the financial resources to maintain and develop the Divestment Business*”¹⁸ based on
- (a) The fact that at 31 March 2021, Interpump had cash holdings [...] and;
 - (b) Interpump is a company that has been listed on the Milan Stock Exchange since 1996, and may be able to raise additional financing through share issuances, should the need arise.
- (33) Based on the above the Commission concludes that Interpump has the financial resources to maintain and develop the Divested Business as a viable and active competitive force in the mobile hydraulics sector in the EEA.

2.4.2. R&D capabilities

- (34) First, R&D activities are conducted at subsidiary business level – for example R&D activities in the hydraulics sector are carried out by Walvoil, Interpump Hydraulics and IMM, and Interpump encourages collaboration of R&D activities across all of its businesses through knowledge sharing and the opportunity to share testing assets (for example test benches at its Walvoil R&D centre).
- (35) Interpump provided the Trustee with an overview of the R&D function of its Walvoil business, which it considers would be able to support the R&D activities of the Divestment Business given the similar applications of the products of the two businesses.
- (36) Second, considering R&D spending, over the course of the period from 2016 to 2020, Interpump spent a [...] of revenue over the period. Considering more specifically the hydraulics business sector of Interpump by focusing on [...], the R&D spending is [...].
- (37) This is in line with the [...] % average based on 7 comparable companies including Danfoss ([...] %) and Eaton ([...] %). [Details on the Divestment Business R&D spending].
- (38) Third, the Trustee view is that “*Interpump has the proven expertise and R&D capabilities to maintain and develop the Divestment Business*”¹⁹ based on:
- (a) The fact that Interpump has a proven track record in the hydraulics industry;
 - (b) Interpump sales growth of [...] % in its hydraulics business sector attesting to its ability to grow in its activities, both organically and through M&A and;

representing a highest ever EBITDA margin of 24.4% for the company. (First Quarter 2021 Consolidated Results - <https://www.interpumpgroup.it>)

¹⁸ Reasoned Proposal, section 2.13.

¹⁹ Reasoned Proposal, section 2.13.

(c) Interpump ability to support the R&D activities of the Divestment Business through support from its Walvoil given the similar applications of the products of the two businesses.

(39) Based on the above the Commission concludes that Interpump has the R&D capabilities to maintain and develop the Divested Business as a viable and active competitive force in the mobile hydraulics sector in the EEA.

2.4.3. *Proven expertise and incentive*

(40) First, Interpump has an extensive expertise in integrating and developing acquired businesses as it has completed 29 acquisitions since 2005. The largest acquisition completed by Interpump to date has been Walvoil in 2015 whose revenue has more than doubled since between 2015 and 2019²⁰, as a result of both organic growth and merger of other Interpump assets into the Walvoil business.

(41) Second, Interpump has experience in transferring production lines and integrating carved out assets through the acquisition of GS-Hydro Oy following that company's bankruptcy in 2018. Considering the expected transfers within the Interpump group following the acquisition of the Divestment Business, experience of transferring production assets to different plants including obtaining the approval of customers to recommence production is a key asset.

(42) Third, the financial forecasts presented by Interpump for the Divestment Business outline a growing business in terms of both revenue and profitability, with growth projections in line with industry expectations. These forecasts appear to generally be more conservative than the forecasts presented by Danfoss for the purposes of the sales process.

(43) Fourth, the Divestment Business acquisition is an opportunity for Interpump to avoid developing production of new hydraulics product lines from scratch and to quickly broaden its hydraulics product range. Interpump currently has no product offerings for orbital motors, HSUs and ESVs and considers that these products present significant sales and technical synergies when combined with its existing valves, cylinders and power take-off products.

(44) Based on the above the Commission concludes that Interpump has expertise and incentive to maintain and develop the Divested Business as a viable and active competitive force in the mobile hydraulics sector in the EEA.

2.4.4. *Conclusion*

(45) On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Interpump has the financial resources, R&D capabilities, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitive force in the mobile hydraulics sector in the EEA.

²⁰ Reasoned Proposal, section 2.2.3

2.5. Absence of *prima facie* competition problems and risks of delayed implementation

- (46) Pursuant to paragraph 30 (d) of the Commitments, the acquisition of the Divestment Business by a suitable purchaser must neither be likely to create *prima facie*²¹ 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.
- (47) First, Interpump's acquisition of the Divestment Business would *prima facie* not lead to competition concerns. There is no horizontal overlap between the products of the Divestment Business and the products sold by Interpump as Interpump is not active in orbital motors, HSU, ESV or Priority Valves. There is however a vertical relationship between Interpump and the Divestment Business which, as described below, does not give rise to *prima facie* completion concerns.²²
- (48) Interpumps' subsidiary Reggiana Riduttori ('RR'), a manufacturer of wheel gears and reduction gears, in certain instances sells its products together with orbital motors purchased from the Divestment Business or from other manufacturers.^{23,24} In 2020 RR purchased from the Divestment Business [...] units, amounting to sales of EUR [...].²⁵
- (49) With respect to input foreclosure, after the acquisition of the Divestment Business, Interpump would have neither the ability, nor the incentive for foreclosing RR's competitors because:
- (a) the Divestment Business' market share in the market for orbital motors in the EEA is [30-40]%,²⁶ which means that approximately [60-70]% of the orbital motors sold in the EEA come from the Divestment Business' competitors from which RR's competitors can source orbital motors;
 - (b) the Divestment Business' competitors offer orbital motors that are suitable for RR's products and for the ones of its competitors.²⁷ This is confirmed by the fact that, both in 2019 and in 2020, RR's largest supplier of orbital motors was not the Divestment Business, which supplied only approximately [...] % of RR's orbital motors needs;²⁸
 - (c) RR's and its competitors' products are typically designed to be coupled with a variety of motors. Therefore, orbital motors of different manufacturers are

²¹ Prima facie is the standard of analysis set out in paragraph 104 of the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1). See paragraph 54 below.

²² The Commission also considers that Interpump's acquisition of the Divestment Business would not raise competition concerns with respect to conglomerate effects or to otherwise linked neighbouring markets.

²³ Notifying Party's reply to request for information RFI 32, question 1.

²⁴ Interpump's reply to request for information RFI 1 dated 2 July 2021, question 2.

²⁵ Notifying Party's reply to request for information RFI 32, Table 3.

²⁶ Decision, Table 20.

²⁷ Interpump's reply to request for information RFI 1 dated 2 July 2021, question 2b.

²⁸ Interpump's reply to request for information RFI 1 dated 2 July 2021, Table 2b.

interchangeable and, consequently, the Divestment Business does not enjoy any type of lock-in effect vis-à-vis RR or its competitors;

- (50) Furthermore, the effect of a hypothetical input foreclosure would be limited because RR's downstream customers (and those of its competitors) have access to the orbital motor market (i.e. they can purchase orbital motors directly from manufacturers or through distributors), and therefore any attempt of Interpump to foreclose RR's competitors would not have any sizable impact on the downstream market.
- (51) Therefore the acquisition of the Divestment Business by Interpump would not raise competition concerns with respect to input foreclosure because: (i) Interpump would not have the ability to foreclose RR's competitors;²⁹ (ii) the Divestment Business would not have incentives to engage in input foreclosure practices because such a practice would likely be unprofitable.³⁰ This is the case because the loss of revenues from not selling orbital motors to RR's competitors would likely not be recouped downstream by RR as RR's competitors would continue to have several alternatives to the Divestment Business and therefore would continue competing with RR; and (iii) the impact of the foreclosure on the downstream market would be negligible as it would not lead to price increases in the markets where RR is active.³¹
- (52) With respect to customer foreclosure, after the acquisition of the Divestment Business, Interpump would have neither the ability, nor the incentive to foreclose the Divestment Business' competitors in the market for orbital motors. In terms of ability to foreclose, as explained in the Decision,³² the majority of the orbital motors sold in the EEA are purchased by OEMs that manufacture agricultural or construction machines and not from RR and its competitors (which produce mainly wheel gears and reduction gears). Therefore, the Divestment Business' competitors would not experience any increase in their costs as they would continue to have ample alternatives for continuing selling their orbital motors.³³ In terms of incentives, due to the limited purchases of orbital motors by RR, it is unlikely that a customer foreclosure would generate any sizable profit to Interpump.³⁴ Similarly, it is unlikely that a customer foreclosure would have any impact on the downstream markets where the Divestment Business' customers are active.³⁵
- (53) Second, the acquisition of the Divestment Business by Interpump would not give rise to any risk that the implementation of the Commitments will be delayed as it is

²⁹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraphs 33-39.

³⁰ According to the Non-horizontal Merger Guidelines, paragraph 47, "[...] a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market [...]".

³¹ According to the Non-horizontal Merger Guidelines, paragraph 40, "[t]he incentive to foreclose depends on the degree to which foreclosure would be profitable".

³² See, for example, Section 6.5.3.2, figure 15 or Section 8.5.3.4, table 14.

³³ According to paragraph 60 of the Non-horizontal Merger Guidelines, a vertical merger would raise competition concerns in terms of customer foreclosure if upstream competitors would have higher costs in accessing the downstream market. Paragraph 61 explains that if, on the contrary, there is a sufficiently large customer base in the downstream market accessible to the merged entity' competitors, the Commission is unlikely to raise competition concerns.

³⁴ According to paragraph 68 of the Non-horizontal Merger Guidelines, "[t]he incentive to foreclose depends on the degree to which foreclosure would be profitable".

³⁵ Non-horizontal Merger Guidelines, paragraph 72.

expected that all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business will be obtained in a timely manner.

- (54) The Trustee informed the Commission that Interpump requires merger approval for its acquisition of the Divestment Business in the following jurisdictions: Austria, Brazil, Germany and Ukraine. Since there are no indications that any of these competition authorities will raise competition concerns, it is not expected that the timeline for obtaining clearance from them would delay the implementation of the Commitments.³⁶
- (55) On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the acquisition of the Divestment Business by Interpump is neither likely to create *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.
- (56) This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Business by Interpump by a competent competition authority under applicable merger control rules.

3. CONCLUSION

- (57) On the basis of the above assessment, the Commission approves Interpump as a suitable purchaser of the Divestment Business.
- (58) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (59) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Danfoss has complied with the Commitments.
- (60) This decision is based on paragraph 30 of the Commitments.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

³⁶ [...].