

<i>Case</i>	<i>No</i>
COMP/M.2698	–
<i>Promatech/Sulzer</i>	

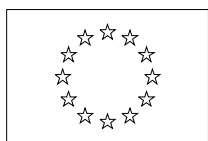
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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 8 (2)
Date: 24/07/2002

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The official text of the decision will be published in the Official Journal of the European Communities.



COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision

of 24.07.2002

**declaring a concentration to be compatible with the common market
and the EEA Agreement**

(Case No COMP/M.2698 - Promatech / Sulzer)

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹, as last amended by Regulation (EC) No 1310/97², and in particular Article 8(2) and 22 (3) thereof,

Having regard to the Commission's decision of 16 April 2002 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations³,

1 OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, p. 13.

2 OJ L 180, 9.7.1997, p. 1.

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Having regard to the final report of the Hearing Officer in this case⁴,

WHEREAS:

I. INTRODUCTION

- (1) On 7, 11, 18, 19 and 21 December 2001 the Commission received requests for a joint referral, pursuant to Article 22 of Regulation (EEC) No 4064/89 (“the Merger Regulation”), from Spain, Italy, the United Kingdom, Germany and France, respectively, to investigate a proposed concentration by which the undertaking Promatech SpA (Promatech) would acquire the mechanical textile division (Sulzer Textile) of the undertaking Sulzer Ltd. On 11 and 13 February 2002 two further such requests were received from Portugal and Austria, respectively.
- (2) The Commission found that the above-mentioned requests meet the requirements laid down in Art 22 (3) of the Merger Regulation. The authorities of the referring Member States had dispatched to the Commission documentation at their disposal consisting mainly of parties' submissions and results of preliminary investigations. This information was completed thereafter by the parties to the operation.
- (3) After a careful examination of the proposed concentration, the Commission concluded that the operation raised serious doubts as to its compatibility with the common market and with the EEA Agreement. The Commission identified serious competitive concerns in the market for rapier weaving machines or, alternatively, in a further segmented market for negative rapier weaving machines, in Western Europe, that is to say, in the EEA Member States and Switzerland). On 16 April 2002 the Commission accordingly initiated proceedings in this case pursuant to Articles 6(1)(c) and 22(4) of the Merger Regulation and Article 57 of the EEA Agreement.

II. THE PARTIES TO THE OPERATION

- (4) Promatech is a company incorporated in Italy that manufactures, sells and distributes weaving machines and spare parts. Promatech is controlled by the Radici Group, which is active in the chemicals industry, plastics, engineering, packaging, weaving industries, synthetic fibres and textile industries sectors, and Miro Radici Group, that operates in the textile sector.
- (5) Sulzer Ltd. is a holding company incorporated in Switzerland with major activities in various fields, such as medical implants, heavy engineered pumps and building infrastructure material. The Sulzer Group is also engaged, primarily through its wholly owned subsidiary Sulzer Textil AG (Switzerland) and other directly or indirectly owned subsidiaries, in the design, manufacture, marketing, sale and distribution of weaving machines, as well as in after-sales services for weaving machines.

³ OJ C ...,...200. , p....

⁴ OJ C ...,...200. , p....

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III. CONCENTRATION

- (6) The proposed operation consists in the acquisition of the whole mechanical-textile division of Sulzer by Promatech, by means of purchase of shares. The proposed transaction would thus give Promatech sole control over a number of companies throughout the world, including sales companies, which are wholly owned by Sulzer. The proposed transaction consists also in the purchase of eleven sales branches throughout the world, which are controlled by Sulzer but managed by companies belonging to the Sulzer Group.
- (7) The proposed operation constitutes therefore a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.
- (8) The concentration under examination has no Community dimension, since the thresholds of Article 1 of the Merger Regulation are not met. Promatech's turnover is EUR [...] million world-wide and EUR [...] million EU-wide (figures for the year 2000). The turnover of the Sulzer activities which are subject to acquisition is EUR [...] million world-wide and EUR [...] million EU-wide (figures for the year 2000).

IV. COMPETITIVE ASSESSMENT

(A) PRODUCT MARKET DEFINITION

1. Shuttle and non-shuttle weaving machines

- (9) The economic sector involved in the proposed merger is the manufacturing and sale (including spare parts and servicing) of weaving machines. Weaving machines are one of the main types of textile machinery, a segment that comprises a number of other broad categories of machines, such as spinning machines or knitting machines⁵.
- (10) Weaving machines may be subdivided according to the technology used for the transportation of the weft thread from one side of the machine to the other and its insertion through the warp thread. Weaving machines are generally divided accordingly into:
 - (i) shuttle machines;
 - (ii) non-shuttle machines.
- (11) Shuttle machines appear to be technically obsolete, with a small production capacity and a very low operating speed. They are widely used in Southeast Asia and China for the manufacture of low cost textiles. In Europe, shuttle machines are almost exclusively used for the production of luxury textiles, where their low speed does not

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

⁵ See in this regard the reports of the International Textile Manufacturers Federation (ITMF), in particular the *International Textile Machinery Shipment Statistics* (Volume 23/2000).

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affect significantly the final price of the product. In any event, sales of shuttle machines are negligible in Europe nowadays (see table).

Table 1: shipments of shuttle weaving machines in 2000 (units)

Africa	313
America	0
Asia & Oceania	16,470
Western Europe	1

Source: International Textile Machinery Shipment Statistics, Volume 23/2000

- (12) Neither the parties to the operation nor generally their main competitors are active in the production of shuttle weaving machines. The parties have submitted that shuttle weaving machines do not form part of the same market as non-shuttle weaving machines. This submission has been confirmed by the Commission market investigation.

2. Non-shuttle weaving machines

(a) Overview of the various types of non-shuttle weaving machines

- (13) Depending on the method used for inserting or weaving the weft thread through the warp thread, non-shuttle weaving machines can be further subdivided into:
- (i) positive rapier weaving machines;
 - (ii) negative rapier weaving machines;
 - (iii) air-jet weaving machines;
 - (iv) projectile weaving machines;
 - (v) water-jet weaving machines;
 - (vi) multi-phase weaving machines.
- (14) Each of these types of machines can be distinguished by virtue of differences in their technology, their range of applications, and cost.
- (15) *Positive rapier* looms are the most versatile weaving machine available. Weft insertion is achieved through the use of metal grips, called rapiers, which pull the weft thread to the centre of the loom, where it is actively transferred to the other rapier head which brings it to the other side of the loom. The rapier head is mounted on a rod. They are intended for specialised textile production of high quality. Productivity levels are lower than for negative rapier while energy consumption is comparatively higher making them among the more expensive machines not only to buy but also to run. They can produce a spectrum of materials ranging from the finest pure silk to woollen and worsted fabrics destined for the fashion industry, and from upholstery

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and decorative fabrics to heavy industrial fabrics made from wire, jute and carbon fibre. They are currently produced by Dornier and, to a lesser extent, by Promatech and Panter.

- (16) *Negative rapier machines* come second (after positive rapier) in terms of versatility and are able to produce high quality fabrics of sophisticated design. Weft insertion is achieved by the use of metal grips, called rapiers, one of which transports the weft thread to the centre of the loom, where it is transferred passively to the other rapier which brings it to the other side of the loom. The design and development of the rapier head itself involves sophisticated technology involving both patents and know-how. The rapier head is mounted on a tape. These machines are moderately expensive, have an average energy consumption and an average speed. They are produced primarily by Promatech, Sulzer, Picanol and, to a lesser extent, Panter. Tsudakoma is manufacturing a limited number of negative rapier looms exclusively for the Japanese market, where they are used to manufacture traditional Japanese textiles.
- (17) *Air-jet machines* are characterised by a jet of compressed air which is used to insert the weft into the warp. Air-jet looms are highly productive but less versatile than rapier looms. They are best suited to lightweight fabrics. They are moderately versatile and can be used to produce a significant variety of fabrics although heavy fabrics like denim significantly increase the energy consumption. Energy consumption is relatively high (compared to rapier or water-jet, for example), but because of a relatively low number of moving parts, replacement costs for spare parts are relatively low. They require considerable infrastructure involving air compressors and high pressure air-piping in order to become operational. This infrastructure can cost between 15% and 25% of the overall machine value. Typically they are used by weavers catering to a predictable and unchanging demand for a particular fabric. They are produced by Promatech, Picanol, Dornier, Tsudakoma and Toyota.
- (18) *Projectile machines* are characterised by a projectile which is used to insert the weft into the warp. The technology was developed in the 1950s and can be considered mature. Projectile looms are relatively expensive, with a wide range of application and a relatively low energy consumption, and are suitable for the production of high to medium quality textiles. Projectile looms accommodate larger widths than other looms. They also have a longer life span than any other loom. Projectile looms have similar technical characteristics to rapier looms but are also significantly more expensive than most other looms (with the exception of multi-phase looms). Due to their relatively high price and average productivity levels projectile looms are a product for niche markets⁶. This machine type is almost exclusively produced by Sulzer⁷.

⁶ There were only around 1,000 projectile looms sold world-wide in 2000, and around 200 in Western Europe (EEA and Switzerland). This accounts for 2% of all looms sold world-wide and 4% of all looms sold in Western Europe.

⁷ Two Russian producers manufacture a small number of projectile looms but these are not sold in Western Europe.

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- (19) *Water-jet looms* are characterised by a jet of water which is used to insert the weft into the warp. They are relatively inexpensive; their energy consumption is low and their productivity high. On the other hand they have a limited field of application, since they can only be used to manufacture water-repellent fabrics, mainly synthetics. Due to the corrosive action of the water the life-span of a water-jet loom tends to be shorter than that of other looms. Water-jet looms are mainly used in Asia⁸. Neither of the parties produces water-jet looms.
- (20) *Multi-phase looms* are the latest development in weaving machine technology. They are currently sold only to selected trial customers⁹. They have an extremely high productivity and although their running costs are high, they need low manning levels. They are designed for use in a limited number of applications, mainly the mass production of low quality fabrics. Sulzer is the only company producing this type of machine.
- (21) The differences between the various machines, in terms of both technical characteristics and price, are summarised in the following table :

Table 2: comparison of different technologies of non-shuttle weaving machines

	Versatility	Productivity	Energy consumption	Price Range (EUR 1000)
Positive Rapier	Widest	Medium	Medium	[...]*
Negative Rapier	Very wide range	Medium-High	Medium-low	[...]*
Projectile	Wide	Low-Medium	Low-Medium	[...]*
Air-Jet	Medium	High	High	[...]* ¹⁰
Water-Jet	Low	High	Low	[...]*
Multi-phase	Low	Highest	Highest	[...]*

Source: information submitted by the parties

(b) The parties' submission with regard to product market delineation

- (22) The notifying parties submit that there is a single relevant product market which includes all types of shuttle-less weaving machine, without distinction between the different types (air-jet, water-jet, negative rapier, positive rapier, multi-phase and projectile). They argue that the various forms of weaving machine have a high degree of substitutability since users can, to a significant extent, switch from type to type. On the demand side the parties argue that each type of machine is substitutable in terms of speed, flexibility (the possibility of changing the type of production), quality of final product, application and after-sales service. On the supply side the parties submit that

⁸ According to statistics supplied by the International Textile Manufacturers Federation (ITMF) 97.5% of all water-jet looms were sold in Asia (22,368 out of 22,940). Only 45 machines were sold in Western Europe.

⁹ In the year 2000 a total of four multi-phase looms were sold, two in Western Europe and two in the USA.

¹⁰ Does not include the cost for the necessary infrastructure (e.g. air compressor and piping)

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any producer of one type of machine can switch production to the other types without incurring significant costs or risks.

(c) Demand-side substitution

(i) General characteristics of demand

- (23) The Commission's investigation has revealed that the majority of sales of weaving machinery in Western Europe are to customers replacing or extending existing weaving machinery. The Commission's investigation also indicates that a textile producer will replace a weaving machine on average once every seven to ten years although this period may vary with technological advances which may stimulate demand or where weavers decide to upgrade their machinery in order to increase productivity within installations and thereby reduce costs.

(ii) Technical barriers to switching between various machine types

- (24) The various different types of weaving machine are not significantly substitutable from a demand side perspective. All six machines vary considerably in terms of their technical use (feasibility and versatility) and in terms of their suitability for each particular application.
- (25) As regards feasibility some textiles can only be woven on one particular machine whereas others can be woven on a range of different machines; at one end of the spectrum is silk which is most suitable for production on a rapier machine. At the other end are synthetic fibres which can be woven on any machine. Within these two ends of the spectrum there are intermediate fabrics which can be made on various types of machine. An example of a more versatile fabric would be shirting which can be woven on either rapier or air-jet machines. However this does not mean that for all shirt weavers these two machines are a reasonable alternative each for the other. In general there will always be one machine type which is better suited to a particular fabric from a technical perspective and which is more economically suited to the weaver's overall production profile. Much will depend on the nature of his business – on the size and sophistication of his customer base and the consistency and predictability of his production, that is to say, depending on whether he has to produce a large quantity of the same fabric or smaller quantities of fabrics of different types. For example air-jet machines are not suitable for "short runs" because the setting of the threads requires considerable investment of time and labour. Accordingly, a weaver who produces small quantities of different patterns or fabrics would not find an air-jet machine a suitable alternative to a rapier.
- (26) Each machine can also be differentiated according to its level of versatility, that is to say, the range of yarns, fabric styles and number of colours which can be woven on the machine. The spectrum of versatility runs from the positive rapier which is the most versatile machine to the water-jet which is the most limited in terms of the range of fabrics and styles which it can produce. For example delicate fabrics involving complex, unbalanced weaves are most suitable for production on rapier machines. Air-jet looms are more suited to "long runs" (production of the same fabric over an extended period) because of the time and cost involved in re-setting the machine after

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each stop, whereas rapier would be more suited for a weaver whose order book tends towards “short runs” (production of limited quantities of a particular style of fabric).

- (27) The parties have indicated that, in the absence of any new factor, customers tend to re-purchase the same kind of machine that they have already installed. In other words, according to the parties themselves, there is in practice little switching between the six machine types. The results of the Commission’s investigation confirm the very limited substitutability of the different types of weaving machine. In particular, the vast majority of sales of each machine type are made to customers replacing the same machine type. For example the parties estimate that 90% of negative rapier European customers continue to buy negative rapier machines. The remaining 10% may buy positive rapier (3%), air-jet (3%) or projectile (4%). In relation to positive rapier the investigation has revealed that the rate of switching is even lower. Virtually all weaving machine producers have stated during the course of the investigation that customers almost invariably indicate a preference for a particular type of machine at the outset and only a small minority will be persuaded to change to another type of machine during the course of the negotiation.

(iii) Economic barriers to switching between weaving machine types

- (28) The results of the Commission’s investigation also indicate that there are significant economical barriers to switching from one type of machine to another. Prices differ significantly for the six product types: positive rapier weaving machines are typically priced between EUR [...] and EUR [...]; negative rapier between EUR [...] and EUR [...] and air-jet from EUR [...] to EUR [...]. Water-jet remains the cheapest option (but then it is not suitable for non-synthetic applications) with prices ranging from EUR [...] to EUR [...]. That results in a differential of approximately [10 to 30%] between negative rapier and air-jet and [35-45%] as between water-jet (one of the least versatile machines) and positive rapier (the most versatile). The price differential between the most expensive version of the projectile machine and water-jet (the cheapest machine) is in excess of 400%.
- (29) The six machine types are highly differentiated in economic terms. These differences lie not only in the initial price, as explained, but also in the manning levels needed to run the machine; the amount of energy consumed; running costs in terms of spare parts consumption and servicing needed; and productivity in terms of speed of fabric production.
- (30) Almost all customers have also indicated that switching from an existing installed base (the type and brand of weaving machines already installed) to another machine type entails high costs in terms both of personnel training and of spare parts inventory.

(iv) No constraining effects as between machine types

- (31) Not all the above-mentioned factors carry equal weight for every weaver. For some weavers versatility may take priority over productivity and energy savings. For example, in the case of certain weavers producing for the fashion industry (where demand for new fabric designs is constantly changing and where there is little predictability), versatility and feasibility may have to take priority over running costs. On the other hand, for weavers involved in mass production of low quality fabrics

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versatility may be of low priority and running costs may be the most important selection criterion.

- (32) In these circumstances it is difficult to see how the price of one type of machine could have a significant constraining effect on the price of the other machine types. Indeed the parties have not claimed that they are aware of any such constraining effects or that their pricing policy involves any link between the prices of the various machines in their own product range. According to a number of producers, price increases in a particular machine type are decided independently of possible increases in any other machine type. Nor have they witnessed any change in the demand for a particular machine type in consequence of a price increase in another machine type.

(v) Demand side substitutability as between rapier and other machine types

- (33) As mentioned, prices vary considerably as between rapier and the other machine types. For example, projectile weaving machines are at least 50% more expensive than the average rapier loom.
- (34) In addition, air-jet looms need a specific infrastructure in the plant to be operational. Since an air-jet loom does not have its own compressor, the plant needs one or more central compressors and high-pressure air piping to connect the weaving machines with the compressor. Promatech submits that the cost of this infrastructure is generally about 15% to 25% of the overall machine purchase value, and installations of less than 12 weaving machines are generally uneconomical in Western Europe. These facts have been generally confirmed by the Commission's investigation of the market. For small weaving mills, therefore, switching from rapier machines to air-jet weaving machines is not an option. According to the parties, 43% of their clients have 10 machines or fewer.
- (35) The Commission's investigation has revealed that there is limited substitutability as between rapier and other machine types. The Commission has found little evidence to suggest that customers of rapier would switch to another type of machine should the price of these machines increase by 5% to 10% relative to the other types. This is so because
- (i) customers are reluctant to change their installed base;
 - (ii) rapier customers need versatility and are not able for technical reasons to switch to other technologies, such as air-jet or projectile, in the event of a 5% to 10% increase in the price of rapier;
 - (iii) a significant number of rapier customers lack the critical minimum size to switch to air-jet looms economically.
- (36) As for the distinction between positive and negative rapier weaving machines, although there are indications that neither technology is generally substitutable for the other from a demand point of view, the question can be left open for the purposes of this decision, since it does not affect the competitive assessment of the case.

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(d) Supply-side substitutability

- (37) Promatech has submitted that, from the supply side, it is possible to switch from the production of one type of weaving machine to another with a moderate financial investment. However, the Commission market investigation has not confirmed this.
- (38) On the contrary, the weaving machine manufacturers contacted by the Commission have indicated that to switch production from one technology to another would entail appreciable investment and considerable risks (both commercial and financial). Switching technologies requires substantial changes in the production processes, at significant cost (several million euro), since the basic technologies, machinery and know-how are dissimilar. One competitor has pointed out that the development of a technology by a manufacturer not present in that particular segment would involve the following risks:
- (i) the extensive research and development needed may not result in a viable commercial technology;
 - (ii) the existence of patents held by competitors often prevents manufacturers from producing new technologies or requires them to adopt costly alternative solutions; and
 - (iii) late entry in a new technology requires the overcoming of obstacles such as low reputation levels, absence of an installed base and substantial capital investment as against the depreciated development costs of existing players.
- (39) Finally, according to the estimations of the various weaving machine producers, a switch in production as between different technologies would require between 2 and 5 years.
- (40) Those factors seem to be confirmed by the fact that the majority of manufacturers of non-shuttle weaving machines tend to concentrate production in no more than two or three technologies. Indeed, only Sulzer (negative rapier, projectile and multiphase), Promatech (negative and positive rapier and air-jet) and Tsudakoma (negative rapier, air-jet and water-jet) manufacture 3 different types of weaving machine; Picanol (negative rapier and air-jet), Dornier (positive rapier and air-jet), Panter (positive and negative rapier) and Toyota (air-jet and water-jet) produce 2 different types, while the smaller producers produce only 1 type (Van de Wiele, which produces negative rapier, and Vuts and Trustfin, that produce air-jet). Moreover, and more importantly, late entrants in any given technology are extremely rare (see paragraph 86).

3. Conclusion

- (41) On the basis of the foregoing, it must be concluded that rapier weaving machines form a separate product market from other types of non-shuttle weaving machines. As to the distinction between positive and negative rapier, for the purposes of this decision, the question whether or not they constitute separate product markets can be left open.
- (42) The relevant product market for the assessment of the proposed concentration is therefore the market for negative rapier weaving machines or, alternatively, the market for all rapier machines (including both positive and negative).

(B) GEOGRAPHIC MARKET DEFINITION

1. Preliminary remarks

- (43) The parties to the operation have submitted that the market(s) for non-shuttle weaving machines is (are) world-wide, based on the existence of low transport costs, substantial trade flows between the EU and third countries and similarities in terms of prices and technical characteristics.
- (44) In particular, Promatech claims that transport costs do not represent a significant part of the final price, estimating that the average transportation costs account for around 2.1% of the price paid for each weaving machine. Further, Promatech submits that all weaving machine manufacturers produce machines in their country of origin and export the product world-wide, and there are no barriers to trade. Moreover, Promatech points to the existence of import and export flows into and from the European Union. In that respect, Promatech indicates that there are two Japanese producers already active in Europe (Toyota and Tsudakoma) and forecasts that Chinese producers, although not present in Europe as yet, will enter the European market in the coming years. Finally, Promatech submits that the conditions of competition are homogeneous world-wide and that there are no technical differences between the products manufactured all over the world.
- (45) The market investigation conducted by the Commission has confirmed that the scope of the markets for weaving machines is broader than national. As for the exact geographic definition, however, the market investigation has revealed that, contrary to the parties' submission, the relevant markets for the purposes of the assessment of the proposed merger are narrower than world-wide.

2. The market for rapier weaving machines

(a) Existing trade flows

- (46) Trade flows in the sector of rapier weaving machines are very significant within the countries of the EEA and between Switzerland and the EEA Member States.
- (47) The majority of these countries (Spain, the UK, France, Portugal, Austria, the Netherlands, Denmark, Greece and Sweden) do not have any significant national production of rapier weaving machines and acquire all their supplies of rapier from other countries within this area¹¹. As for the Western European countries with a manufacturing industry of rapier weaving machines (Italy, Belgium, Germany and Switzerland), although the current pattern of purchases shows a significant level of national production, a high percentage of acquisitions come from other countries within the considered area (approximately 19% to 75% in the year 2001).
- (48) By contrast with the significant trade flows within Western Europe, there have been traditionally no imports of rapier weaving machines into this market from countries

¹¹ According to the available data, in the year 2001 there were no purchases of rapier weaving machines in Luxembourg, Ireland, Finland, Iceland or Norway.

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outside the area. Indeed, the Western European market for rapier weaving machines is supplied exclusively by Western European manufacturers.

- (49) Not only is there a current (and historical) absence of imports into Western Europe, there is also a lack of alternative sources for supplies (in terms of the geographic location of suppliers) of rapier weaving machines for Western European customers, as is explained in section (b).

(b) Absence of effective alternative sources of supply located in other geographic areas

- (50) Worldwide, the most significant weaving machine manufacturing industries, other than the Western European producers, are located in Japan and China. However, neither the Japanese nor the Chinese weaving machine producers appear to constitute viable alternative sources for the supply of rapier machines to Western European customers in the short to medium term.

- (51) Japanese producers focus almost exclusively on air-jet and water jet technologies, which are particularly suited to the characteristics of the textile industry in the Far East (low labour and energy costs, use of synthetic fabrics), which is in rapid expansion. Of the two main Japanese manufacturers, Toyota does not manufacture rapier machines at all, while Tsudakoma produces only a very small number of negative rapier machines. Moreover, Tsudakoma's limited production of negative rapier machines is particularly adapted to the demands of the Japanese traditional textile industry and is sold exclusively in Japan. Nothing in the market investigation suggests that the Japanese weaving machine manufacturers intend to start or develop production of rapier weaving machines according to the standards of the Western European textile industry. Japanese producers seem to have more incentives for continued expansion in the growing Far East markets rather than for switching to or developing alternative weaving technologies more adapted to the Western European market.

- (52) With regard to China, the other important (non-European) manufacturing industry world-wide, the market investigation has revealed that Chinese manufacturers focus on low-grade traditional rapier machines which require high manning levels and are therefore unsuited to areas with high labour costs, such as Western Europe (where industry requires capital-intensive rather than labour-intensive policies). The Chinese production of negative rapier machines is sold almost exclusively in their large local market, where they compete with the more sophisticated production of European and Japanese manufacturers.

- (53) There are indeed important technological differences between Chinese negative rapier weaving machines and those produced and marketed in Europe. According to a European weaving machine producer, rapier machines manufactured in China are 20 to 25 years behind the European ones in technological terms. The market investigation has confirmed that Chinese manufacturers do not appear to be sufficiently advanced in the development of rapier weaving technology to be able to make significant sales outside the Far East in the coming years. Moreover, for the Chinese manufacturers to start exporting into Europe, they will have not only to overcome their technological underdevelopment (building up the relevant know-how, obtaining the necessary

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patents, development of cutting-edge weaving machine technology) and the reputational barriers (establishing of a brand/reputation), but also to establish marketing, servicing and distribution networks in Europe.

- (54) Furthermore, it is doubtful whether Chinese producers have the economic incentives to try to enter the European market for rapier weaving machines. According to the figures provided by Promatech, based on ITMF (International Textiles Manufacturers Federation) statistics, while sales of negative rapier and projectile machines have increased in the last five years in Asia and Oceania (+7% between 1996 and 2000), sales in Western Europe have decreased during the same period (-11%). Given the expected growth of the Chinese textile industry in the coming years and the stagnation of the European market, the economic interest of Chinese producers is more likely to lie in the consolidation of their local market sales rather than in expansion into Western Europe.

Table 3: evolution of shipments of rapier and projectile weaving machines (units)

	Western Europe	Asia & Oceania
1996	4,905	13,327
1997	5,003	15,358
1998	6,100	6,559
1999	4,476	8,528
2000	4,378	14,241

Source: information submitted by the parties

- (c) *Access to distribution networks and proximity of reliable after-sales services and availability of spare parts*
- (55) The market investigation has revealed how important it is for any manufacturer wishing to enter the Western European market to have access to:
- (i) distribution networks / sales representatives;
 - (ii) after-sales services, including the provision of spare parts and accessories.
- (56) European producers conduct the majority of their sales of weaving machines through independent sales agents, who are normally bound by exclusive (with regard to weaving machines) distribution agreements with the manufacturers. Promatech has pointed out that these independent agents are normally "multi-product" agents, since they distribute other types of textile machinery apart from weaving machines (such as spinning or knitting machines) and producers of weaving machines frequently change their sales agents. Hence, according to Promatech, a new entrant could easily distribute its weaving machines through existing networks of independent agents.

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- (57) Other producers, however, submit that manufacturers and agents rather tend to maintain their commercial relationships over time and that, in particular, since the installed base of a manufacturer's machines is a key element for the business prospects of a sales agent it is unlikely that a sales agent will terminate a contract with an established producer in favour of a new entrant in the market. As for the possibility for new entrants to contact "multi-product" agents not already linked to weaving machine producers, it should be noted that, since most sales of weaving machines in the Western European market consist in weavers replacing or extending their installed machines, these agents will be in a disadvantageous position as compared with distributors already active in the market.
- (58) Any new entrant in the Western European market should also have access to a network of service centres, in order to provide customers with timely and effective technical support. These servicing activities include the provision of spare parts, and possibly accessories as well, for the weaving machines sold. As Promatech has pointed out, in Europe spare parts are not normally delivered together with the machines, as opposed to other geographic areas where it is common practice to include in the supply of looms a certain number of spare parts (generally for the first two years of the running of the machine).
- (59) A sales agent's commission largely derives from sales of spare parts. The volume of spare parts requested by customers depends directly on the size of the installed base of machines of a particular producer in the agent's territory. According to a competitor of the parties, the stronger the installed base of a manufacturer, the higher the commission for the sales agent representing that manufacturer. It would therefore be difficult for a new entrant to persuade sales agents to terminate their commercial relationship with a producer and start distributing the products of a new entrant in the market.
- (60) According to one market participant contacted by the Commission, given the above requirements, it would take on average between 3 to 5 years for a manufacturer of weaving machines established elsewhere in the world to enter the European market. The majority of weaving machine producers have confirmed the importance of both sales agents and servicing centres for selling into the Western European area.

(d) Views of customers

- (61) The Commission's market investigation has confirmed that customers in Western Europe do not consider imports of rapier weaving machines from outside this area as a viable alternative source of supply.
- (62) Among the reasons quoted by customers was their high degree of dependence on the technical performance of the machine for their own production. The reliability of the machines, and in particular the proximity of trustworthy after-sales service and the availability of spare parts and accessories are therefore of the utmost importance. The market investigation has also confirmed that the reputation of a manufacturer in a determined region is another important factor that customers take into account when deciding their purchases of negative rapier weaving machines.

(e) Particular characteristics of demand

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- (63) There also exist differences between Western Europe and other geographic areas as regards the renewal of a customer's installed machine base. According to Promatech, while European (and North American) clients change their weaving machines every five years, customers based in Africa, Asia and South America normally replace their machines every 10 years on average. This difference is mainly due to the fact that European customers replacing their machines are normally driven by technological evolution (modernisation and development of weaving machines) with the objective of producing a better product with a higher economic value. Most of the weaving machines replaced in Western Europe and North America are sold as second-hand machines in Africa, Asia and South America.
- (64) In general, as the parties have put forward and the market investigation has confirmed, weaving machine replacement in Europe and North America is mainly motivated by the customers' need to improve performance (higher speed and efficiencies) and reduce maintenance costs, namely spare parts and after-sales service costs. As a result, many European weavers replace a machine before the end of its natural (physical) life cycle¹². Asian, African and South American customers, on the other hand, seem to base their decision to buy a weaving machine mainly on its purchase price, though the parties predict that this trend might change in the future, owing to a growing tendency on the part of these producers to take technological considerations into account in their purchase policies.
- (65) Finally, a significant number of sales in Western Europe are linked to customers extending existing installations or replacing technology, rather than to greenfield projects (setting up a new plant or refitting an existing plant). Greenfield projects are more numerous in developing markets, such as in the Far East. The presence of more new entrants in this latter area means that there is a lesser emphasis in these markets, as compared with Western Europe, on brand loyalty and the importance of a customer's installed machine base in subsequent purchasing decisions.

(f) Conclusion

- (66) In the light of the foregoing it is to be concluded that the market for rapier weaving machines (or alternatively the market for negative rapier machines) is Western Europe, that is to say, the area comprising the territory of the EEA Member States and Switzerland.
- (67) According to this geographic market definition, therefore, the territories of the seven referring Member States (Spain, Italy, the United Kingdom, Germany, France, Portugal and Austria) form an integral part of a single relevant market for the purposes of the application of Article 22(5) of the Merger Regulation¹³.

¹² According to Promatech, although the concerns relating to technological development account for the early replacement of weaving machines in Western Europe, the physical life of the machines also depends on the geographic area in which customers are based and on maintenance conditions. In Europe and North America, customers try to maximise the performance of weaving machines, and this results in great wear and tear.

¹³ See Case T-102/96 *Gencor v Commission* [1999] ECR II-753, para. 100.

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(C) COMPATIBILITY WITH THE COMMON MARKET

- (68) In accordance with Article 2(3) of the Merger Regulation, a concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it is to be declared incompatible with the common market.
- (69) The Court of Justice¹⁴ has defined the concept of dominance as a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition from being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, of consumers. Such a position does not preclude the existence of some competition but enables the undertaking which profits from it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment.
- (70) The existence of a dominant position may derive from several factors which, taken separately, are not necessarily determinative; amongst these factors, a highly important one is the existence of very large market shares. In addition, the relationship between the market shares of the undertakings involved in the concentration and their competitors, especially those of the next largest, is relevant evidence of the existence of a dominant position.¹⁵
- (71) The factors taken into account in order to assess whether or not the concentration would create or strengthen a dominant position in the Western European market for all rapier weaving machines or, alternatively, in the Western European market for negative rapier weaving machines, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it, are set out in paragraphs 72 to 104.

1. Horizontal effects

(A) Rapier machines

(a) Market shares

- (72) The following table indicates the shares of the parties and each of their main competitors in rapier machines:

¹⁴ See Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paras 38 and 39; see also Case T-102/96 *Gencor v Commission* [1999] ECR II-753, para. 200.

¹⁵ See Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, para. 39; see also Case T-102/96 *Gencor v Commission* [1999] ECR II-753, paras 201 and 202, and Case T-221/95– *Endemol v Commission* [1999] ECR II-1299, para. 134.

Table 4: market shares in all rapier weaving machines (in volume)

	Promatech	Sulzer	Combined Entity	Dornier	Picanol	Van de Wiele	Panter
2001	[40-50]%	[15-25]%	[65-75]%	[5-15]%	[5-10]%	[1-5]%	[1-5]%
2000	[45-55]%	[15-25]%	[65-75]%	[5-15]%	[5-10]%	[1-5]%	[1-5]%
1999	[45-55]%	[15-25]%	[65-75]%	[5-15]%	[5-10]%	[1-5]%	[1-5]%

Source: information submitted by the parties and their competitors

(b) Change in market structure

- (73) On the basis of a market for rapier machines within Western Europe the parties' combined share would be [65-75%] (Promatech [40-50%], Sulzer [15-25%]). The next largest competitors in this market would be Dornier with [10-15 %], Picanol with [5-10 %], Van de Wiele with [1-5%] and Panter with [<5%]. In addition the proposed concentration would significantly increase the gap in market share between the largest competitor which would then be the merged entity with [65-75%] and its closest competitor which would be Dornier. Prior to the concentration the gap between the largest competitor, Promatech, and the second largest, Sulzer, was of the order of 2:1 with Dornier as the third largest player having a market share which was approximately 2.5 times smaller than that of the market leader Promatech. Following the implementation of the concentration the gap between the first and second largest competitors would thus widen to a factor of approximately five and the gap between the largest entity and that of the third largest competitor Picanol would widen to a factor of approximately ten.
- (74) These concerns are aggravated by evidence which suggests that none of the other main competitors, Picanol, Dornier, Van de Wiele and Panter, have shown any trend towards an increase in their market share in the last three years. The share of these competitors has in fact remained fairly static during this period.

(c) Merging parties are each other's closest competitors

- (75) In addition to this substantial change in market structure the Commission's investigation supports a finding that, prior to the proposed concentration, Promatech and Sulzer have been each other's closest competitors in Western Europe. The investigation has shown that customers of either party are most likely to use the other as an alternative source of supply. As a result of the proposed concentration, this competition would be lost and, as indicated, the advantage that the merged entity would hold over the remaining competitors would increase significantly.

(d) High barriers to entry

- (76) In addition, the results of the Commission's investigation demonstrate that new entry to the Western European rapier market would be unlikely to occur to a sufficiently significant extent, or in a sufficiently timely manner, to deter the possible exercise by the new entity of market power in the market. In fact market entry in this market seems highly improbable.
- (77) Barriers to entering the rapier market are high. First the Commission's market investigation has confirmed that there are substantial *research and development* costs involved in entering this market. There would also be considerable risks in that the

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research and development effort may not necessarily result in a viable technology. The existence of patents held by competitors in both air-jet and rapier technology discourages other players from attempting to invent other methods when they are aware that patented solutions have already been tried and tested by the market. It seems also that in addition to the development of the basic technology there is a need to develop considerable know-how of the operation of the technology.

- (78) Secondly, a reputation for reliability and performance seems to be essential in order to establish a presence in this market. There is therefore a need for a new producer to establish a *reputation* and/or to have proven past experience in the industry.
- (79) Thirdly, linked to reputation is the concept of an *installed base*. The Commission's market investigation has revealed that weavers prefer consistency as regards the make of machines within a mill and that for most weavers it would be neither practicable nor cost effective to consider installing more than two brands of machine.
- (80) Fourthly, the Commission's investigation has underlined the need to establish an *after-sales service capability* in order to become truly competitive. In the course of the investigation a significant proportion of the buyers of rapier machines have expressed the view that a producer must have an established and reliable after-sales service in order to be considered as a viable competitor in this market.
- (81) Fifthly, the Commission's enquiries have confirmed that most producers conduct the majority of their sales in Europe through *independent sales agents*. Typically the contract with the agent provides that the agent may not sell competitors' weaving machines. However, the agent will generally sell a range of products other than weaving machines such as knitting machines and spinning machines. Although it is possible generally to terminate such agency agreements, on the whole both the manufacturer and the agent tend not to do so as it is in the interests of both parties to maintain the relationship in order to maximise the level of understanding of the technology of the product and the needs of the customer. Moreover, as a large proportion of a sales agent's commission is derived from sales of spare parts there would seem to be little incentive for established agents with established relationships with manufacturers to abandon these manufacturers in favour of a new entrant in the absence of some form of compensation for the loss of revenue and the increased risk involved.

(e) No constraining effects deriving from potential competition

- (82) As regards producers with an established presence outside Western Europe it is not considered that there is any real credible threat sufficient to counteract the market power of the combined entity in the short term. There are two possibilities of such new entry: the first possibility would be from Chinese producers. However these producers have as yet no presence in Europe. In order for them to establish a presence in Western Europe they would have to improve their technology which is estimated to be considerably less advanced than that of the European producers. Even were this technology to match that of the European producers they would have to overcome obstacles in terms of reputation, based on proven past experience, and they would have to gain access to a sales' infrastructure and establish an after service network. Given that their home market is growing and that the European market is relatively

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static and is not expected to grow in the foreseeable future, it does not seem likely that these producers could provide sufficient competitive pressure, or the threat of it, to compensate for the loss of competition deriving from the disappearance of the second largest competitor within Western Europe.

- (83) The second possible source of new entry in the rapier market in Western Europe might come from the two Japanese producers who are already present in the air-jet and water-jet market in Europe. However, significant new entry sufficient to exert competitive pressure on the combined entity from these two Japanese producers is also considered unlikely given that there would be little incentive for them to commit the necessary resources in a static European market when markets closer to them are booming. Furthermore, Toyota does not produce rapier machines and Tsudakoma produces a small quantity of negative rapier machines, designed and adapted exclusively for its home market.

(f) Switching difficulties

- (84) The Commission's market investigation shows also that customers are reluctant to switch brands (see paragraphs 78-79) as this can involve significant costs in terms of spare parts and training of personnel. This reluctance is likely to be more pronounced in the case of an unknown new entrant and is therefore a further obstacle which a new entrant would have to overcome in order to establish a presence in Western Europe.
- (85) Should the merged entity attempt to raise prices, either through higher list prices or through lower discounts, customers would find it very difficult to defeat that price rise by sourcing their needs from other producers. Customers would face significant technical and economical difficulties if they wanted to switch to other suppliers. This is further confirmed by the fact that a vast majority of customers indicated that they do not like to change their suppliers as this can involve significant costs in terms of training and spare parts inventory. In that context, it seems highly unlikely that customers could switch suppliers should the merged entity attempt to raise prices or reduce discounts.

(g) New entry

- (86) Actual new entrants into this market are rare. Most of the existing large competitors, as well as the parties themselves, have been active in this market since the technologies became available over twenty years ago. One new entrant within the EU – Panter – set up as a new competitor in Italy in the early nineties. In spite of the previous experience of its founder in the weaving machines business, Panter's share within Western Europe remains negligible.

(h) Limited countervailing buying power

- (87) The customer base of both Promatech and Sulzer is highly dispersed with a customer list numbering more than [...] and [...] respectively. Of Promatech's customers [...] buy fewer than 10 machines per year and only [...] buy more than 50 machines. Of Sulzer's [...] customers some [...] buy fewer than 10 units per year; a further [...] buy between 10 and 50 units and some [...] buy more than 50 units per year. The Commission considers therefore that there would not be sufficient

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countervailing buyer power in the market to counterbalance that of the combined entity.

(B) Negative rapier machines

- (88) The following table indicates the shares of the parties and each of their main competitors in negative rapier machines:

Table 5: market shares in negative rapier weaving machines (in volume)

	Promatech	Sulzer	Combined Entity	Picanol	Van de Wiele	Panter
2001	[50-60%]	[25-35%]	[80-90%]	[5-15%]	[0-5%]	[0-5%]
2000	[50-60%]	[25-35%]	[80-90%]	[5-15%]	[0-5%]	[0-5%]
1999	[50-60%]	[20-30%]	[80-90%]	[5-15%]	[0-5%]	[0-5%]

Source: information submitted by the parties and their competitors

- (89) On the basis of those market shares for negative rapier, there are strong indications that the operation would give rise to competition concerns in relation to the negative rapier market within Western Europe. Promatech's [50%-60%] market share would be added to Sulzer's [25%-35%] share to yield a market share of [80%-90%]. The merged entity's closest competitors would have considerably smaller shares of the Western European negative rapier market: Picanol [5%-15%]; Panter [0%-5%]; Van de Wiele [0%-5%]. In addition to this high market share the proposed concentration would significantly widen the gap in market share between the largest competitor which would then be the merged entity with [80-90%] and its closest competitor which would be Picanol with [5%-15%]. Prior to the concentration the gap between the largest competitor, Promatech, and the second largest, Sulzer, was of the order of 2:1 with Picanol as the third largest player having a market share which was approximately six times smaller than that of the market leader Promatech. Following the implementation of the concentration the gap between the first and second largest competitors would thus widen to a factor of approximately ten.
- (90) In addition, the analysis outlined in relation to barriers to entry, potential competition, switching difficulties, new entry and buyer power would apply equally to a market for negative rapier machines.

(C) Conclusion

- (91) On the basis of the above analysis, it must be concluded that the proposed concentration will bring about the creation or strengthening of a dominant position in the Western European market for the production of rapier weaving machines, or alternatively in the Western European market for the production of negative rapier machines, as a result of which effective competition in the common market and the functioning of the EEA Agreement would be significantly impeded.

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2. Vertical effects

- (92) The Itema Group, which controls Promatech, is active in the vertically related market(s) for the production of accessories for weaving machines¹⁶. In particular, the Itema Group produces:
- (i) shedding motions;
 - (ii) warp stop motions;
 - (iii) heald frames;
 - (iv) beams.
- (93) The Itema Group's share of the Western European market(s) for the different types of accessories is below [20-30]*%, with the only exception of warp stop motions. Warp stop motion is the accessory used to receive the signal from the drop wires denoting that the warp end is broken, and to send it to the weaving machine to allow it to stop as quickly as possible in order to prevent fabric's faults. Warp stop motions can be either mechanical or electronic. Almost all weaving machines are equipped with a warp stop motion.
- (94) Itema's share of the Western European merchant market for warp stop motions was approximately [30-40]* in 2001¹⁷. The main supplier in this area is the Swiss undertaking Grob, which accounts for the remaining [60-70]*%. Other producers of warp stop motions worldwide are Toyota and Tsudakoma (Japan) and CTMTC (China). Grob is not integrated downstream in the production of negative rapier weaving machines.
- (95) It can therefore be concluded that the proposed operation would not create a dominant position in the market for warp stop motions which would lead to a risk of vertical foreclosure with regard to the supply of warp stop motions.

V. UNDERTAKINGS

(A) UNDERTAKINGS OFFERED BY PROMATECH

- (96) In order to solve the competition concerns identified by the Commission, Promatech has offered to enter into the following commitments:
- (i) To offer to divest itself of Sulzer's business unit of negative rapier weaving machines located in Zuchwil (Switzerland). The divestiture would entail the

¹⁶ Promatech has identified the following as being the main accessories for weaving machines: shedding motions, that include dobbies, external cam motions, internal cam motions and jacquards; heddles; drop wires; warp stop motions; heald frames; weft stop motions; tuck-in devices; name selvedge Jacquard machines; weft pre-feeders; leno devices; beams; nozzle and sub-nozzle (only for air-jet machines); and reeds.

¹⁷ The Itema Group produces warp stop motions through its subsidiary OMV.

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sale of all projects, client portfolios, technology and machinery related to that business;

- (ii) To divest itself of Sulzer's production plant in Schio (Italy), currently dedicated almost exclusively to the production of negative rapier machines, either as a going concern or by means of the sale of the subsidiary which owns the Schio plant. The divestiture would entail the sale of all projects, client portfolios, technology and machinery related to the production and trading of negative rapier weaving machines, as well as the production plant itself. Prior to the sale, Promatech would remove from the plant the items which could be used for the manufacturing of air jet weaving machines as well as for the production of gas turbine nozzles. The removal of this equipment would not, in any event, affect the production process of negative rapier machines.
- (97) Promatech would divest itself of the rapier business in Zuchwil and the rapier plant in Schio, each to a different independent purchaser approved by the Commission. However, pursuant to paragraph 39(iv) of Annex I and paragraph 40(iv) of Annex II, the Commission could decide to waive the obligation to sell the divested business to different acquirers if, taking into account the identity of the proposed purchaser, the market structure resulting from the divestiture did not give rise to competition concerns.
- (98) The text of the undertakings submitted by Promatech are appended to this Decision as Annexes I and II.

(B) ASSESSMENT OF THE UNDERTAKINGS

- (99) By virtue of the proposed undertakings, the overlap between Promatech and Sulzer in the segment of rapier weaving machines (and *a fortiori* in the market of negative rapier machines) would be completely eliminated. The concentration would, therefore, bring about (a) no increase of Promatech's market share in the market for (negative) rapier weaving machines and, from a more general point of view, (b) no significant horizontal or vertical overlaps in any of the different markets for weaving machines where the parties to the operation are active.
- (100) The proposed divestitures would either strengthen the market position of Promatech's current competitors in the market for negative rapier weaving machines and /or allow for new entry in this market (up to two new entrants). Moreover, given the current situation of availability of spare capacity of the two businesses to divest, and the fact that a significant part of their production is sold outside Western Europe, the acquirers of these businesses would dispose of enough available capacity to aggressively compete in Western Europe, in particular if Promatech were to decide to increase prices after the concentration.
- (101) Since the territories of the seven referring Member States form an integral part of the relevant market in this case, a merger that creates or strengthens a dominant position in that market would certainly have the effect of significantly impeding competition in the territory of those countries also¹⁸. Accordingly, given that the conditions of

¹⁸ See Case T-102/96 *Gencor v Commission* [1999] ECR II-753, para. 100.

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competition are sufficiently homogeneous within the relevant area, if the proposed undertakings eliminated the competition concerns raised by the operation in the relevant market, they would by the same token solve the competition concerns in the different territories that form part thereof.

(102) In sum, the remedies proposed constitute appropriate measures necessary to maintain or restore effective competition within the territory of the referring Member States for the purposes of the application of Article 22(5) of the Merger Regulation.

(103) These considerations have been borne out by the market test of the proposed remedies undertaken by the Commission.

VI. CONCLUSION

(104) It must accordingly be concluded that the notified concentration, as modified by the undertakings entered into by Promatech, would not create or strengthen a dominant position on any of the markets assessed above.

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HAS ADOPTED THIS DECISION:

Article 1

The operation whereby Promatech would acquire sole control of Sulzer Textile within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 is, as modified in accordance with the Annexes to this Decision, declared compatible with the common market and with the EEA Agreement.

Article 2

Article 1 is subject to full compliance with the conditions set out in paragraphs 1, 2, 4, 8, 9, 10, 11, 12, 15, 19, 20, 21 and 29(ii) of Annex I and in paragraphs 1, 2, 4, 8, 9, 10, 11, 12, 16, 20, 21, 22 and 30(ii) of Annex II. These conditions are necessary in order to maintain or restore effective competition within the territory of the referring Member States in accordance with Article 22 (5) of Regulation (EEC) No 4064/89.

Article 3

Article 1 is subject to full compliance with the obligations set out in the remaining paragraphs of Annexes I and II.

Article 4

This decision is addressed to:

Promatech S.p.A.
Via Case Sparse, N° 4
24020 Colzate (BG)
Italy

Brussels, 24.07.2002

For the Commission

Mario Monti
Member of the Commission
(signed)

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ANNEX 1

By hand and by fax: 00 32 2 296 4301

Mr. Francisco Enrique Gonzalez-Diaz
Head of Unit
European Commission – Merger Task Force
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M. 2698– PROMATECH/SULZER TEXTIL

COMMITMENT TO THE EUROPEAN COMMISSION

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EEC) No. 4064/89 as amended (the “Merger Regulation”), Promatech S.p.A. (hereafter “Promatech”) hereby provides the following Commitment (hereafter “the Commitment”) in order to enable the European Commission (hereafter “the Commission”) to declare the acquisition of sole control over Sulzer Textil compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2), of the Merger Regulation (hereafter “the Decision”).

This Commitment shall take effect upon the date of adoption of the Decision (hereafter “the Effective Date”).

Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98¹⁹.

¹⁹ *Official Journal C 68, 02.03.2001, pages 3-11.*

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DIVESTMENT OF RAPIER WEAVING MACHINE ASSEMBLING LINE RELATED TO THE PLANT LOCATED IN ZUCHWIL (SWITZERLAND)

Section A. Definitions

In this Commitment, the following expressions shall have the following meaning:

The Closing Date: the date of the transfer of the legal title of the Divested Business to the Purchaser.

The Commission Standard Trustee Mandate: the Commission's recommended model trustee mandate in the case of commitments accepted under Council Regulation (EEC) No 4064/89.

The Customer List: the list of customers of the Divested Business as defined in Section B.

The Divested Business: the rapier weaving machine assembling line related to the plant located in Zuchwil (Switzerland) as defined in Section B, that Promatech commits to offer to divest within the time period provided for in Section D.

The Divestment Trustee: the natural or legal person, independent from Promatech which is approved by the Commission and appointed by Promatech, which has received from Promatech the irrevocable and exclusive mandate to sell the Divested Business to a Purchaser [...]*²⁰.

The Extended Divestment Period: the period of [...]* from the date of expiration of the First Divestment Period within which the Divestment Trustee shall have an irrevocable and exclusive mandate from Promatech to sell the Divested Business [...]*.

The First Divestment Period: the period of [...]* within which Promatech can propose a Purchaser for the Divested Business.

The Hold Separate Manager: the person employed by the Divested Business, who will be in charge of running the day-to-day business under the authority of the Monitoring Trustee.

The Intellectual Property Rights: intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, copyrights, technical information, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, parts and devices, safety

²⁰ Deleted text contains confidential information covered by Business Secret.

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procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information, and all research data concerning historic and current R&D efforts relating to the Divested Business, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

The Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divested Business, which is listed by the Monitoring Trustee in its first report and is subject to the prior approval of the Commission.

The Monitoring Trustee: the natural or legal person, independent from Promatech, which is approved by the Commission and appointed by Promatech, which has the duty to monitor and to ensure that Promatech complies with the conditions and obligations under this Commitment.

The Personnel: all personnel retained by the Divested Business, including secondees and share personnel.

The Purchaser: the entity approved by the Commission as acquirer of the Divested Business in accordance with the criteria set out in Section E.

The Trustee(s): the Monitoring Trustee and/or the Divestment Trustee.

Promatech: the company incorporated under the laws of Italy which includes all of its successors and assigns, its subsidiaries, and the directors, officers, managers, agents and employees acting for or on behalf of Promatech.

Section B. The Divested Business

Commitment to divest

1. Promatech undertakes to offer to divest Sulzer's rapier weaving machine assembling line related to the negative rapier Business Unit located in Zuchwil (Switzerland), including the sale of all projects, client *portfolios*, technology and machinery related to such Business, to the Purchaser according to the procedure described in Section D.

Present structure and functions of the Divested Business

2. The present legal and functional structure of the Divested Business as operated to date are described in the schedules attached to this Commitment as (**Annex 1**) and in paragraph 3 to this Commitment.

Definition of the Divested Business

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3. The Divested Business consists of the rapier weaving machine assembling line related to the plant located in Zuchwil, including:

- (a) all tangible assets, which contribute to the current operation of the Divested Business or may be necessary to ensure the viability and competitiveness of the Divested Business. The negative rapier weaving machine assembling line refers to the model G6200 looms which is a very special loom. It is necessary to underline that the object of divestment is the assembling line of G6200 negative rapier weaving machine.

These machines represent a top technology range of weaving machines, characterised by high complexity of applications, specific customers requirements, top quality positioning, relatively small quantities and small order sizes. All these elements explain the uniqueness of the features and components which render the outsourcing of these parts impossible. The result is that most of the parts and components are manufactured inside the company.

[...]*

- (b) all intangible assets, including, but not limited to, intellectual property rights, which contribute to the current operation of the Divested Business or may be necessary to ensure the viability and competitiveness of the Divested Business. The intangible assets include all elements related to the G6200 loom technology.

Transfer of personnel

4. The Divested Business shall be divested as a going concern. Promatech commits to transfer to the Purchaser all the Personnel, with the exception of such employees whose services have not been retained by the Purchaser.
5. This transfer will be achieved in the following manner:
- (a) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, identify a framework for a complete organisation that includes the number of required resources by skill set;
- (b) Ensuring the compliance with all applicable labour and employment laws, in particular (where relevant) with the Council Directives on collective redundancies²¹, on safeguarding employees rights in the event of transfers of

²¹ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

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undertakings²² and on informing and consulting employees²³ as well as with national provisions implementing these Directives;

(c) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, establish objective criteria to complete the matrix of functions and specific skills required for the business;

(d) [...];

(e) Promatech and/or the Hold Separate Manager shall provide to the Purchaser information relating to the Personnel to enable the Purchaser to make offers of employment taking into account all applicable labour and employment laws;

(f) Promatech shall waive all contractual rights concerning the Personnel of the Divested Business in order to facilitate the immediate transfer of the Personnel;

(g)[...]*.

6. [...]*.

Customer list

7. The Customer List as referred to in this Commitment shall comprise all the customers in the negative rapier weaving machines market with whom:

(a) the Divested Business did business during the year prior to the closing date of the divestiture

(b) the Divested Business did business during the year of the divestiture up to the Closing Date.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

8. Promatech undertakes to preserve from the Effective Date the full economic viability, marketability and competitiveness of the Divested Business until the Closing Date, in accordance with best commercial practice, as shall be monitored by

²² Council Directive 77/187/EC of 14 February 1977 1998 on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of a business as amended by Council Directive 98/50/EC.

²³ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, as amended by Directive 97/74/EC.

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the Monitoring Trustee in accordance with paragraphs 28 and 29 (ii). In this regard Promatech undertakes to reduce to the minimum any possible risk of loss of competitive potential of the Divested Business resulting from the uncertainties inherent to the transfer of a business.

Pending divestiture, Promatech shall enable the Hold Separate Manager to manage the Divested Business in the best interest of the business. In particular, Promatech undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the Divested Business until the Closing Date. Promatech also undertakes not to carry out upon its own authority any act which may be likely to alter the nature and scope of activity of the Divested Business, or the industrial or commercial strategy or the investment policy of the Divested Business.

Sufficient resources shall be made available for the business to develop until the divestiture, based on the approved strategic and annual business plans, it being understood, however, that this obligation does not include extraordinary injections of funds by Promatech that would go beyond its commitment to ensure the viability and competitiveness of the Divested Business.

Hold-separate obligations of Promatech

9. [...]*.

In particular, Promatech commits to keep the Divested Business separate from their other retained businesses and to ensure that employees of the Divested Business – including the Hold Separate Manager – have no involvement in any other retained business and vice versa and to also ensure that the employees of the Divested Business do not report to any individual outside of the Divested Business.

10. Promatech shall assist the Monitoring Trustee in ensuring that the Divested Business is managed as a distinct and saleable entity separate from the retained businesses of Promatech. The Monitoring Trustee shall in particular ensure that the Divested Business shall have its own management, which shall be under the supervision and the responsibility of the Hold Separate Manager. The Divested Business shall be managed on an independent basis in the best interest of the business and ensuring its continued viability, marketability and independence from the retained businesses of Promatech.

[...]*

Ring-fencing

11. Promatech shall implement all necessary measures to ensure that it shall not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested Business, with the exception of information reasonably necessary for the divestiture of the Divested Business or otherwise required by law. The

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Monitoring Trustee, after having heard Promatech and the Hold Separate Manager, shall decide on the exercise of this exception.

Non-solicitation clause

12. Promatech undertakes not to hire or solicit the Key Personnel transferred with the Divested Business for a period of two years after the Closing Date. Promatech shall ensure that any of the personnel retained who have been employed by or seconded to the Divested Business [...]*, shall not be employed or assigned to any Promatech business unit that directly or indirectly competes with the Divested Business for a period [...]*, with the exception of such employees whose services have not been retained by the Purchaser.

Section D. The Divestment Procedure

The First Divestment Period

- 13 Promatech undertakes to find a Purchaser for the Divested Business and to enter into a final binding sale and purchase agreement with such a Purchaser for the sale of the Divested Business [...]*.

The Extended Divestment Period

14. If Promatech is not able to enter into a binding agreement for the sale of the Divested Business in accordance with paragraph 13 above, the First Divestment Period shall be extended [...]*. Promatech undertakes to give the Divestment Trustee (to be appointed pursuant to Section F of this Commitment) an irrevocable and exclusive mandate to sell the Divested Business [...]*.

Should the Divestment Trustee not be able to sell the Divested Business within the Extended Divestment Period in accordance with the above, Promatech shall be deemed to have complied with the commitments with the above-described offer to divest.

Closing

15. Promatech shall be deemed to have complied with this undertaking if: (i) within a period not exceeding [...]*, it has entered into a binding agreement for the sale of the Divested Business in accordance with paragraphs 13 and 14 above, provided that the closing of the sale takes place within [...]* after the conclusion of the sale and purchase agreement, or (ii) no suitable Purchaser is being found after the Extended Divestment Period in accordance with paragraph 14.

Reporting

16. Promatech shall report in full in writing in English to the Commission and the Trustee on developments in the negotiations with potential purchasers of the Divested Business [...]*. The Commission may accept that particular Annexes to

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the above referred reports are provided in other Community official languages, in particular in Italian.

17. Promatech shall inform the Commission and the Trustee on the preparation of the data room documentation, on the preparation of the information memorandum and on the due diligence procedure. Promatech shall submit to the Commission for prior approval a copy of the draft information memorandum prepared for the sale of the Divested Business to allow the Commission to verify the information memorandum's consistency with the terms of this Commitment.
18. Promatech shall also inform the Commission and the Trustee/s on the identification of possible purchaser and submit to the Commission a list of potential buyers, which have expressed a clear interest for the Divested Business.

Section E. The Purchaser

19. The Purchaser shall be independent of and unconnected to Promatech, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Business as a viable and active competitive force in competition with Promatech and other competitors. [...]*

In addition, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business. Promatech must be able to demonstrate to the Commission that the purchaser meets the requirements of this Commitment and that the Divested Business is sold in a manner consistent with this Commitment. In order to maintain the structural effect of this Commitment, Promatech will not subsequently directly or indirectly acquire influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Business is no longer necessary to render the proposed concentration compatible with the common market.

20. When Promatech has or is about to reach an agreement with the Purchaser referred to in the paragraph above, it will submit a fully documented and reasoned proposal enabling the Commission to verify that the above requirements with regard to the identity of the Purchaser are fulfilled and that the Divested Business is sold in a manner consistent with this Commitment Promatech shall send simultaneously to the Monitoring Trustee a copy of the sale and purchase agreement in order to enable it to perform its duties in accordance with paragraph 29 (iii).
21. The verification that the Divested Business is sold in a manner consistent with the commitment shall include an approval by the Commission of the Purchaser and of the final binding sale and purchase agreement.

Section F. Trustee

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I. Appointment Procedure

22. Promatech shall appoint a Trustee, such as an investment bank or consultant or auditor, subject to the prior approval of the Commission. The Trustee shall be independent of Promatech, possess the necessary qualifications to carry out its mandate and shall not be, or become, exposed to a conflict of interest. The Trustee shall be remunerated by Promatech in such a way as not to impede its independence and effectiveness in fulfilling its mandate. In particular, the remuneration package of the Divestment Trustee may not provide for a success premium that is linked to the final sale value of the Divested Business.

Proposal by Promatech

23. Promatech shall propose a list of proposed Trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Trustee fulfils these requirements. Promatech shall indicate to the Commission whether the proposed Trustees will act as Monitoring Trustee as well as Divestment Trustee or whether different trustees are proposed for the two functions. The mandate submitted for approval shall be drawn up taking due account of the Commission Standard Trustee Mandate and shall include all provisions necessary to enable the Trustee to fulfil its duties under this Commitment. Promatech shall also procure that the proposed Trustee shall submit to the Commission a detailed work plan in which it is described how the Trustee intends to carry out its duties under this Commitment. This proposal shall be made [...] unless otherwise specified in the Trustee mandate.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee or Trustees, and to approve the proposed mandate subject to modifications, that the Commission deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Promatech shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Promatech shall be free to choose the Trustee to be appointed from among the names approved.

New proposal by Promatech

25. If all the proposed Trustees are rejected, Promatech will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed Trustees as well as all information necessary for the Commission to verify that the proposed Trustees possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. If only one name is approved, Promatech shall appoint or cause the individual or institution

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concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one further name is approved, Promatech shall be free to choose the Trustee to be appointed from among the names approved.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee which Promatech will appoint or cause to be appointed in accordance with a Trustee mandate approved by the Commission.

Appointment by Promatech

27. As soon as the Commission has given approval to one or more proposed Trustees, Promatech shall appoint or cause the Trustee concerned to be appointed [...]*, in accordance with the mandate approved by the Commission.

II. Functions of the Trustee

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitment on behalf of the Commission and taking into account the legitimate interest of Promatech.
29. The Monitoring Trustee shall, following its appointment:
- (i) propose to the Commission a detailed work plan in which it is described how the Trustee intends to monitor the full respect of the proposed Commitment.
 - (ii) oversee the on-going management of the Divested Business with a view to ensuring its continued viability, marketability and competitiveness and monitor the compliance by Promatech with the conditions and obligations under this Commitment. Therefore the Monitoring Trustee shall:
 - (a) in consultation with Promatech, determine the best management structure to ensure that the obligation of non-disclosure of competitively sensitive information, as described in paragraphs 10 and 11, is observed by Promatech;
 - (b) monitor that Promatech maintains the viability, marketability and competitiveness of the Divested Business, in accordance with paragraph 9 of the Commitment, and the management and operation of the Divested Business in the normal course of business, in accordance with past practice, until divestiture;

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- (c) monitor, where applicable, that no competitively sensitive information concerning the Divested Business is disclosed to Promatech (except in so far as necessary to allow Promatech to carry out the divestiture or as otherwise required by law);
 - (d) propose to Promatech such measures as the Monitoring Trustee considers necessary to ensure compliance with the conditions and obligations under this Commitment, in particular the maintenance of the viability, marketability or competitiveness of the Divested Business and the non-disclosure of competitively sensitive information by Promatech;
 - (e) be entitled to impose the measures described in the sub-paragraph (d) (with the approval of the Commission) in the event that Promatech does not comply with the Monitoring Trustee's proposals within the timeframe set by the Monitoring Trustee;
- (iii) provide to the Commission, with a simultaneous non-confidential copy to Promatech, a written report [...] concerning the monitoring of the operation and management of the Divested Business in order to assess whether the business is held in a manner consistent with this Commitment. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission if the Monitoring Trustee concludes on reasonable grounds that Promatech is failing to comply with any of the conditions or obligations under this Commitment. Promatech shall receive a simultaneous non-confidential copy of any such additional reports;
 - (iv) assess the suitability of the proposed Purchaser and the viability of the Divested Business after the sale to the Purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under this Commitment;

Duties and obligations of the Divestment Trustee

- 30. [...] the Divestment Trustee shall sell [...] the Divested Business to a Purchaser independent of Promatech, provided that the Commission has approved both such a Purchaser and the final binding sale and purchase agreement in accordance with procedures laid down in paragraphs 19, 20 and 21. [...].
- 31. The Divestment Trustee shall report in full in writing to the Commission on developments in the negotiations with potential purchasers of the Divested Business [...]. A simultaneous non-confidential copy of these reports shall be provided to the Monitoring Trustee and Promatech.

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32. Promatech shall grant a comprehensive power of attorney to the Divestment Trustee for the Sale of the Divested Business, the closing of the Sale and all actions and declarations which the Trustee considers necessary or appropriate for achieving the Sale of the Divested Business or the closing of the Sale, including the appointment of advisors to assist with the Sale process. The power of attorney includes the authority to grant sub-powers of attorney to members of the Trustee's Team.
33. If necessary to accomplish the Sale, Promatech shall grant the Divestment Trustee further powers of attorney, duly executed, or cause the documents required for the effecting of the Sale and the closing of the Sale to be duly executed.

III. Duties and obligations of Promatech

34. Promatech shall provide the Monitoring Trustee with all such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require to monitor compliance with the conditions and obligations under this Commitment. Promatech upon request of the Monitoring Trustee, shall make available to him a reasonable use of office infrastructures on their premises. Promatech shall be available for regular meetings with the Monitoring Trustee, according to a timetable agreed between them, in order to provide the Monitoring Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Monitoring Trustee, Promatech shall provide the Monitoring Trustee with access to sites to the extent necessary for the fulfilment of its duties under this Commitment. Promatech shall provide all managerial and administrative support which may reasonably be requested by the Monitoring Trustee on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level.

The Trustee may appoint advisors (e.g. for corporate finance or legal advice), subject to Promatech's approval (this approval not to be unreasonably withheld) if the Trustee considers the advisors necessary or appropriate for the performance of its duties and obligations under the Mandate. In the case that Promatech refuses to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead. Only the Trustee shall be entitled to issue instructions to the advisors. The advisors shall not be liable to Promatech for and shall be held harmless by Promatech from any consequences of following the Trustee's instructions. In the Extended Divestment Period, the Divestment Trustee may use Promatech's advisors who served during the First Divestment Period if the Divestment Trustee considers this in the best interest of an expedient Sale.

IV. Replacement, discharge and reappointment of the Trustee

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35. The Commission may, after hearing the Trustee, order Promatech to remove the Trustee in the event that the Trustee has not acted in accordance with the provisions of this Commitment or for any other good cause.
36. The Trustee may also be removed by Promatech with the prior approval of the Commission and after the Commission has heard the Trustee in the event that the Trustee has not acted in accordance with the provisions of this Commitment or for any other good cause.
37. 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. Regarding the appointment of a new Trustee the same procedure applies as described in this section.
38. The Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee made after all the Commitment with which it has been entrusted have all 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 G. The review clause

39. The Commission may, upon request from Promatech showing good cause and after hearing the Trustee, and where relevant allow for:
 - (i) an extension of the Divestment Period, the closing period for the divestiture, or
 - (ii) the sale of the Divested Business, at the request of the proposed Purchaser showing good cause, without one or more assets, facilities, contracts or other rights or obligations that are part of the Divested Business.
 - (iii) waive or modify, in exceptional circumstances, one or more of the conditions and obligations in this Commitment,
 - (iv) [...]*
40. Promatech shall address any request for an extension of time periods [...]*, showing good cause. Only in exceptional circumstances shall Promatech be entitled to request an extension [...]*.

June 14,2002-06-14

By Promatech, S.p.A

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Palmiro Radici



Annex 1

[...]

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ANNEX 2

By hand and by fax: 00 32 2 296 4301

Mr. Francisco Enrique Gonzalez-Diaz
Head of Unit
European Commission – Merger Task Force
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M. 2698– PROMATECH/SULZER TEXTIL

COMMITMENT TO THE EUROPEAN COMMISSION

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EEC) No. 4064/89 as amended (the “Merger Regulation”), Promatech S.p.A. (hereafter “Promatech”) hereby provide the following Commitment (hereafter “the Commitment”) in order to enable the European Commission (hereafter “the Commission”) to declare the acquisition of sole control over Sulzer Textil compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2), of the Merger Regulation (hereafter “the Decision”).

This Commitment shall take effect upon the date of adoption of the Decision (hereafter “the Effective Date”).

Any term used in this text shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98²⁴.

²⁴ *Official Journal C 68, 02.03.2001, pages 3-11.*

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Divestment of Sulzer's rapier weaving machine Business Unit located in Schio (Italy)

Section A. Definitions

In this Commitment, the following expressions shall have the following meaning:

The Closing Date: the date of the transfer of the legal title of the Divested Business to the Purchaser.

The Commission Standard Trustee Mandate: the Commission's recommended model trustee mandate in the case of commitments accepted under Council Regulation (EEC) No 4064/89.

The Customer List: the list of customers of the Divested Business as defined in Section B.

The Divested Business: the rapier weaving machine Business Unit located in Schio (Italy) or the company owning such a Business Unit that Promatech undertakes to divest or to procure the divestment within the time period provided for in Section D.

The Divestment Trustee: the natural or legal person, independent from Promatech, which is approved by the Commission and appointed by Promatech, which has received from Promatech the irrevocable and exclusive mandate to sell the Divested Business to a Purchaser [...] ²⁵.

The Extended Divestment Period: the period of [...] * from the date of expiration of the First Divestment Period within which the Divestment Trustee shall have an irrevocable and exclusive mandate from Promatech to sell the Divested Business [...] *.

The First Divestment Period: the period of [...] * within which Promatech can propose a Purchaser for the Divested Business. [...] *.

The Hold Separate Manager: the person employed by the Divested Business, who will be in charge of running the day-to-day business under the authority of the Monitoring Trustee.

The Intellectual property rights: intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, copyrights, technical information, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, parts and devices, safety procedures for the handling of materials and substances, quality assurance and control

²⁵ Deleted text contains confidential information covered by Business Secret.

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procedures, design tools and simulation capability, manuals and technical information, and all research data concerning historic and current R&D efforts relating to the Divested Business, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

The Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divested Business, which is listed by the Monitoring Trustee in its first report and is subject to the prior approval of the Commission.

The Monitoring Trustee: the natural or legal person, independent from Promatech, which is approved by the Commission and appointed by Promatech, which has the duty to monitor and to ensure that Promatech complies with the conditions and obligations under this Commitment.

The Personnel: all personnel retained by the Divested Business, including seconded and share personnel.

The Purchaser: the entity approved by the Commission as acquirer of the Divested Business in accordance with the criteria set out in Section E.

The Trustee(s): the Monitoring Trustee and/or the Divestment Trustee.

Promatech: the company incorporated under the laws of Italy and includes all of its successors and assigns, its subsidiaries, and the directors, officers, managers, agents and employees acting for or on behalf of Promatech.

Section B. The Divested Business

Commitment to divest

6. Promatech undertakes to divest Sulzer's rapier weaving machine Business Unit located in Schio (Italy), or, at Promatech's sole discretion, the company owning such a Business Unit, including the sale of all projects, clients *portfolios*, technology and machinery related to the production and trading of rapier weaving machines, as well as the plant itself, to the Purchaser according to the procedure described in Section D.

All items of the Schio plant which could be used for the production of air-jet weaving machines as well as for the manufacturing of gas turbine nozzles and all other items which will be recognized by the Trustee as not being necessary for the operation of the negative rapier production line, will not be part of the divestiture. Prior to the divestiture, they will be removed from the Schio Business Unit.

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Present structure and functions of the Divested Business

7. The present legal and functional structure of the Divested Business as operated to date (including the organisational chart and the indication of the key personnel) are described in the schedules attached to this Commitment as (**Annex 1**). The Parties commit that these schedules identify all the relevant functions of the Divested Business, [...]*

Definition of the Divested Business

8. The Divested Business refers to the :

design, supply of raw materials and components, warehousing and logistic, manufacture, assembling, sale, testing, after sale service and spare parts service for negative rapier weaving machines produced in the Schio plant, as well as the plant itself;

also including:

- (a) all tangible assets, which contribute to the current operation of the Divested Business or may be necessary to ensure the viability and competitiveness of the Divested Business. The tangible assets include, but are not limited to, the assets referred to in (**Annex 2**);
- (b) all intangible assets, including, but not limited to, intellectual property rights, which contribute to the current operation of the Divested Business or may be necessary to ensure the viability and competitiveness of the Divested Business. The intangible assets include, but are not limited to, those assets described in (**Annex 3**).

Transfer of personnel

9. The Divested Business shall be divested as a going concern. Promatech commits to transfer to the Purchaser all the Personnel, with the exception of such employees whose services have not been retained by the Purchaser.
10. This transfer will be achieved in the following manner:
 - (a) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, identify a framework for a complete organisation that includes the number of required resources by skill set;
 - (b) Ensuring the compliance with all applicable labour and employment laws, in particular (where relevant) with the Council Directives on collective

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redundancies²⁶, on safeguarding employees rights in the event of transfers of undertakings²⁷ and on informing and consulting employees²⁸ as well as with national provisions implementing these Directives;

(c) The Hold Separate Manager will, in co-operation with the Monitoring Trustee, establish objective criteria to complete the matrix of functions and specific skills required for the business;

(d) [...]*;

(e) Promatech and/or the Hold Separate Manager shall provide to the Purchaser information relating to the Personnel to enable the Purchaser to make offers of employment taking into account all applicable labour and employment laws;

(f) Promatech shall waive all contractual rights concerning the Personnel of the Divested Business in order to facilitate the immediate transfer of the Personnel;

(g) [...]*.

Customer list

11. The Customer List as referred to in this Commitment shall comprise all the customers in the negative rapier weaving machine market with whom:

(a) the Divested Business did business during the year prior to the closing date of the divestiture;

(b) the Divested Business did business during the year of the divestiture up to the Closing Date.

Non-divested businesses

12. The Divested Business shall not include:

(i) the production of the Schio plant of gas turbine nozzles;

²⁶ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

²⁷ Council Directive 77/187/EC of 14 February 1977 1998 on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of a business as amended by Council Directive 98/50/EC.

²⁸ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, as amended by Directive 97/74/EC.

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(ii) the production of air-jet weaving machines,

provided that these items referred to in 7(i) and (ii) are recognised by the Trustee as not being necessary for the operation of the negative rapier production line.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

13. Promatech undertakes to preserve from the Effective Date the full economic viability, marketability and competitiveness of the Divested Business until the Closing Date, in accordance with best commercial practice, as shall be monitored by the Monitoring Trustee in accordance with paragraphs 29 and 30 (ii). In this regard Promatech undertakes to reduce to the minimum any possible risk of loss of competitive potential of the Divested Business resulting from the uncertainties inherent to the transfer of a business.

Pending divestiture, Promatech shall enable the Hold Separate Manager to manage the Divested Business in the best interest of the business. In particular, Promatech undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the Divested Business until the Closing Date. Promatech also undertakes not to carry out upon its own authority any act which may be likely to alter the nature and scope of activity of the Divested Business, or the industrial or commercial strategy or the investment policy of the Divested Business.

Sufficient resources shall be made available for the business to develop until the divestiture, it being understood, however, that this obligation does not include extraordinary injections of funds by Promatech that would go beyond its commitment to ensure the viability and competitiveness of the Divested Business.

Hold-separate obligations Promatech

14. Promatech commits to keep from the Effective Date the Divested Business separate from their other retained businesses and they will ensure that employees of the Divested Business, with the exception of such employees whose services have not been retained by the Purchaser, including the Hold Separate Manager – have no involvement in any other retained business and vice versa and they will also ensure that the employees of the Divested Business do not report to any individual outside of the Divested Business.
15. [...]*. Moreover Promatech shall assist the Monitoring Trustee in ensuring that the Divested Business is made and managed as a distinct and saleable entity separate from the retained businesses of Promatech. The Monitoring Trustee shall in particular ensure that the Divested Business shall have its own management, which shall be under the supervision and the responsibility of the Hold Separate Manager. The Divested Business shall be managed on an independent basis in the best interest of the

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business and ensuring its continued viability, marketability and independence from the retained businesses of Promatech.

[...]*

Ring-fencing

16. Promatech shall implement all necessary measures to ensure that it shall not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divested Business, with the exception of information reasonably necessary for the divestiture of the Divested Business or otherwise required by law. The Monitoring Trustee, after having heard Promatech and the Hold Separate Manager, shall decide on the exercise of this exception

Non-solicitation clause

17. Promatech undertakes not to hire or solicit the Key Personnel transferred with the Divested Business for a period of two years after the Closing Date. Promatech shall ensure that any of the personnel retained who have been employed by or seconded to the Divested Business [...]*, shall not be employed or assigned to any Promatech business unit that directly or indirectly competes with the Divested Business [...]* after the Closing Date, with the exception of such employees whose services have not been retained by the Purchaser.

Transitional Arrangements

13. Promatech commits, unless otherwise agreed with the Purchaser, to procure that, with respect to all contracts of the Divested Business with the Parties existing at the Effective Date and for a transitional period of (up to two years after the Closing Date,) the Divested Business shall be entitled to maintain all services and contract nowadays in force on terms and conditions that are equivalent to the terms and conditions that are made available at present to the Divested Business.

Section D. The Divestment Procedure

The First Divestment Period

14. Promatech undertakes to find a Purchaser for the Divested Business and to enter into a final binding sale and purchase agreement with such a Purchaser for the sale of the Divested Business within a period [...]*.

[...]*

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The Extended Divestment Period

15. If Promatech is not able to enter into a binding agreement for the sale of the Divested Business in accordance with paragraph 14 above, the First Divestment Period shall be extended [...]*. Promatech undertakes to give the Divestment Trustee (to be appointed pursuant to Section F of this Commitment) an irrevocable and exclusive mandate to sell the Divested Business [...]*.

Closing

16. Promatech shall be deemed to have complied with this undertaking if, [...]*, it has entered into a binding agreement for the sale of the divested Business in accordance with paragraphs 20, 21 and 22, below, provided that the closing of the sale takes place [...]* after the conclusion of the sale and purchase agreement, if, of course, the Purchaser has received all the required Antitrust clearances.

Reporting

17. Promatech shall report in full in writing in English to the Commission and the Trustee on developments in the negotiations with potential purchasers of the Divested Business [...]*. The Commission may accept that particular Annexes to the above referred reports are provided in other Community official languages, in particular in Italian.
18. Promatech shall inform the Commission and the Trustee on the preparation of the data room documentation, on the preparation of the information memorandum and on the due diligence procedure. Promatech shall submit to the Commission for prior approval a copy of the draft information memorandum prepared for the sale of the Divested Business to allow the Commission to verify the information memorandum's consistency with the terms of this Commitment.
19. Promatech shall also inform the Commission and the Trustee/s on the identification of possible purchaser and submit to the Commission a list of potential buyers, which have expressed a clear interest for the Divested Business.

Section E. The Purchaser

20. The Purchaser shall be independent of and unconnected to Promatech, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Business as a viable and active competitive force in competition with Promatech and other competitors. [...]*. In addition, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Divested Business. Promatech must be able to demonstrate to the

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Commission that the purchaser meets the requirements of this Commitment and that the Divested Business is sold in a manner consistent with this Commitment. In order to maintain the structural effect of this Commitment, Promatech will not subsequently directly or indirectly acquire influence over the whole or part of the Divested Business during a period of 10 years, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Business is no longer necessary to render the proposed concentration compatible with the common market.

21. When Promatech has or is about to reach an agreement with the Purchaser referred to in the paragraph above, it will submit a fully documented and reasoned proposal enabling the Commission to verify that the above requirements with regard to the identity of the Purchaser are fulfilled and that the Divested Business is sold in a manner consistent with this Commitment. Promatech shall send simultaneously to the Monitoring Trustee a copy of the sale and purchase agreement in order to enable it to perform its duties in accordance with paragraph 30 (iii).
22. The verification that the Divested Business is sold in a manner consistent with the Commitment shall include an approval by the Commission of the Purchaser and of the final binding sale and purchase agreement.

Section F. Trustee

I. Appointment Procedure

23. Promatech shall appoint a Trustee, such as an investment bank or consultant or auditor, subject to the prior approval of the Commission. The Trustee shall be independent of Promatech, possess the necessary qualifications to carry out its mandate and shall not be, or become, exposed to a conflict of interest. The Trustee shall be remunerated by Promatech in such a way as not to impede its independence and effectiveness in fulfilling its mandate. In particular, the remuneration package of the Divestment Trustee may not provide for a success premium that is linked to the final sale value of the Divested Business.

Proposal by Promatech

24. Promatech shall propose a list of proposed Trustees and the terms of the mandate for approval to the Commission with adequate information for the Commission to verify that the Trustee fulfils these requirements. Promatech shall indicate to the Commission whether the proposed Trustees will act as Monitoring Trustee as well as Divestment Trustee or whether different trustees are proposed for the two functions. The mandate submitted for approval shall be drawn up taking due account of the Commission Standard Trustee Mandate and shall include all provisions necessary to enable the Trustee to fulfil its duties under this Commitment. Promatech shall also procure that the proposed Trustee shall submit to the Commission a detailed work plan in which it is described how the Trustee

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intends to carry out its duties under this Commitment. This proposal shall be made [...] unless otherwise specified in the Trustee mandate.

Approval or rejection by the Commission

25. The Commission shall have the discretion to approve or reject the proposed Trustee or Trustees, and to approve the proposed mandate subject to modifications, that the Commission deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Promatech shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Promatech shall be free to choose the Trustee to be appointed from among the names approved.

New proposal by Promatech

26. If all the proposed Trustees are rejected, Promatech will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed Trustees as well as all information necessary for the Commission to verify that the proposed Trustees possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. If only one name is approved, Promatech shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one further name is approved, Promatech shall be free to choose the Trustee to be appointed from among the names approved.

Trustee nominated by the Commission

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

Appointment by Promatech

28. As soon as the Commission has given approval to one or more proposed Trustees, Promatech shall appoint or cause the Trustee concerned to be appointed [...]*, in accordance with the mandate approved by the Commission.

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II. Functions of the Trustee

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitment on behalf of the Commission and taking into account the legitimate interest of Promatech.
30. The Monitoring Trustee shall, following its appointment:
- (v) propose to the Commission a detailed work plan in which it is described how the Trustee intends to monitor the full respect of the proposed Commitment.
 - (vi) oversee the on-going management of the Divested Business with a view to ensuring its continued viability, marketability and competitiveness and monitor the compliance by Promatech with the conditions and obligations under this Commitment. Therefore the Monitoring Trustee shall:
 - (a) in consultation with Promatech, determine the best management structure to ensure that the obligation of non-disclosure of competitively sensitive information, as described in paragraphs, and 10, and is observed by Promatech;
 - (b) monitor that Promatech maintains the viability, marketability and competitiveness of the Divested Business, in accordance with paragraph 0 of the Commitment, and the management and operation of the Divested Business in the normal course of business, in accordance with past practice, until divestiture;
 - (c) monitor, where applicable, that no competitively sensitive information concerning the Divested Business is disclosed to Promatech (except in so far as necessary to allow Promatech to carry out the divestiture or as otherwise required by law);
 - (d) propose to Promatech such measures as the Monitoring Trustee considers necessary to ensure compliance with the conditions and obligations under this Commitment, in particular the maintenance of the viability, marketability or competitiveness of the Divested Business and the non-disclosure of competitively sensitive information by Promatech;
 - (e) be entitled to impose the measures described in the sub-paragraph (d) (with the approval of the Commission) in the event that Promatech does not comply with the Monitoring Trustee's proposals within the timeframe set by the Monitoring Trustee;

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- (vii) provide to the Commission, with a simultaneous non-confidential copy to Promatech, a written report [...] concerning the monitoring of the operation and management of the Divested Business in order to assess whether the business is held in a manner consistent with this Commitment. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission if the Monitoring Trustee concludes on reasonable grounds that Promatech is failing to comply with any of the conditions or obligations under this Commitment. Promatech shall receive a simultaneous non-confidential copy of any such additional reports;
- (viii) assess the suitability of the proposed Purchaser and the viability of the Divested Business after the sale to the Purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under this Commitment.

Duties and obligations of the Divestment Trustee

- 31. [...]*, the Divestment Trustee shall sell [...]*, the Divested Business to a Purchaser independent of Promatech, provided that the Commission has approved both such a Purchaser and the final binding sale and purchase agreement in accordance with procedures laid down in paragraphs 20, 21 and 22. [...]*
- 32. The Divestment Trustee shall report in full in writing to the Commission on developments in the negotiations with potential purchasers of the Divested Business [...]*. A simultaneous non-confidential copy of these reports shall be provided to the Monitoring Trustee and Promatech.
- 33. Promatech shall grant a comprehensive power of attorney to the Divestment Trustee for the Sale of the Divested Business, the closing of the Sale and all actions and declarations which the Trustee considers necessary or appropriate for achieving the Sale of the Divested Business or the closing of the Sale, including the appointment of advisors to assist with the Sale process. The power of attorney includes the authority to grant sub-powers of attorney to members of the Trustee's Team.
- 34. If necessary to accomplish the Sale, Promatech shall grant the Divestment Trustee further powers of attorney, duly executed, or cause the documents required for the effecting of the Sale and the closing of the Sale to be duly executed.

III. Duties and obligations of Promatech

- 35. Promatech shall provide the Monitoring Trustee with all such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require to monitor compliance with the conditions and obligations under this Commitment. Promatech, upon request of the Monitoring Trustee, shall

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make available a reasonable use of office infrastructures on its premises. Promatech shall be available for regular meetings with the Monitoring Trustee, according to a timetable agreed between them, in order to provide the Monitoring Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Monitoring Trustee, Promatech shall provide the Monitoring Trustee with access to sites to the extent necessary for the fulfilment of its duties under this Commitment. Promatech shall provide all managerial and administrative support which may reasonably be requested by the Monitoring Trustee on behalf of the management of the Divested Business. This shall include all administrative support functions relating to the Divested Business which are currently carried out at headquarters level.

The Trustee may appoint advisors (e.g. for corporate finance or legal advice), subject to Promatech's approval (this approval not to be unreasonably withheld) if the Trustee considers the advisors necessary or appropriate for the performance of its duties and obligations under the Mandate. In the case that Promatech refuses to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead. Only the Trustee shall be entitled to issue instructions to the advisors. The advisors shall not be liable to Promatech for and shall be held harmless by Promatech from any consequences of following the Trustee's instructions. In the Extended Divestment Period, the Divestment Trustee may use Promatech's advisors who served during the First Divestment Period if the Divestment Trustee considers this in the best interest of an expedient Sale.

IV. Replacement, discharge and reappointment of the Trustee

36. The Commission may, after hearing the Trustee, order Promatech to remove the Trustee in the event that the Trustee has not acted in accordance with the provisions of this Commitment or for any other good cause.
37. The Trustee may also be removed by Promatech with the prior approval of the Commission and after the Commission has heard the Trustee in the event that the Trustee has not acted in accordance with the provisions of this Commitment or for any other good cause.
38. 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. Regarding the appointment of a new Trustee the same procedure applies as described in this section.
39. The Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee made after the Commitment with which it has been entrusted have all 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.

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Section G. The review clause

40. The Commission may, upon request from Promatech showing good cause and after hearing the Trustee, and where relevant allow for:
- (v) an extension of the Divestment Period, or
 - (vi) the sale of the Divested Business, at the request of the proposed Purchaser showing good cause, without one or more assets, facilities, contracts or other rights or obligations that are part of the Divested Business.
 - (vii) waive or modify, in exceptional circumstances, one or more of the conditions and obligations in this Commitment,
 - (viii) [...]*
41. Promatech shall address any request for an extension of time periods [...]*, showing good cause. Only in exceptional circumstances shall Promatech be entitled to request an extension [...]*

June 14, 2002-06-14

By Promatech, S.p.A

Palmiro Radici

Annex 1

[...]*

Annex 2

[...]*

Annex 3

[...]*