EN

Case No COMP/M.4187 - METSO / AKER KVAERNER

Only the English text is authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 8 (2)
Date: 12/12/2006

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12 XII 2006

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PUBLIC VERSION

COMMISSION DECISION

of 12 XII 2006

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

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(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 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 11 August 2006 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case[3],

WHEREAS:

I. INTRODUCTION

(1) On 23 June 2006 the Commission received a notification of a proposed concentration by which Metso Corporation Oy ("Metso", Finland) acquires sole control within the meaning of Article 3 (1) (b) of Council Regulation No 139/2004 on the control of concentrations between undertakings ("the EC Merger Regulation") of parts of the

1 OJ L 24, 29.1.2004, p. 1

2 OJ C ...,...200. , p....

3 OJ C ...,...200. , p....

undertaking Aker Kvaerner ASA ("Aker Kvaerner", Norway), namely Aker Kvaerner's pulping and power business ("Kvaerner"), by way of purchase of shares and assets.

(2) After its initial examination of the notification, the Commission concluded that the operation falls within the scope of the Merger Regulation and, even taking into account commitments entered into by Metso on 24 July 2006 and modified on 27 July 2006, raised serious doubts as to its compatibility with the common market and with the EEA Agreement. It therefore decided on 11 August 2006 to initiate proceedings pursuant to Article 6(1)(c) of the EC Merger Regulation.

(3) On 6 October 2006, Metso offered new commitments with a view to rendering the concentration compatible with the common market. These commitments were subsequently modified on 8 November 2006.

(4) The Commission has now concluded that the commitments entered into by Metso remove the serious doubts as to the compatibility of the notified operation with the common market. The concentration can therefore be declared compatible with the common market and the functioning of the EEA Agreement pursuant to Articles 8(2) and 10(2) of the EC Merger Regulation and Article 57 of the EEA Agreement.

II. THE PARTIES AND THE OPERATION

(5) **Metso** is a Finnish public company which is listed on the Helsinki and New York Stock Exchanges. Metso is active in process engineering, development and manufacture of machinery, operating in four business areas:

- Metso Paper, which designs, develops and delivers machinery and equipment for pulp and paper mills;
- Metso Automation, which designs, develops and supplies both process automation and field solutions for automation and information management in selected process industries (including pulp mills);
- Metso Minerals (equipment and solutions for the rock and mineral-processing industries) and
- Metso Ventures (equipment for the panelboard industry, castings for various engineering industry needs, materials technology and specialty cars).

(6) **Kvaerner** designs and delivers machinery and equipment for chemical pulp mills. It is also a supplier of other specialized process technology ancillary to chemical recovery and power generation, including the production of power boilers used in pulp mills.

(7) The proposed transaction consists in the acquisition of 100% of the shares in Kvaerner Pulping AB (Sweden), Aker Kvaerner Power Oy (Finland) and all assets related to Aker Kvaerner's pulping and power business, currently held by various subsidiaries of Aker Kvearner.

III. CONCENTRATION

(8) The transaction will confer sole control of Kvaerner to Metso. It therefore constitutes a concentration within the meaning of Article 3 of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

(9) The concentration does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation, because neither the turnover thresholds of Art 1(2)(a) nor of Art. 1(3)(c) are met. However, the Commission is competent to review the notified operation pursuant to Article 4 (5) of the EC Merger Regulation. On 4 April 2006, the Commission received a referral request by means of a reasoned submission pursuant to Article 4 (5) of the EC Merger Regulation. No EC Member State or EEA country competent to examine the concentration under its national competition law (namely Finland, Sweden, Poland, Germany and Norway) expressed its disagreement as regards the requested referral. Consequently, the transaction is deemed to have a Community dimension pursuant to Article 4 (5) of the EC Merger Regulation.

V. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

1. Overview: Chemical pulping

Pulping and papermaking

(10) Both Metso and Kvaerner develop, manufacture and supply machinery and equipment for chemical pulp mills.

(11) Pulping is the process of converting wood or nonwood material into pulp fibres used for the production of paper or board. Pulp is produced either in *chemical* pulp mills, in *mechanical* pulp mills or from *recycled* materials (waste paper). Whilst Metso is also a leading supplier of equipment for mechanical pulping and active in pulping from recycled materials as well as papermaking, Kvaerner is not active in these fields.

(12) A chemical pulp mill is a manufacturing facility that converts wood into pulp. It uses a chemical process that retrieves the cellulose fibres from the wood by dissolving the lignin that binds the cellulose fibres together, without destroying the fibre structure. The pulp, in the form of fibre board (pulp bales), can then be shipped to a paper mill for further processing[4].

Process stages in chemical pulping

(13) The following main process stages can be distinguished in a chemical pulp mill: The process begins with the **"wood-handling"** stage. At this stage, pulp wood is debarked at the "wood yard" and chipped into little pieces (wood chips). After being homogenised through screening, the chips make their way to the **"cooking"** stage.

4 Pulp mills may be integrated with board or paper mills. In integrated mills, the pulp is directly further processed into board or paper. However the paper/board production is often added only at a later stage after the construction of the pulp mill. Consequently, even in integrated mills, customers often bought paper/board equipment from other suppliers than pulping equipment.

Here, the chips are loaded into a *digester*[5], one or more pressurised vessels, where they are heated with hot steam from the plant's power boiler and mixed with "white liquor". White liquor is a chemical water solution, most commonly consisting of water, sodium sulphide and sodium hydroxide. After several hours in the digester, the pressure, the heat and the chemicals have the effect of dissolving the lignin. The fluid that contains lignin and other dissolved material is separated, dried and used as fuel ("black liquor"), whereas the liquid containing the wood fibres ("brown liquor") is transported to the next stage, the **"screening"** stage, where impurities and knots are removed from the liquid[6].

(14) The screening stage is followed by the **"brown stock washing"** stage, in which the wood fibres are washed clean of the chemical residues. The fibres then typically[7] enter the **"oxygen delignification"** stage, where they are brought into high-temperature pressure vessels ("reactors"), in which oxygen is added in order to further separate the cellulose from the remaining lignin. Washers remove the dissolved lignin and sodium hydroxide from the fibres. If bleached pulp shall be produced, a further process stage, the **"bleaching"** stage, becomes necessary. In this bleaching stage the fibres, which are still brown, are bleached with different bleaching agents in order to change the colour of the pulp from brown to white[8]. The "core part" of the chemical pulping process (cooking, screening, washing, oxygen delignification and bleaching) is also referred to as the "**fibreline**".

(15) The pulp is then cleaned once more, before being channelled first to a moving screen (the **"wet end"**) and through heated rolls (the **"dry end"**) in order to remove the remaining water from the pulp and, in integrated mills, to produce paper or board. Finally, the pulp or the paper is cut, stacked and bailed in order to facilitate its shipment to customers.

(16) A pulp mill also consists of a "secondary" process, the recovery line, which is separate from the "fibreline" and where the chemical residues are recovered and recycled again in different process stages (process islands that can be distinguished are "evaporation", "recovery", "recaustisizing" and the "lime kiln"[9]). It should be

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5 See as to the further distinction between the batch cooking and the continuous cooking process paragraph (37).

6 This stage is also referred to as the de-knotting or knot-screening stage. It should be noted that screens/cleaners are also used in other stages of the production.

7 Instead of adding a "delignification" stage, it is technically also possible to extend the cooking stage. However, most modern mills have added a "delignification" stage, since it improves the environmental performance of the mill and the strength of the fibre might be negatively affected by lengthy cooking.

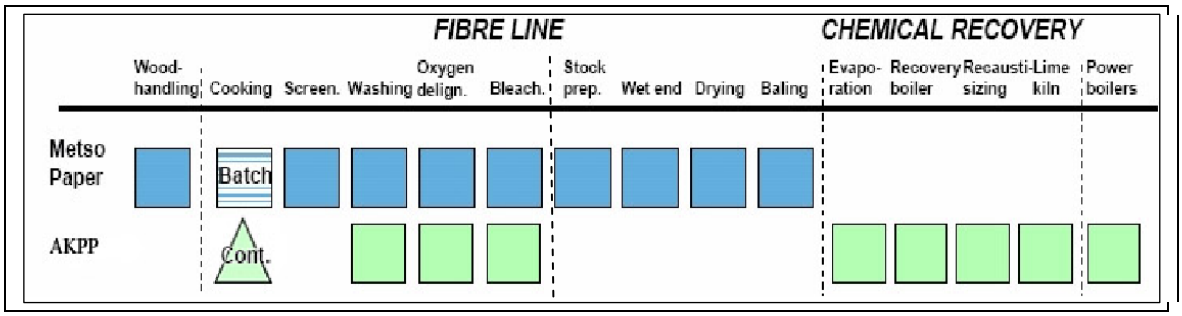
8 Some applications, such as kraft paper or board, do not require bleaching. Unbleached pulp accounts for approximately 1/3 of the total chemical pulp production.

9 The recovery island is used to recycle most of the chemicals used in the pulping process. The spent chemical liquor from the cooking stage and the pulp wash water are combined and concentrated in one or more *evaporators*. The concentrated chemical liquor is then fired in a *recovery furnace*. Combustion of the organics dissolved in this chemical liquor provides heat for generating steam and for converting sodium sulphate to sodium sulphide. Inorganic chemicals present in the black liquor collect as smelt at the bottom of the furnace. The smelt is dissolved in water to form green liquor, which is transferred to a *causticising tank* where calcium oxide (quicklime) is added to convert the solution back to white liquor for return to the digester system. The lime mud residue is regenerated to quicklime in *lime kiln* equipment.

noted that energy is regularly generated in pulp mills from burning the dried black liquor[10]. Indeed, whereas older mills needed more energy for the pulping processes than the abovementioned "recovery" process could generate, modern mills can even produce more energy than they use and sell the surplus to third parties. For the production of power and heat (the latter in particular for the cooking process), pulp mills use a so-called **power boiler**.

(17) Metso offers equipment for wood-handling and the entire fibreline but not for the recovery process, while Kvaerner only offers parts of the fibreline and products for all stages of the recovery line, but has no products for wood-handling and drying/baling. Kvaerner also offers power boilers, as shown in the table below:

Table 1: Pulp mill equipment supplied by the merging parties[11]



2. Chemical pulping equipment vs. other forms of pulp/paper mill equipment

(18) The Commission distinguishes equipment for *chemical* pulping from equipment used for *mechanical* pulping and for *recycled* pulping[12]. All three pulp processes involve to a large extent different equipment and are not substitutable from a customer's point of view. From a supplier's perspective, the production and integration know-how is also considerably different. Even those customers active in several fields of pulping confirmed in the market investigation that they purchased mechanical or recycled pulping equipment separately from equipment for chemical pulping. These differences between the three pulping processes are also reflected in a different market structure: Despite being a leading player in chemical pulping, Kvaerner is not active in mechanical or recycled pulping. Conversely, Kadant Black Clawson, the second largest supplier of recycled pulping equipment, has only negligible sales in the field of mechanical pulping.

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10 See paragraph (13).

11 It should be noted that for cooking equipment two different symbols are used because both parties offer a different type of cooking equipment (Metso: so-called batch digesters; Kvaerner: so-called continuous digesters); see paragraph (37).

12 This is in line with the Commission's previous decision practice; see e.g. case COMP/M.1930 - Ahlström/Andritz.

(19) For similar reasons, *pulping* and *paper mill equipment* do not belong to the same market, either. As the technology and production/integration know-how necessary for pulp mill equipment, in particular in the fibreline and in the recovery part, are manifestly different from the technology and production/integration know-how necessary for a paper mill, customers do not consider these products as substitutable. While chemical pulping technology focuses on chemical processes such as cooking, washing and recovery, paper mill products have to provide solutions for very different processes, such as transforming pulp into paper, drying solution, solutions for multi-layer papers etc. Of the three leading paper mill equipment producers, only Metso is also a major player in pulp mill equipment, but not the two main competitors, Voith[13] and Mitsubishi.

3. Separate product markets for process islands have to be distinguished

(20) The notifying party submits that equipment for different stages in a pulp mill should be defined as separate markets in line with earlier Commission practice. Metso suggests that mainly three product markets are affected by the transaction in which the parties' activities overlap, namely the product markets for the supply of equipment for **brown stock washing**, for **oxygen delignification** and for **bleaching**. As regards the cooking stage, Metso submits that there are separate product markets for **continuous cooking equipment** and **batch cooking equipment**. Metso also submits information on affected product markets for some auxiliary equipment, namely for chemical mixers and certain pumps[14] used in pulp mills.

(21) The Commission has in previous cases defined separate markets for equipment for *process islands* (e.g. brown stock washing, delignification, bleaching). As regards cooking equipment, the investigation in the Ahlström/Kvaerner case left open whether the two digester types used in pulp mills, batch and continuous digesters, belong to the same product market.

Process islands vs market for entire mills

(22) The Commission's market investigation in the present case indicates that the definition of product markets for the different stages of the pulp mill process is still the most appropriate product market definition for pulp mill equipment both in the field of equipment for new mills and in the field of equipment for rebuild projects, although new mill customers most often buy several process islands together from the same supplier. In particular, no separate market for "entire pulp mills" (turnkey projects) can at this stage of market developments be delineated. There are indeed some customers for new mill equipment who clearly prefer buying an entire pulp mill from one single supplier and there are already a few examples of pulp mills where a complete new mill was delivered by only one supplier, namely the "Santa Fe II" mill in Chile (2004) and Metsa Botnia's "Orion" mill in Uruguay (2005), both delivered by Andritz. However, buying a full mill from the wood handling to the recovery stage from one single supplier is still the exception today. In the majority of cases

13 Voith is only to a limited extent present in the markets for pulp mill equipment (drying equipment), but is not able to offer solutions for the "core parts" of the pulp mill such as cooking, screening, washing, delignification, bleaching ("fibre line") or products for the recovery line.

14 So called "Medium Consistency" or "MC" pumps.

customers buy different process stages from different specialised suppliers instead of a full mill. Even for new mills, most customers regularly do *not* buy an entire new mill or give the contract to prime-contractors[15], which in turn employ sub-contractors for different parts. It appears that, most projects in the pulp mill industry are still awarded for distinct process islands, even though in recent years new mill projects customers have often ordered several process islands, but not the whole mill, from one single supplier[16].

(23) Andritz is currently the only supplier capable of delivering a complete new mill, while Metso and Kvaerner, both companies with integration know how and experience with large new mill projects, are not able to supply a full mill. Some customers indicated that for them the monopoly in this segment is indeed the main reason not to buy a full mill but separate process islands. Many customers have indicated to the Commission that they expect more customers to buy complete new pulp mills after the merger between Metso and Kvaerner.

(24) Nevertheless, the market investigation also revealed that many of the customers for new mills will still prefer buying separate process islands from more than one supplier in the future. Customers want to choose the best solution for each individual process stage, which they cannot ensure when buying from one single supplier.

(25) At this stage of market developments it does not seem to be appropriate to define a market for complete new pulp mills. It can, however, not be contested that within the markets for new mill equipment, customers follow two different purchasing patterns: certain customers buy single islands or packages from several suppliers while others choose only one supplier for the entire mill. In its assessment the Commission therefore takes into account the different effects that the present transaction may have on certain customers. The Commission has also considered whether separate markets for different packages of process islands should be defined (e.g., a package consisting of process islands for "washing, delignification and bleaching", or for "cooking and washing" etc.). However, the Commission's Tender Analysis has revealed that the composition of the packages differs significantly and any process island can be combined with any other island. The question whether separate markets for some "typical" packages (e.g. "washing, delignification, bleaching") should be defined, can be left open for the purpose of this decision since the competitive assessment would not change even if such separate markets were defined.

Process island markets vs markets for (main) machines used

(26) It was also considered if a definition of the relevant market should be based on specific types of equipment (e.g. a "wash press" or a "washer" market) rather than on the entire process stage in which the equipment is used, together with auxiliary equipment. The Commission, however, found that the differences between the respective process islands require the definition of different markets for each process island. While similar "auxiliary" parts (such as tanks and pipes) may be used in the whole mill, the main equipment in each individual stage is normally developed

15 See e.g. the purchase pattern for submarines (see e.g. case M.4160 - ThysenKrupp/EADS/Atlas) or for nuclear power plants (see case M.4187, Toshiba/Westinghouse, pending case).

16 See above paragraph (32).

individually for this stage and adapted to it (e.g. digesters for the "cooking" stage, bleaching equipment for the "bleaching" stage etc.). Although in many cases one or several machines (e.g. Metso's SuperBatch digester, Kvaerner's "CompactPress" or its MC mixers) constitute key elements of the respective process island, the specific value for the customer lies often in the assembly and the adaptation of the main machine(s) to the rest of the equipment as well as the specific requirements of each process island. This applies even where similar machines (e.g. wash presses) can be found in different process islands[17], since these machines often need to be adapted and modified for the respective stage. By way of example, as regards wash presses for the bleaching stage certain parts need to be made of titanium or high quality stainless steel, which requires a specific know how related to bleaching equipment.

(27) Customers increasingly require their suppliers to provide *complete solutions* for an entire process island instead of just procuring a single machine and assembling the parts themselves. Indeed, the approach to purchasing pulp mill equipment has evolved over time: In the past, many pulp mills used to have their own engineers who were involved in the planning, integration and installation process. These engineers investigated how to upgrade the line, tendered the specific equipment they needed and often provided for the assembly of the machines and the auxiliary parts themselves (sometimes making use of contracted engineering firms). Today, the majority of customers seem to require more integrated solutions from their suppliers, both for new mills and for upgrade/rebuild projects. Customers often call for tenders for a process stage of a mill by indicating the requested *result* (e.g. indicating specific performance specifications such as quality parameters, energy consumption, waste water, effluent emission levels etc), leaving the entire planning, engineering, assembly and integration to the suppliers. They ask increasingly for "turnkey-" or "EPS[18]" or "EPC[19]" solutions from suppliers for the specific process island instead of ordering an isolated machine only. This has, according to customers, the advantage that the supplier of the respective process stage can be made responsible for ensuring the functioning of that stage (and for losses incurred because of its malfunctioning), without having to prove that a specific machine has caused the malfunction. In response to these demands, in particular the described needs for adaptation, different suppliers have developed different expertise for the respective process islands, and most suppliers are specialised in one or several process stages[20].

(28) For the above mentioned reasons, the Commission will analyse the competitive impact of the transaction on the basis of separate markets for process islands and not on the basis of product markets for isolated machines[21].

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17 E.g., Metso's and Kvaerner Pulping's wash presses are used in different stages, namely in the washing, delignification and bleaching stage.

18 EPS = Engineering, procurement, supervision.

19 EPC = Engineering, procurement, construction.

20 Only one supplier, Andritz, is able to offer the full range of equipment for all process stages.

21 Consequently, the Commission does not define separate product markets for "medium consistency" or "MC pumps" and chemical mixers as suggested by the Notifying Party. As described above, competition in the market for pulping equipment takes place rather at the level of process islands than at the level of isolated machines. Pumps and mixers are included in the process islands, although they may be bought

3. Separate markets for equipment for *new mills* and *rebuild* projects have to be distinguished for each process island

(29) The parties do not propose to distinguish between equipment for new mills and for upgrade/replacement although the Commission has in previous decisions made a distinction between equipment for *new mills* on the one hand and for *replacement projects* (e.g. in cases of performance upgrades) on the other hand[22]. The market investigation confirmed the previous decision practice that equipment sold for new mills and for upgrade, replacement or capacity increase projects ("rebuild" projects) should be distinguished into separate markets.

(30) In order to better understand the differences between new mill and rebuild projects, the Commission has carried out an extensive analysis of the results of the tendering processes for new mill and for rebuild projects over the last ten years[23]. The results of this analysis show that even when new mills are not supplied by one single supplier, new mill customers have a preference for buying significantly bigger equipment packages. Customers will also often invite "EPC" contracts where civil engineering, commissioning, training and performance guarantees might be included.

(31) A significant part of pulp mill equipment is not sold for new mill projects, but to existing mills[24], where customers intend to upgrade, refurbish or replace their existing equipment and, in most cases, to increase the mills' capacity at the same time ("rebuild" projects). The market investigation has shown that "rebuild" customers do not necessarily stay with their original supplier when replacing old machines or process islands in their plants. Although it is true that for some minor replacement works (e.g. replacement of parts of a machine or replacement of a minor machine in a process island[25]) customers usually would turn to the original supplier, a similar "fidelity" to the original supplier has not been confirmed by the market test for bigger/more substantial replacement projects ("rebuild" projects), which represent an important part of pulp mill equipment sales to existing pulp mills. Indeed, the Commission has learned that equipment is regularly replaced after a period of ten to twenty years. Instead of replacing it with the same product(s) which may no longer be "state-of-the-art", customers often try to find a more modern and efficient solution which at the same time increases the capacity of their mill. Therefore, when pulp mills

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separately. Also, MC pumps and chemical mixers represent only a very small part of the value of the process stages they are used in. It should be noted that the competitive analysis would not change substantially should separate markets for MC pumps and mixers be defined, since the Commission has not found competition concerns in the field of pumps and mixers and since the proposed remedy (which comprises the divestiture of Kvaerner's pumps and mixers) will in any event remove the horizontal overlap in this field.

22 See e.g. case COMP/M.1930 - Ahlström/Andritz, paragraph 20, referring to paragraphs 20-23 of the statement of objections sent in case IV/M.1431 - Ahlström/Kvaerner in July 1999.

23 The Commission asked the main suppliers for the same set of data on the scope of call for tenders and the scope of supplies for all Greenfield, Brownfield and rebuild projects in the period 1996 – 2006. The Commission has aggregated and analysed this information. From now on this is referred to as "The Commission's Tender Analysis".

24 The total value of equipment supplied for *rebuild* projects between 2001 and 2005 for the washing/delignification/bleaching stages is estimated by the parties as € […]* m.

25 This type of replacement is referred to by many customers as "service and maintenance".

have to replace old equipment in a process stage, they often invite tenders for a whole new process island and consider not only the original supplier of the old equipment, but also alternatives from other suppliers[26]. Unlike for new mills, most customers, when replacing/upgrading their mill, do it in steps, replacing just one process island when this is appropriate instead of replacing larger parts of the whole mill at the same time. Only exceptionally do they buy two or more process stages.

(32) In contrast, only a minority of new mill customers order only one process island from one supplier[27], whereas the majority chooses two or three islands together from one supplier[28]. The difference in scope of purchases between new mills and rebuilds is shown in the two charts below. The first diagram shows the number of process islands purchased together from the main supplier by new mill customers; the second diagram shows the number of process islands purchased together from the supplier(s)[29] by "rebuild" customers.

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26 For smaller pieces or insignificant parts that have to be replaced, they may, of course, not organise tenders at all. This business falls under the category "specialised service and maintenance", in which competition between different suppliers appears to be limited or even absent.

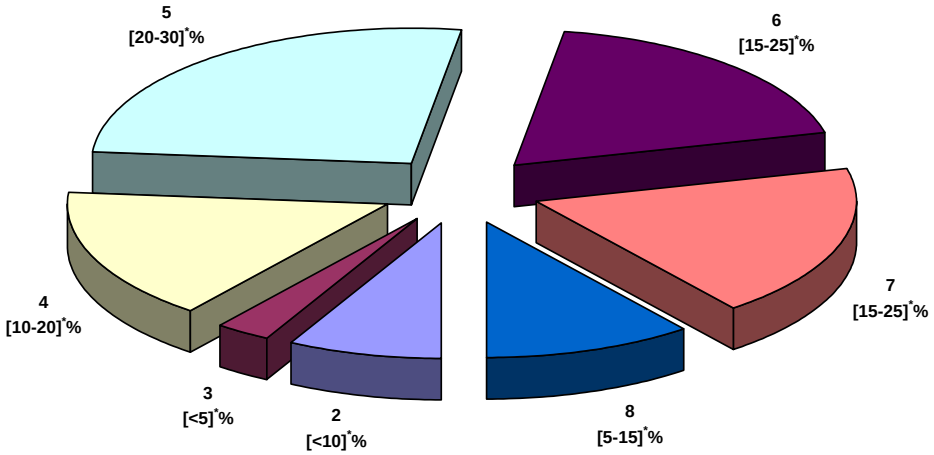
27 The Commission found that in [<10%]* of the analysed new mills projects suppliers were selected for only one process island.

28 The Commission found that the scope of calls for tenders for new mills was different from the scope of calls for tenders for rebuild projects. The scope of calls for tenders for new mills was in [>80%]* of the new mill projects between 1996 and 2006 4 to 8 process islands. The scope for tenders for rebuild projects was in [80-90%]* of the rebuild projects between 1996 and 2006 1 to 2 process islands, c.f. the Commission's Tender Analysis.

29 It should be noted that all suppliers were taken into account for the calculation. In fact, in the vast majority of analysed rebuild projects there was only one supplier ([70-80%]*). Only in [20-30%]* of the cases there were two or more suppliers

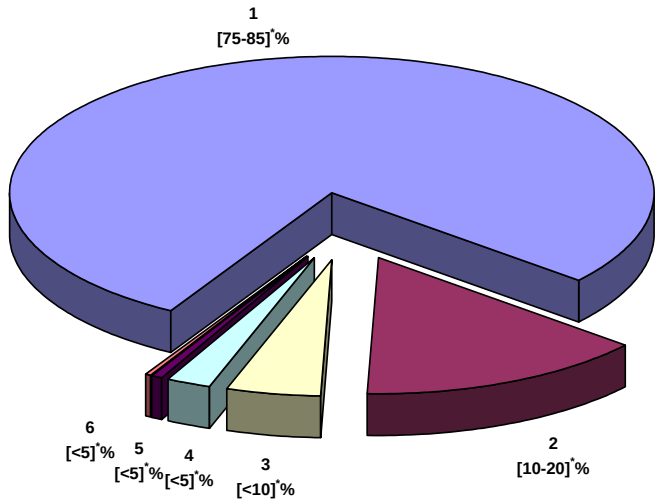
* *Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.*

Diagram 1:
Number of process islands purchased from the main[30] supplier in <u>new mill</u> projects



30 Data for the period 1996 to 2006. The chart for new mill projects indicates, in percentage of the total number of tender procedures, how many process islands (from wood-handling to recovery) were supplied by the main supplier selected. When several suppliers were selected by customer, only the one supplying the highest number of process islands was taken into account. Therefore, it should be noted that other suppliers may have supplied one or more process islands for the analysed projects which do not appear in this chart (in [25-35%]* of analysed new mill projects two suppliers were chosen, in [25-35%]* three or more). The remaining projects, in which only one supplier was chosen, concerned only in two cases the construction of an *entire* new mill (see above, paragraph 22), in all other cases more limited "Greenfield" installations.

Diagram 2:
Number of process islands purchased from selected suppliers for <u>rebuild</u> projects



(33) It follows from the Commission's analysis that only a minority of new mill customers buys only one process island, while [75-85%]* of all rebuild customers buy an "isolated" process island. This difference in the tendering and purchase behaviour applies to all process islands, e.g. cooking, washing, delignification and bleaching islands for rebuild customers are typically sold as isolated process islands while the same process islands are typically bought as part of packages for new mills. It should, however, be noted that the composition of the "packages" bought from one supplier for new mills varies from case to case, according to the specific circumstances of the case.

(34) The differences in the package size between new mill and rebuild purchases indicate separate markets. Moreover, the competitive dynamics for new mill projects differ from those for rebuild projects in that plant engineering and chemical engineering skills as well as know-how of the functioning of the whole pulp mill is of key importance for the success of new mill suppliers. Although know-how on the integration of the supplied process island may play a role also for the purchase decision of a rebuild customer, the Commission has found in its market investigation that the role of the integration know-how in rebuild projects is more limited. When rebuilding a part of the mill, most parameters are already established and the integration problem is limited to the adaptation of the process island itself to the pre-existing parameters. In a new mill project, the chemical engineering skills and know how of the functioning of the whole pulp mill are by far more important: the supplier is entirely free to choose a solution as to how to achieve the desired pulp quality from the given input material in the subsequent stages, how to generate and use power and how to treat secondary chemical processes, without being bound by the need to adjust to pre-existing equipment.

(35) Furthermore, ancillary services such as civil engineering play a significantly less important role in the rebuild market than in the new mill market: In a rebuild project, there is no need to construct and develop a new site with buildings to place the equipment in. The complexity and the degree of civil engineering in rebuild projects is much smaller than in new mill projects, because most buildings are already present on the existing site. In fact, often no or hardly any civil engineering is involved in rebuild projects, and supply and installation of the equipment is sufficient. As a consequence, also the scope of the liabilities taken by the supplier is often more limited in rebuild projects than in new mill projects.

(36) The fact that the competitive dynamics are different for the new mill market and rebuild market respectively is also reflected by different market shares. The market shares for the different pulp equipment in the new mill product market differ significantly from the market shares in the rebuild market[31]. For example, Andritz has a significantly higher market share for delignification equipment in the rebuild market than in the market for delignification equipment for new mills. Similarly, Andritz' market share in the rebuild market for bleaching equipment is significantly lower than in the respective new mill market. Similarly, other suppliers also have different market shares in the new mill and rebuild markets (see e.g. GL&V). On the basis of the foregoing the Commission concludes for the purpose of this decision that for each process island there are separate relevant product markets for pulping equipment for new mills and pulping equipment for rebuild projects; this includes process islands for cooking, washing, oxygen delignification and bleaching.

5. Markets for process islands to be defined for new and rebuild projects

a) Equipment for the cooking stage (new mill/rebuild)

(37) Chemical pulping digesters are considered a core component in a chemical pulp mill, not only with a view to the cost[32], but also given their importance for the entire pulping process[33]. Two technologies are used in the cooking stage, so-called *batch* and so-called *continuous* digesters. Pulp can either be cooked in "batches" by putting wood chips into a batch digester, together with the necessary chemicals (white liquor), and cooking it over a period of one or more hours. When the process is complete, the entire pulp is then pumped to the next stage, and the batch digester has to be filled again. Unlike in the "sequential" process of a batch digester, continuous digesters can ensure a steady product flow from the wood yard to the final baling stage. There is a steady flow of wood chips and white liquor into the continuous digester in order to be cooked at high temperature and pressure; pulp is also discharged continuously from the outlet end of the digester[34].

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31 See in detail the market share tables below, paragraph (77).

32 Metso estimates that cooking equipment represents [5-25]*% of the cost of a pulp mill.

33 As set out above, chemical digesters cook the woodchips in a white liquor to separate the fibres from the binding agents in the wood. Any quality problem in the cooking part has an immediate effect on all later stages of the pulp production.

34 It should, however, be noted that also two-vessel continuous digester systems are used in the industry.

(38) Two companies, Andritz and Kvaerner, offer continuous digesters. This technology has become the most common digester technology for new mills and for larger replacement projects[35]. The total sales value of continuous digesters sold over the last 10 years is more than [2-10]* times higher than the value of batch digesters, of which Metso's "SuperBatch" technology currently is the leading product world-wide.

(39) Metso submits that *separate markets* should be defined for the two digester types, claiming that these types are not technically and economically substitutable. According to Metso, each type of digester has its specific use, since each of them is generally used for different wood types: While the batch digester is the best solution in cases […]*, the continuous digester is, according to Metso, the preferred solution for […]*. Metso submits moreover that the selection of the respective digester type is determined by the availability of space, because a batch cooking plant requires significantly more space for its cooking vessels.

(40) The Notifying Party underlines that batch digesters are substantially more expensive than continuous digesters. It submits that the purchase price of a process island with batch cooking can be as much as 20–30% higher compared to one with continuous cooking. The operating costs of batch digesters are also claimed[…]* It is noted that the continuous digester is, according to Metso, […]*[36].

Digesters for rebuild projects (separate markets for batch and continuous digester)

(41) As already set out in detail above, the competitive conditions for digester sales in the rebuild market are significantly different from the conditions in the new mill market.

(42) In the market for rebuilds, there is only a limited (unidirectional) substitutability between continuous and batch digesters. As opposed to new mill customers, rebuild customers find their choices limited by the existing facilities. Since batch digesters require more plant space than continuous digesters, it is in almost all cases very difficult to replace continuous by batch digesters since the physical presence of the other process islands limits the available space for construction.

(43) The Commission's market investigation showed that no *existing* continuous digester was replaced by a batch digester in the past ten years[37]. Although "batch" customers considering to buy continuous cooking technology for a rebuild project are in principle not confronted with a similar space limitation and could therefore replace their batch digesters with continuous digesters, this has rarely happened. In only 1out

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35 The original cooking technology for chemical pulp mills is based on the so called *conventional batch digester*. Most of these designs were installed in the 1940s and 1950s. The *conventional continuous digesters* were launched commercially during the 1950s and 1960s, with on-going development throughout the 1960s and 1970s. The original patents relating to continuous digesters were granted to Ahlström and the Kamyr Company ("Kamyr"), of which Ahlström later became a shareholder. In 1989-90, Kamyr was split into AMG and KPP. Following further research and development, batch digester suppliers such as Sunds Defibrator ("Sunds"), Beloit (now GL&V) and VAI improved the technology related to batch cooking and launched a so called modified batch digester in the mid-1980s. GL&V developed and commercialised the batch digester technology further into their RDH batch technology.

36 By way of example, Metso explains that using a batch digester may result in […]*.

37 C.f. the Commission's Tender Analysis.

of 32 rebuild projects for digesters in the last 5 years, an existing batch digester was replaced by a continuous digester[38].

(44) In the absence of any appreciable competition between batch and continuous digesters in the rebuild market it is therefore appropriate to define separate product markets for batch digesters and for continuous digesters in the rebuild market.

Digesters for new mill projects (batch and continuous digesters are on the same market)

(45) Unlike in the rebuild market, the customer can in most cases choose between batch and continuous cooking technology when a customer purchases a digester for a new mill. The Commission's market investigation revealed that in more than 50% of all analysed calls for tenders the customers invited to tender *for both types* of digesters.

(46) The Notifying Party suggests that this behaviour might be triggered by the customers' insufficient knowledge of digester technology and their intention to gather more information thereon. These calls for tenders, however, are also organised by customers who bought several digesters within the last ten years and can therefore be regarded as relatively sophisticated. Hence, the mere fact that the customers invite tenders for both types of digesters is in itself an indication that both types belong to the same product market. It should also be underlined that *suppliers* of both batch and continuous digesters take part in tenders for digester projects. It appears unlikely that these competitors would undertake the burden of preparing an offer in a tender procedure, including carrying out the necessary tests, if the outcome of the tender was clear or "predefined" from the outset and if they believed not to have a chance of winning the contract.

(47) In line with this, the market investigation has shown that both digesters are technically capable of fulfilling the requirements of the majority of the customers while the view that there is no substitutability between batch and continuous digesters for new mills, or that batch digesters are a "dying" technology because almost all customers choose continuous digesters for new mills, was not confirmed. Both systems have advantages and disadvantages that are weighed by the customers, which may, according to the individual preferences and needs, choose continuous or batch cooking technology.

(48) On the one hand, the Commission notes that continuous cooking is currently perceived by many customers as the more modern and efficient technology and that continuous cooking is used in most of the recent new mill or upgrade/replacement projects (which results in the relatively smaller size of the batch digester market). This applies in particular to projects for new mills with a high capacity using plantation hardwood. The continuous cooker takes less space on the mill site, and some customers claim that it is less complex to operate and control. The Notifying Party has also submitted to the Commission that the continuous cooker is cheaper to operate because given its lower energy consumption the continuous digester consists of only one large cooking vessel and requires less piping, pumps and other auxiliary

38 C.f. the Commission's Tender Analysis.

equipment. Currently, a certain price advantage for continuous digesters also follows from the increased steel price[39].

(49) On the other hand, Metso's claim as regards the technological and economic superiority of the continuous digester is not shared by all customers. Some customers indicated, on the contrary, that they had chosen the batch technology because they regard it as the superior technology. Customers have explained to the Commission that the batch digester has an advantage over the continuous digester in that it gives greater *control* over the cooking process: The cooking process can be adjusted to each and every batch of input and its special features. Another advantage of batch digesters over continuous digesters is that it is much easier to increase the capacity in batch digester mills, which can be done by adding one or two more vessels to the existing ones[40]. This is not possible for continuous cookers, where a whole new cooker would have to be installed. For some customers, Metso's reputation as a particularly reliable supplier, commercially and technically, triggered the decision to install a batch digester in a new mill project instead of the continuous digester originally considered.

(50) As regards cost, although batch digesters generally may have become more expensive than continuous digesters, customers and other third parties have pointed out to the Commission that the current cost factors can change and that batch digesters are in many cases offered at comparable prices, which has been confirmed by the Commission's Tender Analysis[41]. Moreover, customers have pointed out that the decisive parameter for them is the *total cost* of the project (operating cost/life cycle cost) rather than the initial investment cost. Taking into account the life cycle cost, customers stated that batch digesters can still be competitive.

(51) Moreover, the technological differences appear to be less significant than claimed by the parties: Both batch digesters and continuous digesters are capable of digesting softwood and hardwood materials[42]. The fact that a batch digester may be particularly suitable for mixed wood qualities does not exclude the use of a batch digester in cases where more homogeneous wood is treated. At the same time, the Commission found evidence that mixed wood qualities can also be treated by continuous digesters[43]. Overall, batch cooking is more flexible as regards the input material; it can be adapted

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39 It should be noted that batch digesting and not continuous digesting was perceived as the "leading" technology between 1990 and 1995 and that the price differences during this period were only marginal.

40 One example for such an increase is the mill in Stendal, in which the capacity of the batch cooking was increased by adding extra vessels in a rebuild project a few years after the mill was built.

41 It should be noted that the tendering data available to the Commission suggests that batch digester suppliers may accept lower margins to price at a comparable level as continuous digester suppliers.

42 The customer Aracruz in Chile, for example, commissioned in 2000 a mill that was equipped with a batch digester that produced pulp out of hardwood and softwood. Only two years later Aracruz purchased a comparable new mill with a continuous digester that produced pulp out of the same input material.

43 For example, a project in India was mentioned to the Commission where raw material that is particularly difficult to handle in the cooking process (due to the variation and density consisting of a mix of hardwood and bamboo) is digested in a continuous cooker.

to difficult input materials. The Commission has also found that it is possible to use batch digesters when the input material is of low quality[44].

(52) In line with these findings, many customers indicated that they had *no* preference for one technology from the outset when it comes to buying a new digester. Most customers want to minimise their cost while ensuring a high pulp quality and getting a customised solution for their individual needs. For that purpose, they base their purchase decision on general criteria such as e.g. required pulp quality, yield, strength, bleachability, effects on the environment and operational efficiency. Customers have explained that when weighing these criteria in a purchase decision for a digester, in many cases none of the two digester types are technically or economically excluded at the start of a tendering procedure. Although continuous cooking has been chosen more often during the last five years, batch digesters are in many situations still perceived not only as a technical, but also as an economic alternative. In fact, often the decision for one type rather than the other was made only after the final offer[45], and batch digesters are still bought by customers of modern mills who could also have used a continuous digester[46].

(53) It can therefore be concluded that batch and continuous digesters are in competition with each other at least for a significant number of customers[47] who from the outset are open to buy batch or continuous digesters and have no technologically or economically driven preference for a particular digester type.

(54) At the same time, it appears that the two digester types are not, or not fully, substitutable for *all* customers. Indeed, some customers do not consider buying batch digesters and do not invite batch digesters in their requests for tenders. Other customers (e.g. dissolving pulp producers or sulphite mill owners[48]) need to use batch digesters and do not consider buying continuous digesters.

(55) Whether for these reasons the (new mill) digester market should be further sub-divided can, however, be left open. Insofar as the competitive effect of the operation varies for different customer groups, this will be taken into account in the legal assessment, including the assessment of the proposed commitments.

b) Equipment for brown stock washing (new mill/rebuild)

(56) The Commission's market investigation confirmed that a separate sub-market for equipment for the brown stock washing stage should be defined as regards both the new mill and rebuild markets. This stage generally consists of a number of washers

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44 See e.g. […]*, cf. Metso's response of 19 July 2006 to the Commission's e-mail dated 18 July 2006.

45 It should also be noted that pulp mills often employ industry experts to advise them in technological questions and who normally have good knowledge of the current digester technologies.

46 See e.g. the "Tamil Nadu Newsprint and Papers" mill in India (2005) or the "Stendal" mill in Germany (2001).

47 See already paragraph (45).

48 Only batch digesters are at present suitable for the production of so-called "dissolving pulp". The production of dissolving pulp accounts for approximately 2% to 2.5% of the total global pulp production; sulphite mills account for approximately 1%.

linked in series; washers represent, according to Metso, approximately [40-60]*% of the cost of a brown stock washing process island[49]. From a customer's point of view, the equipment for this stage and the equipment for, among others, the oxygen delignification and bleaching stages is not substitutable, since every stage fulfils a different purpose.

(57) Some arguments have been made that this market definition is too narrow, or alternatively too broad. As regards the first, some customers and competitors have suggested defining an even broader market for a "washing" or "bleaching" stage, encompassing washing, delignification and bleaching equipment[50]. While it is true that these three stages are, at least for new mill projects, often purchased from the same supplier, all of them involve different technology and, accordingly, different know-how (e.g. on oxygen delignification or on bleaching). It should also be noted that the bleaching island is only purchased by those customers who need "bleached" pulp, while customers producing unbleached "kraft" board do not have to buy bleaching equipment. Further, customers often invite tenders for these stages separately, not only in the rebuild, but also in the new mill market. Therefore, even for new mill equipment it appears more appropriate to define separate markets for these three stages than to combine them into a single market[51].

(58) As regards a more narrow market definition, the Commission has also considered whether it might be appropriate to define separate markets according to the *washing technology* used for brown stock washing. Different types of washers are used in the brown stock washing stage (as well as in the delignification and bleaching stages), the two most important being Andritz' "drum displacement washer" ("DD washer") and Metso's and Kvaerner's wash presses. Other washer types used are diffusion washers, belt washers, filter washers or compaction baffle washers. Although notably DD washers and wash presses seem to have different product characteristics and although many customers indicated that they preferred one washer type to the other, the Commission cannot conclude that the two washer types belong to separate markets. While wash presses may currently be perceived as the most modern technology for many applications, customers have confirmed that all washer types can be technically replaced and that they usually call for tenders for more than one washer type. Even rebuild customers consider other solutions than the existing one for washing and may buy a DD washer where they previously used a wash press. The Commission therefore concludes that the relevant product market for the purpose of this decision should be defined as equipment for brown stock washing for rebuild projects and for new mills, respectively.

c) Equipment for oxygen delignification (new mill/rebuild)

(59) The Commission's market investigation also indicates that it is appropriate to uphold its previous definition of a separate market for equipment for the delignification stage as regards new mill and rebuilds projects, respectively. A delignification plant

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49 The remaining products (e.g. pipes, MC pumps, screens/de-knotting equipment) involve less technological know-how and are sometimes bought-in from third parties.

50 Some customers proposed to include also the screening stage..

51 It should be noted that the assessment would not significantly change should a combined market for these three stages be defined.

consists of high-temperature pressure vessels ("reactors"), towers and tanks which represent, according to Metso, approximately [10-30]*% of the cost for a delignification island. The washers to remove the dissolved lignin and sodium hydroxide from the fibres are in principle the same washers as in the washing stage and account for approximately [30-50]*% of the cost. Other products used in that stage are pipes, pumps and valves ([10-30]*%) plus additional products, which are, again, often purchased from third suppliers.

(60) The market investigation confirmed that delignification equipment is significantly different from equipment for other process islands, not only as concerns supply-side substitutability, but also with regard to engineering, production and installation know how[52].

d) Equipment for bleaching

(61) In the bleaching stage one or more bleaching agents are mixed in a bleaching tower, where the chemicals are allowed to react with the pulp. The bleaching takes place in different stages. Between each bleaching stage, washers wash out the residual bleaching agents. These washers are in principle the same washers as in the washing and delignification stage; however, certain parts of these washers may need to be customised to resist aggressive chemicals (i.e. certain parts need to be made of titanium or high quality stainless steel). Washers are, again, the core product of the bleaching stage in terms of value, representing [30-50]*% of the cost according to Metso. A bleaching island also contains reactors, towers and tanks ([10-30]*% of the cost), piping, pumps and valves ([10-30]*%) and other products, often purchased from third suppliers. As set out above, unlike for the other stages, bleaching equipment is only bought by a part of the pulp mill customers.

(62) The results of the market investigation show that for new mills and rebuild projects, respectively, the market for bleaching equipment should be assessed separately from equipment for other process islands, since the engineering, production and installation of bleaching equipment involves specific engineering knowledge that differs from the knowledge required for the production of other process islands[53].

5. No separate market for maintenance/service

(63) As set out above, pulp mill equipment is also sold to customers who want to replace minor parts of a broken machine or a process island. The market investigation shows that for this part of the business (also referred to as *"stay-in-business" replacement*), suppliers do not compete with each other, since in most of these cases customers usually turn to the original supplier of the product.

(64) The same consideration applies to *specialised engineering and maintenance services* related to an installed machine. The Notifying Party proposes, in line with the

52 See first questionnaire to customers, question 34: 7 out of 9 answering customers indicated that a company not active in delignification but other pulp mill systems could not easily provide delignification systems, mainly due to different know-how involved.

53 See first questionnaire to customers, question 44: 7 out of 9 answering customers stated that a company not active in bleaching, but other pulp mill equipment could *not* easily supply bleaching solutions

Commission's previous practice[54], to distinguish between "general" and "specialised" maintenance services. While the first do not involve equipment-specific knowledge (e.g. cleaning, replacing smaller standard parts etc.), the latter can only be done by the supplier of the original equipment or other manufacturers with sufficient know-how of the technology. The parties claim that general services is not an affected market since they only have minor activities in this market and compete with a large number of (local or regional) service providers (if the service is not done in-house). As regards specialised service, the results of the market investigation indicate that companies do not compete for these services but provide services only for their own products.

(65) Finally, it appears that also for technical improvements on existing machines (referred to as "refurbishment" in previous decisions), customers rather stick to their original supplier and do not invite for tenders for these works. Thus, it is not appropriate to define a separate market for "refurbishment".

(66) The Commission considers that the question whether a separate market for "stay-in-business replacement", specialised maintenance service and refurbishment should be defined can be left open for the purpose of this decision. Even if competition concerns could arise in these potential markets they would be removed by the proposed commitments.

6. Vertically affected market: process automation

(67) Unlike Kvaerner, Metso is also active in the development and supply of process automation systems for pulp mills. These systems are used to measure, monitor and control the equipment and facilities in pulp mills, to ensure that the different parts work together and that the mill is run as efficiently as possible. Different types of process automation systems can be distinguished in a pulp mill, notably process automation systems for single machines or process islands (often supplied by the original supplier of the respective equipment) and automation systems for the entire plant. Some competing pulp mill equipment suppliers currently buy process automation systems for their machines from Metso.

(68) The market investigation of the Commission showed that in the segment for process automation for pulp mills, there are many suppliers active. In this segment Metso competes with the likes of ABB, GE Honeywell and others. According to the Notifying Party, the vertically affected market for process automation systems for pulp mills may even be part of a larger market that also includes process automation systems for other industries. However, the question whether a market for process island automation systems, for pulp mill equipment automation or for industrial process automation should be defined can ultimately be left open for the purpose of this decision since no competition concerns would arise under either scenario.

7. Conclusion on product markets

(69) In view of the above and for the purpose of the present decision, the Commission therefore considers that the following relevant product markets must be distinguished:

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54 See e.g. Case IV/M.1489 - YIT/Valmet/Rauma, paragraph 14 et seq.

I. Digesters:

1. Digesters for new mills[55]

2. Batch digesters for rebuilds

3. Continuous digesters for rebuilds

II. Washing, delignification, bleaching equipment:

4. Equipment for the brown stock washing stage for new mills

5. Equipment for the delignification stage for new mills

6. Equipment for the bleaching stage for new mills

7. Equipment for the brown stock washing stage for rebuild projects

8. Equipment for the delignification stage for rebuild projects

9. Equipment for the bleaching stage for rebuild projects

B. RELEVANT GEOGRAPHIC MARKETS

(70) The Notifying Party submits that the markets for the supply of chemical pulping equipment should be regarded as world-wide in scope. The Commission has investigated whether the market conditions for the supply of pulp mill equipment in Europe might differ from market conditions in other areas of the world. However, the market investigation has confirmed that geographically market conditions for all relevant product markets are comparable. The mere fact that more new mill projects are expected outside Europe than in Europe does not justify defining two separate markets.

(71) Customers and competitors have almost unanimously confirmed that the markets for pulp mill equipment are world-wide in scope. Indeed, all three main suppliers are active world-wide and have leading market positions in all regions of the world. By way of example, even in the US and Canada, the traditional "home base" of the US-Canadian company GL&V, the three main suppliers (Metso, Andritz and Kvaerner) are the clear market leaders. Also, the fact that players from outside Europe do account for at maximum 15% of the EEA market does not lead the Commission to define a "European" pulp mill equipment market; it rather reflects the fact that the three leading pulp mill equipment suppliers are European-based companies. Customers from all regions in the world have indicated that in practice they tender and buy pulp mill equipment world-wide.

(72) It should also be noted that the effects of the transaction on customers will not only occur outside Europe. Although most new mills will be located outside Europe some of the mills are owned by EEA customers. Many of the customers of pulp mill equipment have pulp mills that are located in different parts of the world. The market investigation of the Commission showed that North American customers have pulp mills in the US and the EEA as well as in Asia and South America. EEA customers have pulp mills in South America, Africa and Asia.

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55 Or, alternatively, markets for (a) digesters (encompassing batch *and* continuous digesters, for customers who switch between continuous and batch digesters), (b) continuous digesters only and (c) batch digesters only ((a) and (b): separate markets for non-switching customers). As mentioned above, the question of the exact definition can be left open since the different effects on all customers are analysed separately.

(73) For the reasons set out above, the Commission considers for the purpose of this decision that the product markets identified above should be defined as world-wide in scope.

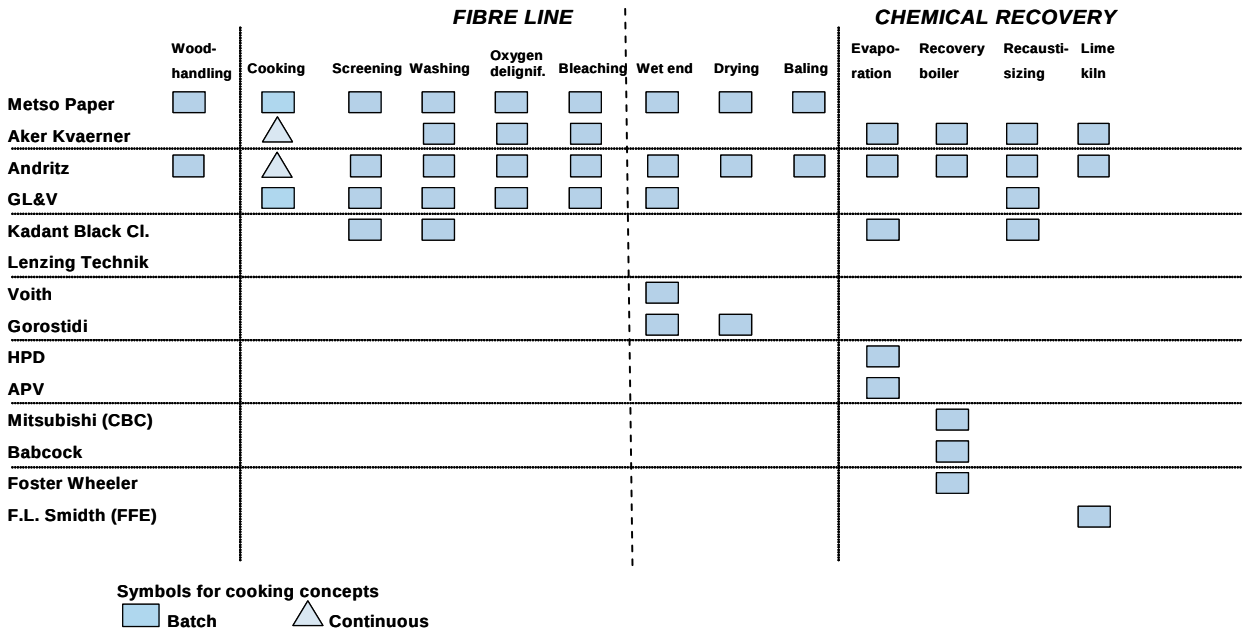
VI. COMPETITIVE ASSESSMENT

A. COMPETITIVE STRUCTURE IN THE PULP MILL EQUIPMENT MARKETS

(74) The competitive structure of the markets for the supply of pulp mill equipment is marked by a highly concentrated supply-side. In the course of the last ten years, the number of major pulp mill suppliers was reduced by several acquisitions, leaving pulp mill customers with only three major suppliers, namely Kvaerner, Andritz and Metso, as well as only one significant further manufacturer, Canadian-based GL&V.

(75) Regarding the product range the three main suppliers are able to offer, it appears that only Andritz, today the leading supplier of pulp mill equipment, is able to supply almost all the equipment for a pulp mill (including wood-handling, fibre line and recovery line), whilst the parties to the notified merger and GL&V only offer parts of the pulp mill (Metso: wood-handling, fibre line, but no recovery line; Kvaerner: essential stages of the fibre line, recovery island, including power boilers; GL&V: most stages in the fibre line as well as the recaustisizing island of the recovery line). After the concentration, the merged entity will be able to offer products for all process stages in a pulp mill. Its range of pulp mill products would even be larger than Andritz' range, since Andritz (unlike Metso/Kvaerner) is not able to offer power boilers. The following table roughly illustrates the main competitors' product range for pulp mill equipment:

Table 2: Suppliers of pulp mill equipment and their product range[56]



B. NON-COORDINATED EFFECTS

1. Introduction

(76) As set out above, the parties' activities overlap in the markets for cooking, brown-stock washing, oxygen delignification and bleaching. Due to the already concentrated market structure before the merger, the notified transaction would lead to high market shares in all horizontally affected markets. Given the limited market share of GL&V and other smaller competitors on the world-wide market for pulp mill equipment, the proposed transaction can be regarded as a operation that reduces the number of leading players in the industry from three (Andritz, Metso and Kvaerner) to two (Metso/Kvaerner and Andritz), with only a significantly weaker fourth (then: third) player, GL&V. The transaction will therefore represent a considerable increase in the level of concentration in markets which were concentrated already before the operation. Only for the emerging group of customers who seek to buy complete new mills, the transaction will be pro-competitive as it will result in two suppliers as opposed to one pre-merger.

(77) The following tables, which are based on sales data provided to the Commission by the notifying party and the respective competitors, illustrate the market shares in cooking, brown-stock washing, oxygen delignification and bleaching equipment for new mill and rebuild projects respectively. As in previous cases, the Commission has taken into account not only last year's sales, but all sales within the last five years

56 This table is based on a table provided by the Notifying Party in its notification. It should be noted that the competitor Lenzing has indicated not to be active in the supply of cooking technology. The respective symbol in the column for "cooking" has therefore been deleted. It should also be noted that the competitor Kadent has indicated that he has only insignificant activities in the field of washing equipment for chemical pulping. On the other hand, the Commission's investigation has identified other suppliers, not mentioned in the above table, also active to a certain extent in the pulp mill market (e.g. the Swedish producer Noss AB for screening equipment).

(2001-2005), in order to avoid an inaccurate allocation of market shares caused by the yearly variation of business:

Table 3: Market shares on markets for <u>new mill</u> projects[57]

	Digesters		**Washing**		**Delignification**		**Bleaching**	
	Value	%	Value	%	Value	%	Value	%
Metso	[...]•	**[*10–20*]**	[...]	**[*20–30*]**	[...]	**[*20–30*]**	[...]	**[*20–30*]**
AKPP	[...]	**[*50–60*]**	[...]	**[*10–20*]**	[...]	**[*30–40*]**	[...]	**[*20–30*]**
Combined	[...]	**[*60–70*]**	[...]	**[*40–50*]**	[...]	**[*60–70*]**	[...]	**[*50–60*]**
Andritz	[...]	**[*30–40*]**	[...]	**[*40–50*]**	[...]	**[*30–40*]**	[...]	**[*40–50*]**
GL&V	[...]	**[*0–10*]**	[...]	**[*0–10*]**	[...]	**[*0–10*]**	[...]	**[*0–10*]**
Others	[...]	**[*0–10*]**	[...]	**[*0–10*]**	[...]	**[*0–10*]**	[...]	**[*0–10*]**

• Information in brackets is kept confidential.

57 All market share tables are based on estimates by the parties and competitors, based on value for the period 2001-2005 in € m.

Table 4: Market shares on markets for <u>rebuild</u> projects

	Digesters		Washing		Delignification		Bleaching	
	Value	%	Value	%	Value	%	Value	%
Metso	[...]	[***10–20***]	[...]	[***30–40***]	[...]	[***30–40***]	[...]	[***30–40***]
AKPP	[...]	<u>[***60–70***]</u>	[...]	[***20–30***]	[...]	[***20–30***]	[...]	<u>[***40–50***]</u>
Combined	[...]	<u>[***70–80***]</u>	[...]	<u>[***60–70***]</u>	[...]	<u>[***50–60***]</u>	[...]	<u>[***80-90***]</u>
Andritz	[...]	[***20–30***]	[...]	[***20–30***]	[...]	[***40–50***]	[...]	[***0–10***]
GL&V	[...]	[***0–10***]	[...]	***10-20***	[...]	[***0–10***]	[...]	[***0–10***]
Others	[...]	[***0–10***]	[...]	[***0–10***]	[...]	[***0–10***]	[...]	[***0–10***]

(78) Although the importance of market shares may vary from one market to another, very large shares (such as created by the present transaction) can in themselves be regarded as evidence of a dominant position[58], leading to a significant impediment of competition in markets in which the merging parties' combined market share clearly exceeds the share of the next largest competitor (e.g. in the markets for digesters for new mills/rebuild projects or for washing and bleaching equipment for rebuild projects).

(79) The Herfindahl-Hirschman index ("HHI") gives an indication of the market concentration that results from the transaction. In the world-wide markets for each of the process islands for new mills, the HHI would increase from well above 3000 pre-merger to a level of well above 4000 and even above 5000 for some process islands post-merger with increments ("Δ") of over 1000. In the world-wide markets for each of the process islands for rebuilds, the HHI would increase from well above 3000 pre-merger to a level of well above 4000 post-merger with Δ's of well above 1000. In the market for bleaching equipment the post merger HHI would be as high as [6000-7000]*, with a Δ of [3000-4000]*. These numbers indicate that the present transaction has a significant impact on market concentration.

58 See CFI, judgment of 14 December 2005, case T-210/01 - General Electric/Commission, paragraph 115.

Table 5: HHI on markets for <u>new mill</u> projects

New mills	*Pre-merger*	*Post-merger*	*Increment*
Cooking	[4000-4500]	[5000-5500]	**[1000-2000]**
Brown Stock Washing	[3500-4000]	[4500-5000]	**[1000-2000]**
Delignification	[3000-3500]	[5000-5500]	**[1000-2000]**
Bleaching	[3500-4000]	[4500-5000]	**[1000-2000]**

Table 6: HHI on markets for <u>rebuild</u> projects

Rebuild	*Pre-merger*	*Post-merger*	*Increment*
Brown Stock Washing	[2500-3000]	[4500-5000]	**[1000-2000]**
Delignification	[3000-3500]	[4500-5000]	**[1000-2000]**
Bleaching	[3500-4000]	[6500-7000]	**[3000-4000]**

(80) The markets for pulp mill equipment are *bidding markets*, in which several suppliers are invited to tender and the final bid is awarded after bilateral negotiations with the respective bidders. In such markets, market shares may be less indicative as to the real competitive strength of a company than in other markets. However, many customers expect that, despite the fact that they invite tenders for their projects, the disappearance of one participant in their bids will lead to an increase in prices. A majority of customers expressed the opinion that on average prices are lower where three suppliers bid in a tender process than if the competition is limited to two manufacturers[59]. Therefore, the fact that the affected markets are bidding markets does not significantly modify the assessment of the effects of the merger.

2. Brown-stock washing, oxygen delignification and bleaching equipment

a) High market shares

(81) The table in paragraph 85 above shows that the proposed transaction leads to high market shares in all six affected markets for equipment for washing, oxygen delignification and bleaching ("WOB"). In all but one of these product markets, the transaction would result in combined market shares of [*50-60%*] or more. In all markets, the transaction brings together two players holding a significant market share, with relatively high increments from around 20% (brown-stock washing/new mills and oxygen delignification/rebuilds) up to [50-60]% (digesters/new mills), leading to market shares between [*40–50%*] (washing/new mills) and [*80-90%*] (bleaching/rebuilds). Andritz, with market shares from around [*10–20%*] to [*40–50%*][60], will remain the main competitor, while the next largest competitor, GL&V, will only hold market shares of at maximum [*10–20%*] in the rebuild markets and at maximum [*0–10%*] in the new mill markets.

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59 Second questionnaire to competitors, replies to questions 29 and 29a. 22 out of 28 customers answering to question 29 indicated that they believe that the choice between three suppliers normally results in a better price than the choice between two suppliers.

60 It should be noted that Andritz exceptionally holds a relatively weak position in the field of bleaching equipment for rebuild projects with only [*0 – 10%*].

b) The transaction will remove an important competitive force

(82) In all overlapping WOB markets, the transaction will remove an important competitive constraint.

(83) Only Andritz and GL&V can potentially constrain the merged entity's market power. However, as regards washers which are the key component of brown-stock washing, oxygen delignification and bleaching equipment, Andritz mainly offers DD washers and does not dispose of wash presses, which are considered by customers to be the most modern type of washing equipment. Even though the Commission's investigation shows that it is not justified to define separate markets for each technology, the fact that the number of competitors for wash presses would be reduced through the merger by bringing together Metso's and Kvaerner's wash press technology gives rise to competition concerns. The Commission found that in some situations (e.g. when replacing wash presses in rebuild projects) customers had often no other appropriate alternative than to choose again a wash press[61].

(84) GL&V, the other remaining supplier of WOB equipment, offers wash presses for small and mid-size mills, but these are perceived by some customers as "outdated" and too expensive compared to Metso's and Kvaerner's presses[62]. GL&V has only achieved limited sales over the last five years, in particular between 2000 and 2003. At the same time, many customers indicated during the Commission's in-depth investigation that they regard GL&V as a credible and reliable supplier for process islands such as WOB equipment[63]. This is true in particular for the rebuild markets, where GL&V disposes of the large installed base of the former pulping equipment suppliers IMPCO and Beloit Pulping which it acquired in 2000. However, absent the acquisition by GL&V of modern wash press technology, GL&V would not be able to exercise the same competitive constraint on the merged entity as previously Kvaerner on Metso.

(85) This view has been confirmed by the majority of customers in the market investigation who were concerned about the reduction of potential competition in the WOB markets, and in particular for wash presses, absent a divestiture[64].

c) High entry barriers

(86) The in-depth market investigation has also confirmed that it cannot be expected that new entrants will enter the market for chemical pulp mill equipment in the foreseeable future. This is mainly due to the fact that the supply of pulping equipment is to a high degree technology-driven and requires not only substantial investments in research and development, but also in-depth knowledge of the functioning of the entire pulp

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61 See Andritz, reply to the first questionnaire to competitors, question 14.

62 Second questionnaire to customers, question 16: In the field of washing equipment, GL&V received an average evaluation of 3,3 (on a scale from 1 [best]) to 5 [worst] and on a basis of 10 replies), whereas Andritz received 1,67 (25 replies), Metso 1,84 (26 replies) and Kvaerner 1,92 (26 replies).

63 See for example minutes of conference calls with M-Real and International Paper.

64 Second questionnaire to customers, replies to question 31: The majority of customers believed the merger to have negative effects in brown stock washing (16 out of 17 replies), oxygen delignification (13 out of 15 replies) and bleaching (12 out of 16 replies).

mill and the interrelation of chemical processes in its different parts. Patents also play an important role in pulp mill equipment. The key products in WOB equipment, notably wash presses and to a certain extent cooking equipment, are patent protected. In addition, the market investigation has shown that past experience and reputation play an important role in the pulping business, and many customers would hardly risk buying equipment from a supplier which has not installed any reference product in an existing pulp mill[65].

(87) It can therefore be concluded that new entrants to the pulp mill equipment market are not likely to reduce Metso/Kvaerner's increased market power on the affected WOB equipment markets. The Commission's investigation has not revealed any evidence of companies (be it new suppliers or companies active in neighbouring markets such as producers of paper mill equipment) intending to enter one or more of the affected WOB markets. Moreover, customers do not expect existing smaller suppliers of specialised pulp mill products to become significant competitors for WOB equipment in the foreseeable future[66].

(88) Therefore, it is not to be expected that new entrants will in the next two to four years be able to exert a significant competitive constraint on the merged entity which could set off possible anti-competitive effects such as price increases for WOB equipment resulting from the transaction. With regard to the three WOB markets (and leaving aside those new mill customers who prefer to buy a complete mill from a single supplier) the notified operation will significantly impede effective competition by creating a new market leader with high market shares between [*40-50%*] and [*80-90%*] with only two competitors left (Andritz and GL&V), one of which (GL&V) has only achieved limited sales over the last five years and whose role as a competitive constraint is thus not comparable to either Metso or Kvaerner pre-merger. It should be noted that the competitive assessment would remain unchanged if instead of product markets for isolated "process islands" markets for process island "packages" (e.g. washing & delignification or "washing & delignification & bleaching") were defined for new mill products, since the same considerations would apply (high market shares, disappearance of an important competitive force, high entry barriers).

3. Cooking equipment

a) Cooking equipment for new mills

(89) In the market for digesters for new mills, Kvaerner and Metso would hold around [*60-70%*] of the market, with Kvaerner's continuous cooking technology accounting for approximately [*50–60%*]% and Metso's batch digester accounting for around [*10-20%*] of the sales value between 2001 and 2005 according to the Commission's investigation. The remaining competitor, Andritz, has around [*30–40%*] of the market. GL&V is also present in this market with its "RDH" technology. Although GL&V

65 Second questionnaire to customers, replies to question 14 and 18 a). 26 of 29 customers replying to question 18 a) stated that smaller suppliers were not able to compete effectively for all pulp mill projects.

66 Second questionnaire to customers, replies to question 22. 18 out of 19 respondents stated they did not expect smaller suppliers to grow significantly and become able to compete with the main suppliers within the next 3-5 years.; see also replies to question 14: 12 out of 28 customers consider experience and an installed base as the most important or the second most important criterion for the selection of a supplier.

takes part in tenders for batch digesters[67], its "RDH" batch digester technology by now is considered as a realistic alternative only by few new mill customers. According to GL&V it has not developed the technology for more than ten years and does not dispose of any recent reference installation in new mill projects[68].

(90) For those customers who have no explicit preference for either digester type the merger would therefore reduce the number of eligible suppliers for digesters for new mills from four to three (considering that GL&V is offering a batch digester solution and takes part in tenders). The market share of the merged entity of [*60–70%*] is in itself indicative for a dominant position on the digester market. The merger will eliminate one of only four competing suppliers in the new mill digester market and will therefore significantly reduce the customers' supply alternatives, leaving the customers with a lesser degree of competition in the tenders. As set out above, it is expected that the reduction of the number of suppliers who are able to take part in tenders for digesters will lead to a price increase in this market.

(91) It should also be noted that post-merger Metso/Kvaerner would be the only company able to offer both types of cooking technology (batch and continuous cooking), while Andritz will face the disadvantage of only having products for continuous cooking. The merged entity would therefore be able to offer the most adequate cooking solution to their customers, who may prefer a supplier with knowledge in both technologies to a supplier with only one alternative (as Andritz). Metso/Kvaerner could use this advantage to further strengthen its already dominant position in the digester market.

(92) For similar reasons as explained above in the context of the markets for WOB equipment, the digester markets are also characterised by very high *entry barriers* constituted by patent-protected technology, investment costs and reputation. For example, the most important elements to produce a continuous digester as well as Metso's "SuperBatch" digester are patent protected. Both types of continuous digesters currently available and offered by, respectively, Andritz and Kvaerner have their origin in the same patented technology developed in the 1950s. Metso tried to independently develop a continuous digester in the 1990s but, in spite of considerable investment, […]* reference product in the market[69]. Eventually, Metso therefore decided to abandon the project. The market entry therefore failed. As a result, it can be expected that the merged entity's market power vis-à-vis those customers which choose between batch and continuous digesters will not be effectively constrained by potential competition or possible market entry.

b) Cooking equipment for rebuild projects

(93) According to the market investigation, batch cooking equipment does not exercise any significant competitive pressure on continuous cooking equipment in rebuild projects, since the only substitution between those two technologies in the rebuild market is from batch to continuous cooking. Also, batch digesters are almost never replaced by continuous cookers. Therefore, as both digester types are on different markets the

67 See the Commission's Tender Analysis.

68 See reply of GL&V to the 2nd questionnaire on commitments.

69 Form CO p.39, footnote 23.

merger of Metso and Kvaerner will not eliminate competition on either one of these markets.

4. Relation to neighbouring markets

(94) The Commission has also investigated whether the competitive position of suppliers of chemical pulp mill equipment is influenced by whether or not they are also active in the neighbouring markets for equipment for mechanical pulping and pulping with recycled materials, as well as paper machinery. In fact, both Metso and Andritz, but not Kvaerner, are leading suppliers of both chemical pulping equipment and equipment for mechanical pulping and pulping with recycled materials. Furthermore, Metso is also a leading supplier of paper mill products, whilst some other players active in the production of paper mill products are also, albeit to a limited extent, active in the supply of pulp mill products (e.g. the market leader for paper mills, Voith)[70].

(95) However, the investigation has revealed that even though many customers operate chemical pulp mills alongside mechanical and recycled materials pulp mills and/or are active in pulp and paper production, there are few advantages for equipment manufacturers from supplying machinery for different types of pulp mills or pulp and paper mills. Technical synergies between the various areas are limited, as the basic technologies of respectively chemical pulping, mechanical pulping, pulping from recycled materials and paper-making are fundamentally different. The market investigation has not revealed any substantiated indications for bundling or similar practices, except to a limited extent for service and maintenance contracts[71].

(96) In any event, the notified operation does not modify in any significant way the merged entity's ability and incentives to take advantage of Metso's position in neighbouring markets.

5. Mitigating factors

(97) The Commission has also assessed whether other factors may constrain the parties' ability to behave independently from their competitors and customers in the overlapping WOB and cooking equipment markets or could outweigh possible anti-competitive effects brought about by the merger.

a) Buyer power

(98) The Commission's investigation has shown that, although the pulp and paper industry is not highly concentrated and although there is a relatively large number of customers of pulp mill equipment world-wide, pulp mill customers are often large companies that run several pulp mills or integrated pulp and paper mills, often in different places around the world. In 2005, the ten largest pulp producers world-wide had a share of 42% of total kraft pulp capacity (compared to 30% ten years ago), and the combined share of the three largest manufacturers, International Paper, Weyerhaeuser and Stora

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70 See above Table 2, paragraph (75).

71 Second questionnaire to customers, replies to question 23c. Several customers pointed at particular differences between pulp and paper equipment; see for instance reply of Mondi: "pulp and paper mill projects are different and unrelated to each other".

Enso, alone is 19%[72]. Pulp mill equipment buyers are highly sophisticated, disposing of engineers with detailed knowledge of machinery and often 10 to 20 years of experience in the business. This enables them to successfully call for tenders for large projects and negotiate with suppliers, and to be sensitive to price increases and quality changes[73]. Consequently, some customers believe that they have, at least to some extent, *buyer power,* which they could use to offset attempts by the merging parties to increase prices[74].

(99) On the other hand, it should be noted that the customer structure is relatively fragmented, with more than 100 pulp as well as integrated pulp and paper mills world-wide. The present case is therefore hardly comparable with cases where the suppliers faced only a handful of important customers[75]. The fact that a certain group of customers claims to dispose of buyer power is not sufficient to off-set adverse effects of a merger, since it only ensures that these particular customers, with particular bargaining strength, are shielded from price increases[76].

(100) The clear majority of customers answering to the Commission's market investigation claimed not to dispose of significant buyer power to off-set price increases by their suppliers. It should also be noted that not only the smaller customers, but also larger ones expressed concerns with the merger.

(101) Therefore, the Commission concludes that overall there is not sufficient countervailing buyer power in the market as to effectively constrain the merged entity's behaviour following the transaction.

b) Pro-competitive effects of the notified operation

(102) Whilst a significant number of customers raise concerns about the merger absent a suitable divestiture, many of these customers also point at possible benefits from the transaction as notified[77]. They particularly refer to the fact that a second supplier able to supply the full range of pulp mill equipment would be created. This might enable Metso post-merger to compete more effectively with Andritz, allowing customers to choose between two suppliers offering a full product range and with experience for all these products.

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72 Poyry Forest Industries Consulting Oy [...]*.

73 See minutes of interview with International Paper.

74 See minutes of interviews with International Paper.

75 See, by contrast, for a case involving a highly concentrated buyer side Case COMP/M.4057 - Korsnäs/Assidomän; see also press release IP/06/610.

76 See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2004 C 31, p.5, paragraph 67.

77 Second questionnaire to customers, replies to question 34. 16 customers stated the merger would be rather negative when weighing the positive and negative effects. Only 4 customers had a positive opinion without any reserves. 16 customers stated the merger would be neutral or that it had positive *and* negative elements (e.g. price increase; reduction of choice).

(103) Also the parties claim that the merger is beneficial at least for those customers who intend to buy an entire mill[78]. They also claim that the merger could result in allowing the merged entity to develop better and more environmentally friendly products, to the benefit of the consumer[79].

(104) The in-depth investigation has revealed that the emergence of a second full-line supplier of pulp mill equipment may indeed be beneficial to customers, at least to a certain extent, for several reasons:

(105) First of all, for those customers within the "new mill" markets (both for WOB equipment and digesters) which plan in the future to buy an *entire mill* from one supplier, the effect of the merger is indeed rather positive. For them, Andritz has currently a monopoly, and the merger will enable Metso/Kvaerner to compete with Andritz for the supply of such full mills, including the supply of a continuous digester. It should, however, be recalled that only a minority of new mill customers is expected to purchase entire mills out of one hand and that the positive effects of buying a full mill out of one hand do in any event not apply to rebuild customers.

(106) Second, the Notifying Party has explained, supported by some customers[80], that buying packages (e.g. digester and WOB equipment together) helps customers to save *"interface costs"* which can result from the mutual adjustment of various process islands from different suppliers. Combining several process islands can also help to avoid conflicts in liability cases. However, the Commission's market investigation shows that many customers do not regard the reduction of "interface costs" as important enough to buy "entire mills" only from one supplier. On the contrary, they prefer having the choice between different suppliers, using their respective strengths in different markets and using competition between the suppliers to keep prices low. The undisputed advantages resulting from reduced interfaces do apparently not lead new mill or rebuild customers to buy "entire mills" or to upgrade larger parts of the mill, using just one supplier.

(107) Finally, customers have explained[81] to the Commission that it is increasingly important that their suppliers have knowledge not only of some parts of the mill, but of as many process stages as possible. This is mainly because changes in any part of a mill may have an impact on the other mill parts (e.g. changes to the chemical processes, to capacity, to water and energy consumption, to pollution etc.). An understanding of all the main mechanical and chemical processes in the respective pulp mill can result in the design of *better and more reliable products*. Accordingly, the majority of customers expect that the merger will be beneficial for the quality of the products supplied by the merging parties. Indeed, Kvaerner's activities in the pulp mill equipment business today are more limited in scope than Metso's and Andritz's. As Kvaerner is currently part of a larger group of companies the main focus of which

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78 See report from RBB Economics of 14 September 2006.

79 See the parties' submission on "Benefits of the Merger in Terms of Innovation" of 29 September 2006.

80 Second questionnaire to customers, replies to question 32; see in particular the minutes of interviews with UPM and M-Real.

81 Second questionnaire to customers, replies to question 32; see in particular the minutes of the interview with M-Real.

is outside the pulp and paper industry, it is perceived by customers as less committed to the business (also in terms of research and development activities) than Metso or Andritz[82]. The merger between Metso and Kvaerner might, hence, not only create a second full-line supplier of pulping equipment able to compete on an equal footing with Andritz, but also a manufacturer fully committed to the pulp and paper industry and having the necessary critical mass for further research and development activities.

(108) It should, however, be noted that the majority of customers remains concerned that the merger will result in price increases for their products and states that these concerns will not be outweighed by potential benefits of the merger (e.g. in terms of increased R&D activities, resulting in better products)[83], not the least because it will reduce the number of suppliers competing for innovating solutions in the pulp equipment markets.

c) Conclusion

(109) The Commission therefore concludes that the above described potential pro-competitive effects of the notified operation are very unlikely to counterbalance the loss of effective competition caused by the reduction of eligible supply alternatives, the removal of an important competitive constraint and the creation of the largest equipment supplier in the affected markets to an extent that it would remove the Commission's serious doubts as to the compatibility of the transaction with the common market and the EEA Agreement.

6. Conclusion on non-coordinated effects

(110) The Commission therefore concludes that it has serious doubts that the notified operation will significantly impede effective competition in the common market, in particular through the creation of a dominant position or non-coordinated effects in the markets for the supply of pulp mill equipment for the cooking stage in new mill projects as well as for the supply of pulp mill equipment for the brown stock washing, oxygen delignification and bleaching stages in both new mill and rebuild projects.

C. COORDINATED EFFECTS

(111) The proposed transaction would result in the creation of two leading suppliers, Metso Kvaerner and Andritz, in many markets for pulp mill equipment, followed by a much smaller third competitor, GL&V. This raises the question whether the notified operation would enable the two main remaining suppliers to tacitly coordinate their behaviour, e.g. to raise prices or divide the market, even without entering into a concerted practice or agreement within the meaning of Article 81 of the EC Treaty, or would further facilitate such a coordination if it were already in place.

(112) It could be argued that the market was rather transparent, given that mainly two competitors will be active in the markets concerned and only a limited number of pulp mills is constructed /upgraded each year. A reduction of the main suppliers from three to two would therefore make the market more symmetric and, hence, facilitate tacit

82 See e.g. minutes of interview with Klabin.

83 Second questionnaire to customers, replies to question 34, as well as the minutes of the interviews with GP Cellulose.

coordination, for example by alternating new mill projects between the two main competitors.

(113) However, the Commission's investigation has not revealed any concrete indications that the operation is likely to create or enhance the possibility and incentives for Metso/Kvaerner and Andritz to tacitly coordinate their competitive behaviour.

(114) First, the investigation could not identify any element indicating an already existing tacit coordination of the main players in the market. None of the customers has raised any substantiated concern in that respect, and the asymmetric market structure prevailing pre-merger, with one full-line supplier (Andritz), two other main suppliers (Metso and Kvaerner) that lack important elements of a pulp mill (continuous digester and recovery line in the case of Metso, wood yard and certain process islands of the fibre line in the case of Kvaerner), as well as the presence of a smaller fourth player (GL&V), makes it highly difficult for these suppliers to tacitly agree on terms of coordination.

(115) Second, market transparency relates only to projects as such but not to prices, since customers keep project prices confidential and these prices are therefore not available to suppliers[84]. Also, the Commission's tender analysis has shown that there is only a limited number of projects each year, especially in the new mill market, which are inhomogeneous, unpredictable and variable in terms of size as well as timing. This creates a clear disincentive for competitors to alternate or otherwise divide bids, since it is too risky for any supplier to miss a contract.

(116) Next, no structural links between Metso and Andritz exist which they could use for facilitating coordination.

(117) The risk of coordinated effects is further mitigated by the fact that pulp mill equipment can, as set out above, not be considered as a homogeneous product. On the contrary, pulp mill equipment is usually adapted to the specific needs of each individual customer. Depending on the specific requirements of the customers, the supply of pulp mill equipment also involves engineering advice, the assembly of the island, testing services or additional guarantees of specific functions (e.g. EPC contracts).

(118) Finally, pulp manufacturers are sophisticated customers with a very good knowledge of the industry, own engineering capacities and long-standing experience with tenders. They are very price-and quality-sensitive. For all these reasons, it seems likely that customers would be able to detect a coordinated course of conduct, provoking them to (at least try to) react appropriately, which would make a coordinated outcome unsustainable in the long run. It should also be underlined that no customer has raised substantiated concerns about a future possibility of tacit coordination.

(119) In any event, even if the present transaction could give rise to competition concerns with regard to possible coordinated effects caused by the notified operation such concerns would be removed by the commitments entered into by the Notifying Party, which will (as explained in more detail in the assessment of the commitments) enable GL&V to establish itself as a third major player in the pulping equipment markets

84 See e.g. Form CO, p. 59.

and, thereby, re-create a market structure similar to the one prevailing before the transaction.

D. VERTICAL EFFECTS (PROCESS AUTOMATION)

(120) The Commission has also assessed whether Metso's ability to provide process automation to pulp mill customers might have anti-competitive effects.

(121) The remaining competitor, Andritz, is currently buying process automation systems for some of its equipment from Metso. Therefore the Commission investigated whether the upwards integration could hamper the competitors of the merged entity to effectively compete on the defined relevant product markets for pulp mill equipment.

(122) However, given Metso's relatively moderate market share in pulp mill related process automation (according to the Notifying Party [10-15]*% for any possible automation market), it can be excluded that Metso could use its current supplier position to foreclose Andritz from the market. In fact, there are a large number of other suppliers active in the market for process automation for pulp mills (including, *inter alia*, large companies such as ABB), to which Andritz or any customer could turn should he look for an alternative supplier.

(123) The Commission's market investigation has confirmed this view, since most customers do not see an appreciable advantage for Metso in the competition for pulp mill equipment because of Metso's ability to provide process automation[85]. A large majority of customers indicated that the ability of a pulping equipment manufacturer to also supply automation control systems is not an important criterion for their choice of a supplier[86]. This is mainly because this product can be bought separately from the pulp mill equipment and a sufficient number of suppliers seem to be able to provide equally eligible solutions for process automation.

VII. COMMITMENTS

A. DESCRIPTION OF THE COMMITMENTS OFFERED BY METSO

(124) In order to remove the competition concerns arising as a result of the proposed transaction and identified at this stage of the procedure, Metso has submitted commitments pursuant to Article 8(2) of the Merger Regulation on 6 October 2006. These commitments were subsequently modified by a revised set of commitments on 8 November 2006 (the modified commitments are hereinafter referred to as "Phase II Commitments").

(125) The main content of the Phase II Commitments can be summarised as follows:

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85 Second questionnaire to customers, replies to question 23b. 18 out of 28 answering customers indicated the market for process automation is highly competitive and that therefore, the merged entity will not be able to further strengthen its market position.

86 Second questionnaire to customers, replies to question 14. When asked for the most important criteria in the acquisition of a pulp mill, 7 out of 11 answering customers considered automation as the least or second least important criterion and none of the 11 customers considered automation as the most important criterion.

1. Divestiture of Kvaerner's washing, oxygen delignification and bleaching business

(126) Metso offers to divest all tangible and intangible assets related to Kvaerner's business in the markets for washing, oxygen delignification and bleaching equipment. Metso has already entered into Sale and Purchase Agreements with a purchaser of this business, namely the Canadian company GL&V[87].

(127) The parties commit to divest all tangible and intangible assets that constitute Kvaerner's business in the abovementioned markets (the "WOB Business"), including:

- all *intellectual property rights* (patents/patent applications; trademarks, logos) relating to Kvaerner's brown stock washing, bleaching and oxygen delignification equipment;
- all *know how* relating to Kvaerner's brown stock washing, bleaching and oxygen delignification equipment (such as pumps, mixers etc.); this includes i.a. the transfer of all drawings, designs and all factual and technical data on previous and ongoing projects such as lists of suppliers and customers;
- all *machines & tools* for the manufacture of the relevant products (welding stations, fixtures, moulds, work stations etc.);
- all *ongoing contracts* (manufacture and service & maintenance) related to Kvaerner's brown stock washing, bleaching and oxygen delignification business
- Kvaerner's *key personnel* i.a. for engineering, project management, sales and marketing of brown stock washing, bleaching and oxygen delignification equipment.

2. Divestiture of Metso's batch digester business

(128) In order to address the Commission's concerns with regard to cooking equipment, the Notifying Party offered to divest all tangible and intangible assets related to Metso's batch digester business. The Notifying Party proposes to sell the batch digester business to the same acquirer, the Canadian competitor GL&V, with whom Metso has entered into a binding agreement on the purchase[88].

(129) The Notifying Party commits to divest all tangible and intangible assets that constitute Metso's batch digester business (the "Cooking Business"), including but not limited to:

- All *IP rights* (patents/patent applications; trademarks, logos), in particular those related to Metso's "SuperBatch" technology;

87 The respective Sale and Purchase Agreements, signed on […]*.

88 The Sale and Purchase Agreement is also […]*.

- all *know how* to Metso's batch digester business (drawings, designs and all factual and technical data on previous and ongoing projects such as lists of suppliers and customers);

- all *machines & tools* for the manufacture of the relevant products;

- all *ongoing contracts* (manufacture and service & maintenance) related to Metso's batch digester business;

- Metso's *personnel* involved in the development and sale of batch digesters.

(130) The commitment provides that the acquirer, GL&V, grants a *back-licence* to Metso, enabling Metso to use all IP rights and know-how related to the SuperBatch technology in order to develop and market this technology in parallel to GL&V.

B. ASSESSMENT OF THE PROPOSED COMMITMENTS

(131) In order to eliminate the competition problems identified at this stage, the commitments must fulfil three conditions: (a) the divested assets must form a *viable business*, (b) GL&V must be considered a *viable purchaser* that will be able to compete effectively on the markets for pulp mill equipment, and (c) divestiture of the said assets to GL&V must create conditions of competition comparable to those prevailing pre-merger, in particular by *eliminating the overlap* of the competitive positions of the parties in the markets concerned by the notified transaction[89].

(132) Unlike in other cases, where the purchaser of the divested business is unknown at the time of the Commission's decision in the present cases, the Commission can, in the present case, already take the identity of the purchaser into account for the assessment whether the three conditions are fulfilled.

1. Viability of the divested business

(133) The parties have already entered into a legally binding agreement with GL&V on the divestiture of the WOB as well as the Cooking Business during the administrative procedure, on […]*.

a) Problems related to the carve-out of the divested businesses

(134) Since the divested businesses are no stand-alone legal entities, but form part of Kvaerner's/Metso's integrated pulp mill equipment business, the divested business has necessarily to be "carved out" of the remaining business. In such "carve-out" operations, it is of utmost importance for the viability of the transferred business that all main elements are identified and transferred to the acquirer[90] that is, in the present case, all elements which are necessary for successfully selling "process islands" to pulp mill equipment customers. This is particularly important in the present case, because sales in the pulp mill equipment business are done via tenders for every single

89 See e.g. Commission Notice on remedies acceptable under Council regulation (EC) No 4064/89 and under Commission Regulation (EC) No 447/98 ("Remedies Notice"), paragraphs 13 et seq.

90 See in this context also DG Competition's Merger Remedies Study of October 2006, p. 73 et seq. (http://ec.europa.eu/comm/competition/mergers/studies_reports/remedies_study.pdf).

project and the importance of long term customer contracts is more limited than in other industries. In particular with regard to the sale of Metso's cooking business to GL&V, where Metso will remain active in parallel to GL&V, the commitments must ensure that the viability is not put into question by unresolved separation issues related to the "carve-out", since an "incomplete" divestiture might significantly affect the viability of the transferred business which will be in competition with Metso/Kvaerner after the transaction.

b) Shortcomings of the commitments submitted in Phase I

(135) In this context, it should be recalled that the commitments Metso had originally submitted during the initial Phase I investigation ("Phase I Commitments") contained important limitations as to the transferred business. These limitations risked seriously undermining the viability of the transferred businesses.

(136) The Phase I Commitments for washing, delignification and bleaching equipment did i.a. not include the transfer of ongoing contracts or projects with customers to GL&V[91]. Moreover, the proposed commitments granted Metso the right to retain a license for three patents[92] developed by Kvaerner. According to Metso, these patents were developed for the production of washing equipment for […]*[93]; however, they are also used for other (smaller) wash presses. According to provisions of the Phase I Commitments, the merged entity would remain entitled to use the three patents and to stay in the business with machines using these patents for an unlimited time (i.e. not only for a transitional period). As concerns cooking equipment, the Parties had only offered to grant a license for the SuperBatch technology to a not further specified purchaser, but not to divest Metso's complete digester business including contracts and personnel.

(137) Finally, the Phase I Commitments only summarised the tangible and intangible assets to be transferred, without providing detailed information on the specific assets and rights to be transferred, and without providing solutions and mechanisms for problems related to the transfer of key personnel, the separation of shared assets or the separation of rights and information relating to "mixed" contracts (contracts relating not only to the divested businesses but also to other businesses such as wood handling etc.[94]). In a situation where an extensive carve-out is required to separate the divested business, the Commission considers a detailed description of the assets to be transferred, including shared assets and contracts, and the procedures for the transfer of the key personnel, etc., as indispensable for securing the viability of the business. The proposed Phase I package could therefore not discard the potential "carve-out" problems with the necessary degree of certainty.

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91 See e.g. paragraph 11 (d) - (f) of the Phase I Commitment text. For details, see also the Business Separation Agreement proposed in Phase I, Sections 2, 3 and 5.

92 These patents related, according to the description given in the Phase I Commitment text, to a […]*.

93 See paragraph 6 of the Phase I Commitment text and Exhibit 1(B), "Patent License Agreement"[…]* thereto.

94 It should be noted that some contracts with customers do not only concern washing, delignification, bleaching or cooking equipment, but also other products or services for other process islands.

(138) The Commission's concerns were confirmed in the market test of the Phase I Commitments.

c) The modified commitments submitted in Phase II

(139) The Phase II Commitments constitute a significant improvement with regard to the initial proposal in Phase I. Metso has removed all main doubts as to the completeness of the divested businesses which put into question its viability and has provided solutions for all main problems that might be related to the "carve-out", in particular with regard to Metso's cooking business.

WOB Business

(140) As concerns the transfer of the *WOB Business*, the Phase II Commitments provide not only for a divestiture of some isolated parts or machines used in the WOB Business (e.g. only the wash press technology as initially proposed by the parties), but for a divestiture of *all relevant tangible and intangible assets* necessary to sell entire process islands, including IP rights and know how for the main auxiliary equipment such as Kvaerner's well-known mixers. The Notifying Party has also committed to transfer all relevant *process know-how* for the integration of the different components. Metso has renounced its rights to retain any of Kvaerner's patents for the wash press technology and clarified that it will grant an *exclusive* license to GL&V for all other patents which cannot be transferred[95].

(141) In the Phase II Commitments, Metso also commits to divest its ongoing business, that is all contracts relating to ongoing new mill or rebuild projects and to service and maintenance business[96]. The purchaser GL&V can therefore decide which contracts it wants to take over[97] (e.g., the purchaser may not wish to take over those contracts in which only warranty obligations are to be fulfilled and no payments are to be expected). The transfer of the on-going contracts will give the purchaser the opportunity to get knowledge on all previous projects and to get in contact with Kvaerner's customers immediately after the transfer. This "baseload" of ongoing business will also facilitate the expansion of the purchaser in the area of the divested business and create turnover even in the absence of first "reference projects" with the new technology. The Phase II Commitments contain also a detailed list of Kvaerner's ongoing projects (delivered projects with ongoing obligations) and Kvaener's "order backlog" (obligations for non-delivered projects)[98].

95 See paragraph 6(a) of the Phase II Commitments.

96 It should be noted that customers may have a right to veto a change of their supplier. Metso committed to co-operate with GL&V in good faith in obtaining consent from the respective customers and to use its best efforts to convince customers to accept GL&V as a substitute for Metso, see paragraphs 20-25 of the Phase II Commitments.

97 See e.g. paragraphs 20(c)(i) and 20(d)(i) of the Phase II Commitments.

98 See Schedule 2.1. (j) of the Phase II Commitments.

Cooking business

(142) As concerns the transfer of the *Cooking Business*, the Phase II Commitments provide for a full transfer of Metso's batch cooking business to the purchaser. The acquirer will therefore not only hold a license for certain products, but dispose of all tangible and intangible assets forming Metso's current batch cooking business. Given the specific nature of the transfer of the Cooking Business, notably the requirement of a "carve-out" and the licence-back clause according to which Metso will be entitled to offer the SuperBatch technology in parallel to the purchaser, the Commission had to safeguard that all conceivable problems related to the transfer of the entire cooking business are solved before the closing of the main transaction.

(143) The Commission had not only to verify whether the scope of the divested cooking business is complete, but also whether convincing solutions for potential "carve-out"-problems are provided. In the present case, it was in particular necessary to verify whether it can be expected that the relevant *key personnel* will change to the acquirer and whether separation problems might impede the transfer of *shared assets* or of the contracts forming the *ongoing business.* Having reviewed the Phase II Commitments and their exhaustive schedules on the transferred Cooking Business, the Commission has come to the conclusion that these commitments can ensure that GL&V as the acquirer will obtain a complete and viable business and that its commercial success is not hampered by problems caused by conflicts with the seller on the scope or the separation of the transferred assets.

(144) As concerns the *scope* of the business, the Commission considers that the improved commitments encompass all elements necessary to successfully enter the SuperBatch business. It should be noted that GL&V, the acquirer of the SuperBatch business and itself already currently a supplier of batch technology, has been involved in the process of identifying the necessary tangible and intangible assets and has confirmed that no significant elements are missing to its best knowledge[99]. Since the Commission considered the transfer of personnel as crucial for the success of the transferred business, Metso has not only committed to agree on the transfer of such personnel on GL&V's request and to provide for the necessary incentive schemes, but attaches to the commitments a list of […]*. Given Metso's and GL&V's agreed understanding that not more than […]* employees or even less should be sufficient for the transfer of a "viable" business, the Commission has reached the conclusion that the viability of the transferred business will not be undermined by any problems of transfer of personnel[100].

(145) As concerns possible issues with the separation of *shared assets*, both the seller and the acquirer of the business have confirmed that there are no tangible assets to be shared, hence no separation problems are to be expected. In order to ensure that no disputes will occur on the occasion of the separation of the *ongoing business* to the acquirer, Metso and GL&V have identified all affected contracts. Metso has granted GL&V access to all information related to this business, regardless of whether the contracts related also to other than the transferred equipment ("mixed" contracts). It

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99 See interview with GL&V of 30 October 2006; letter from GL&V to Metso of 30 October 2006.

100 This view is shared by GL&V, see interview with GL&V of 30 October 2006; letter from GL&V to Metso of 30 October 2006.

should be noted that for […]*, Metso and GL&V have already reached an agreement with the customer that GL&V will replace Metso as a supplier for the cooking part of the new mill. Hence, the Commission has reached the firm conviction that the viability of the transferred business will not be hampered by disputes on the repartitioning of ongoing business.

(146) Altogether, the provisions in the Phase II Commitments and the sale and purchaser agreement entered into with GL&V provide the Commission with the necessary certainty that any problems related to the "carve-out" will be solved and that the Cooking Business will be transferred as a viable business to GL&V.

(147) It should also be noted that Metso commits to appoint a *Monitoring Trustee* in order to solve potential conflicts between the seller and the purchaser, e.g. on how to separate the divested businesses from the businesses remaining with the merged entity. Given the importance of the trustee function in the present case, in particular with a view to the separation of the WOB Business and overseeing the "carve-out" process of the Cooking Business, the parties commit not to close the main transaction before a Monitoring Trustee has been appointed after approval by the Commission. Thereby, sufficient safeguards are established to find workable solutions for any disputes arising during this process which could call into question the viability of the transferred business.

(148) Finally, the Commission has taken into account that Metso has offered a "fix-it-first" solution in which the purchaser, GL&V, can already be approved by the Commission's decision pursuant to Article 8 of the Merger Regulation and not only at a later stage after an additional divestiture period (which usually takes 6 months or longer). This solution will shorten the transition period significantly, thereby strengthening the viability of the transferred businesses, because the acquirer can start to compete immediately or within a relatively short period of time after the decision.

2. Viability and suitability of GL&V as a purchaser

(149) The Commission has also verified whether GL&V can be considered as a viable purchaser which can effectively compete with the two main remaining suppliers (Andritz and Metso/Kvaerner) on the market for pulp mill equipment.

(150) The first results of the initial Phase I investigation revealed that some (in particular European) customers had little knowledge on GL&V as a supplier and that GL&V's market share in the overlapping markets was below 10% in the last 5 years. This led the Commission to further evaluate GL&V's commitment to the pulp mill equipment business and its ability to become a credible competitor for the divested pulp mill products in the future and to verify whether GL&V could compete effectively for rebuild and new mill projects.

(151) The Phase II market investigation has removed the initial doubts as to GL&V's viability and showed that GL&V has both the incentives and the ability to become a credible "third player" in the markets for pulp mill equipment through the acquisition of Kvaerner's and Metso's divested businesses.

a) GL&V is an established supplier in the market for pulp mill equipment

(152) In fact, the market investigation showed that GL&V is by far no "fringe player" in the pulp mill equipment market. Similar to Andritz, GL&V has entered the market for pulp mill equipment through a number of acquisitions, the largest one being the acquisition of Beloit Pulping in 2000, at that time a leading supplier of fibreline equipment. GL&V disposes of a number of strong brand names such as Beloit, Impco or Celleco which enjoy a good reputation in the market.

(153) Through the past acquisitions, in particular as result of the Beloit acquisition, GL&V has one of the largest customer bases of all pulp mill equipment suppliers. This "installed base" is a steady steam of revenue for GL&V's service and maintenance business and can also constitute an advantage when it comes to replacement. GL&V's "Celleco" division is the current market leader for "stock preparation" equipment (screens, cleaners, disc filters) both for new mill and rebuild projects. Besides, GL&V is not only active in sales of products for the fibreline, but also offers equipment for the recovery part of the pulp mill, namely recaustisizing equipment.

(154) GL&V is a financially solid group, the size of which is comparable to that of Kvaerner with a total turnover of €[400-500]m […]*. The Commission notes that GL&V's turnover of its Pulp & Paper Group amounted to €[150-200]m in 2006[101]. This turnover exceeds even Kvaerner's current turnover with its entire pulp & paper business […]*. Also other financial indicators (e.g. asset/equity ratio or return on equity) do not support the view that GL&V is a financially weak competitor. On the contrary, the financial data available to the Commission, which included reports from independent financial analysts, confirm that GL&V's performance and financial strength is comparable to its main competitors.

(155) GL&V explained to the Commission that its limited market position in the markets for washing, delignification and bleaching equipment outside the US and Canada during the last five years was the result of an intended strategy change of GL&V after the dramatic bankruptcy of the Beloit company. Since Beloit's bankruptcy was at least partly caused by payment problems of customers for some large projects, GL&V had decided in 2000 to focus on its service & maintenance business and to establish experience through this field before focussing again on world-wide new mill/rebuild sales outside North America. This decision was mainly taken because the service & maintenance business involves less financial risks than the capital intensive business with equipment for new mill or larger rebuild projects. This strategy has in fact led to a decline of Beloit's/GL&V's business outside North America between 2000 and 2005 as compared to its position between 1995 and 1999. While Northern American customers[102] still consider GL&V as market leader for pulping equipment, European customers have had fewer contacts concerning new projects with GL&V over the last five years, which may at least partly explain their weak knowledge on GL&V.

(156) However, since GL&V's pulp business has developed very well since 2000, GL&V decided in 2004 to change its previous strategy and to re-enter the market for pulping equipment for rebuild and new mill projects on a world-wide basis, i.e. also outside

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101 This number does not even include GL&V's turnover in the field of recaustisizing islands sold to pulp mills.

102 See e.g. minutes of the interview with International Paper of 3.10.2006 or with Rayonier of 21.9.2006.

North-America. This decision was mainly due to the fact that the vast majority of the demand for pulp mill equipment in the next ten years is expected to come from outside North America. Not the least with a view to the fact that GL&V's pulp & paper business has become the most important activity within GL&V in terms of turnover, GL&V's has a strong incentive to participate in the competition for rebuild and new projects for pulp mill equipment, a market with a project volume of estimated […]* within the next 10 years[103].

(157) As a result of GL&V's new strategy, GL&V was able to increase its revenues for new mills/mill and rebuild projects outside North America significantly. The relaunch of GL&V's business with equipment for new mills and rebuilds has also resulted in a sharp increase of GL&V washers sales. In fact, while GL&V has sold only [0-5] washers in 2003 ([0-3] of which outside North America), GL&V has already sold [20-30] in 2005, with a clear focus on countries outside North America ([10-20] washers sold to non-US customers). GL&V's market share in the field of WOB equipment in 2005 has accordingly increased to 11% in washing, 5% in bleaching and 8% in oxygen delignification.

b) No "structural weakness" in the field of R&D and integration know how

(158) The Commission has also further investigated whether GL&V will have sufficient resources to invest in research and development in order to adapt their equipment to the customers' needs and to further improve their pulping equipment. Indeed, some customers which had no experience with GL&V as a supplier have raised concerns as to GL&V's commitment to invest in research and development and as to GL&V's product and integration know how. However, the Commission's investigation did not support this view. As concerns GL&V's commitment to R&D, it should be noted that GL&V's R&D expenditures are comparable to those of other competitors. All customers who have previously bought from GL&V and replied to the Commission have negated that GL&V has a disadvantage in terms of integration know how and confirmed that they consider GL&V as reliable supplier which has no appreciable disadvantage in terms of R&D capacities and process know how compared to the other competitors. Many customers pointed at GL&V/Beloit's long-standing experience in the pulping business and indicated that despite its technological weaknesses in some fields, GL&V's pulping know-how and services are not inferior to those of GL&V's competitors. It should also be noted that GL&V has, in a number of previous acquisitions (e.g. the Eimco acquisition of 2002), proven to be able to successfully integrate and sell an acquired technology and to meet the respective customer demands.

c) Ability to compete for new mill projects

(159) The market investigation has also removed the Commission's concerns with regard to GL&V's ability to compete not only for projects in the rebuild markets, but also for new mill projects. According to GL&V, taking part in tenders and winning projects for new mills is an integral part of their strategy with the acquired business. Indeed, as new mill projects are expected to represent about […]* of the market volume for pulping equipment in the future and since supplying new mill projects may favour the

103 See report from Jakko Pöyry on the development of the pulp mill business.

original supplier when it comes to replacing the equipment, it can be expected that GL&V will have a strong incentive to compete also for new mill contracts.

(160) The divestiture package is likely to further increase GL&V's chances to sell products for new mill projects, since it will provide GL&V with Kvaerner's entire technology for washing, delignification and bleaching equipment, including notably the established "CompactPress" technology, which is perceived by most customers as superior to GL&V's current "baffle" washers, and Kvaerner's mixers which also enjoy a particular good reputation in the market.

(161) A further reason for this is that the divestiture package will in practice also enhance GL&V's product portfolio, since it will enable GL&V to offer product packages for new mills which include a modern batch digester, based on the "SuperBatch" technology. Indeed, while GL&V's own batch digester solution was only regarded as a realistic choice by few customers anymore and GL&V has had only de minimis sales of batch digesters, Metso's SuperBatch technology is regarded as an established and modern technology. Customers have expressed their view that GL&V's ability to offer a modern cooking solution would make GL&V more eligible also as a supplier of larger packages of different process islands. It should be noted that in particular the cooking stage is often sold together with the washing/delignification/bleaching stages.

(162) Although GL&V will not become a "complete full-line" supplier such as Andritz or Metso (after the implementation of the concentration) with the divestiture package, it will be able to offer products for the entire fibreline, including screening equipment, as Kvaerner before the transaction. With the acquisition of the recausticizing specialist Eimco in 2002, GL&V has also started to enter the business with process islands in the recovery part of pulp mills. GL&V's presence in the neighbouring paper equipment markets and in the market for water treatment are likely to further increase their chances to win new customers, since more than 50% of all new mill projects are integrated pulp and paper mills and since GL&V's experience in the water treatment sector can facilitate a possible expansion in the field of the recovery line.

(163) While GL&V's new mill activities in the last five years were not focused on large capacity projects, the divestiture package will enable them to compete also for large new mill projects. Through the acquisition of Kvaerner's wash press technology, GL&V will get access to wash presses with a capacity of […]*. This will considerably increase GL&V's chances to win tenders for projects for which it currently had no solution (GL&V's current capacity limit for wash presses is 1800 t/day). GL&V has also experience with customers who wish to enter into an "EPC" contract and carried out several projects of an "EPC" type (e.g. the "Spring Grove" project for the pulp & paper producer Glatvelter and the "North West Timber" project in Russia).

(164) In the Commission's view, the fact that GL&V has no completed reference projects for batch digesters in the last years does not constitute a barrier to enter the business with the SuperBatch technology. In fact, as a direct result of the divestiture, GL&V will be assigned […]*, which GL&V can use as a reference for future projects and which will contribute to establish GL&V as a second supplier of the SuperBatch technology.

(165) Furthermore, the majority of the customers who answered to the Commission's market test have confirmed that they would consider buying from GL&V not only for

rebuild projects, but also for new mill projects[104], some of them even in the absence of a reference project. Even those customers for whom reference projects are crucial for their choice of a supplier do usually not require more than one operational "reference" project (such as […]*), since already one plant is regarded as a sufficient proof of a supplier's ability to install the SuperBatch technology if it is working without problems. The fact that GL&V will not be able to supply an entire pulp mill after the merger does not put into question the appropriateness of the remedy, since Kvaerner was not able to offer such solutions before the concentration either. For these customers the number of potential suppliers is not reduced through the merger but, on the contrary, enlarged from one (Andritz) to two (Andritz and Metso/Kvaerner).

d) Suitability of GL&V as a purchaser of the divested businesses

(166) Finally, the Commission was able to accept the Phase II Commitments as the legally binding agreements with GL&V provided the required certainty that the commitments will be implemented by transferring the businesses to a suitable purchaser. Other purchasers did not appear to be suitable to remove the competition concerns because transferring the divested businesses or parts of it to other purchasers than GL&V would not have ensured the success of the commitments with the same degree of certainty.

(167) A few customers have suggested that the Parties should sell their overlapping business to Andritz, the current market leader for pulp equipment products. Although such a solution might have an advantage for those customers who prefer buying large packages or even a full pulp mill, the pro-competitive effect of this solution for the majority of the customers would be less positive, since it would not create a substitute for Kvaerner which will disappear as a third supplier from the market, leaving customers with only two big competitors (Andritz and Metso/Kvaerner) and one significantly weaker supplier (GL&V).

(168) Also, a divestiture to a "specialised" competitor, i.e. a competitor who is specialised in the production of equipment for one process island only without being able to supply other process islands, would not have been appropriate in the present case. It is clear that there are at present only four suppliers of pulp mill equipment which are able to sell a larger portfolio of products to customers and who are not only active in specific process islands.

(169) In such a concentrated market, it appears likely that only the current number four in the market, GL&V, will be able to substitute Kvaerner and to become an eligible alternative for all main pulp mill projects by strengthening GL&V in the fields in which its portfolio is perceived as weak (cooking, washing, delignification and bleaching). Contrary to this, it seems considerably less likely that companies which have only experience in one single process island could exercise similar competitive constraints on the merged entity as GL&V. Although some of these companies are successful and innovative in their respective field of activity and although it cannot be excluded that some of these companies might be able to use the divestiture package to significantly expand their pulp mill business, the Commission considers that the risks for such a "newcomer" to the digester/fibreline market to fail and not meet the

104 Only 7 out of 28 answering customers replied that they would not buy from GL&V, see answers to question 8 of the Commission's first questionnaire on the commitments.

customers' demand is higher than for the established player GL&V. Not only are many of the specialised players significantly smaller than GL&V and Kvaerner; customers have also indicated in the Commission's market investigation that it would be difficult for specialised suppliers to build up sufficient knowledge on new process islands with which they have no or limited experience to compete effectively with the main competitors given the high entry barriers and the need for reference projects and reputation for the success in the pulp mill market.

(170) Therefore, the fix-it-first solution as foreseen by the Phase II Commitments, established by the binding agreements with the purchaser GL&V, provided the required certainty to the Commission that the commitments will be implemented with the transfer of the divested businesses.

3. The proposed divestiture removes the entire competitive overlap and will effectively restore competition

a) Washing, delignification, bleaching

(171) As concerns the markets for WOB equipment, the Phase II Commitments will remove the *entire competitive overlap* between the parties, because Kvaerner will divest these businesses in their entirety. Unlike provided for in the Phase I Commitments, the Notifying Party will not retain any patent or any part of the know how relating to […]*. The divestiture of the said business to GL&V will therefore create conditions of competition comparable to those prevailing pre-merger. It should also be noted that the commitments do not negatively affect the potential benefits for customers stemming from the combination of Kvaerner and Metso[105].

b) Cooking: reasons for the shared licence solution

(172) The Commission is of the view that a full divestiture with a subsequent withdrawal of the seller from the market is not the optimal solution for the identified competition concerns in the field of cooking equipment. Due to the specificities of the digester markets, the Commission found that a shared licence for the SuperBatch technology is the best solution to effectively remove the competitive overlap without harming other customers.

(173) In fact, as set out above, as regards competition for digesters demand is not uniform but customers are affected in different ways by the transaction: While the merger has no or little impact on those customers with a strong preference for continuous digesters (currently the majority of all customers), the merger has an impact on those customers who remain open to choose between both digester types. In order to address the Commission's competition concerns in the field of digesters, the parties had originally proposed to grant GL&V an *exclusive* license for Metso's SuperBatch technology in their Phase I Commitments.

(174) However, the vast majority of customers responding to the Commission's market test rejected this proposal and suggested that Metso should remain active in the business

105 See above, paragraphs (102) - (108).

for batch digesters[106]. They explained to the Commission that an exclusive license or a "clear-cut" divestiture of the SuperBatch technology to GL&V without the possibility for Metso to stay in the business would create a *de facto monopoly* for those customers who need to buy batch digesters (e.g. for sulphite mill customers[107]) or who want to buy a batch digester for any other reason.

(175) The Commission acknowledges that a complete divestiture of the technology to GL&V might negatively affect in particular those customers who have a preference for batch digesters for technological or other reasons, since it would leave these customers with only one supplier of batch digester technology. It should be noted that, although GL&V's activities in the field of digesters through its own batch technology are limited today, GL&V's presence in tenders can be expected to exercise at least some competitive pressure which would be eliminated through an *exclusive* divestiture of the SuperBatch technology to GL&V.

(176) The Commission has carefully weighed the disadvantages of a "non-exclusive" divestiture of Metso's SuperBatch technology (e.g. potential difficulties for GL&V to win projects against the current market leader, or attract key personnel) and the advantages of such a solution (maintaining competition for the "batch" segment of the digester market) and come to the conclusion that it is preferable to allow Metso to stay in business with the SuperBatch technology alongside GL&V. Such a remedial solution appears to be adequate for a type of equipment competition for which is marked by different customer demand and in which only parts of the customers are harmed by the transaction.

(177) The Notifying Party's Phase II Commitment will create two competing suppliers for the well-established SuperBatch technology while today Metso's SuperBatch technology is clearly considered as the preferred choice for batch digesters by customers. The example of the continuous cooking technology, which was originally exclusively owned by Kamyr/Kvaerner and had to be shared after a company split between two suppliers, shows that sharing an existing technology (such as the SuperBatch technology) is possible and can successfully open the markets and even create competition in an industry where previously one company (Kamyr/Kvaerner) had a monopoly for this technology.

(178) Since the proposed solution of sharing the technology found not only the support of those customers who have a preference for batch digesters but also of those customers who choose between both types, the Commission considers that the Commitments offered by the parties (divestiture with a back licence for Metso) constitute a satisfactory solution for the competition problems in the field of cooking equipment.

(179) The Commission has also considered the alternative of a *"transitional exclusivity"* for GL&V, allowing GL&V to market the SuperBatch technology on an exclusive basis for a transitional period. Such a solution might theoretically further increase GL&V's chances to gain sales in the SuperBatch business and avoid the situation to compete

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106 See answers to question 12 b) of the Commission's Phase I Commitments market test, sent on 27. July 2006. 19 of all 26 replying customers answered that they prefer a shared licence for the SuperBatch technology.

107 See above paragraph (55).

immediately with the "established provider" of the technology. […]*[108]. While some customers supported the idea of a transitional exclusivity, the majority was opposed to such a solution, mainly because they claimed that it would create a temporary "monopoly" for batch digester technology.

(180) In the Commission's view, the disadvantages for customers from a (limited) monopoly for batch digesters (e.g. risk of postponement of investment decisions[109] and of forcing rebuild customers currently buying from Metso to change their supplier[110] are more important than the possible benefits for GL&V's chances to become an established supplier of the SuperBatch technology. Moreover, the Commission believes that the Phase II Commitments are sufficient to enable GL&V to establish itself as a credible alternative to Metso/Kvaerner in the SuperBatch market, without major barriers that could prevent GL&V from competing effectively. It should in this respect be stressed that Metso will transfer at least one ongoing "reference" project for SuperBatch cooking to GL&V. GL&V has also reported that it has realistic chances to win other contracts for new mill projects in the near future, in which it could also use the SuperBatch technology. An "artificial" monopoly period in order to create reference projects does therefore not seem to be indispensable for GL&V's success in the Super Batch market.

(181) Also other elements submitted by GL&V show that the Phase II Commitments are sufficient to enable GL&V to compete with Metso/Kvaerner for SuperBatch projects. In addition to the above mentioned reference projects, GL&V expects advantages from combining its own "RDH" technology with Metso's SuperBatch technology, which could help GL&V to compete very effectively in the field of batch digesters. GL&V also expects to be able to offer batch digesters at a lower price than Metso/Kvaerner. It should further be noted that also the majority of customers is confident that in spite of the shared license, the divestiture of the SuperBatch business will create the necessary conditions to enable GL&V to make competitive bids for cooking equipment in competition with Andritz and the merged entity.

(182) Finally, the Commission's market investigation has shown that the merged entity will have an incentive to continue to develop its business with batch cooking, since Metso has a large installed base of SuperBatch digesters and since it would deprive itself of the advantage of being able to offer two cooking solutions, thereby providing a solution for all potential customers.

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108 [...]*.

109 Customers who have a clear preference for Metso or who are bound to Metso by other reasons (e.g. because they wish to combine different process islands from Metso) might react by artificially postponing their tenders for new equipment, which would create undesirable market inefficiencies.

110 Customers for batch digesters for rebuild products would automatically be affected by the remedy for the new mill market, since also these customers could only turn to GL&V if Metso could no longer offer batch cooking solutions. As rebuild customers often upgrade existing cooking islands with an additional digester, they have a preference to purchase from the original supplier, with whom the have already worked, rather than negotiating a complete new contract with a new supplier.

4. The proposed divestiture will also avoid possible anticompetitive effects through coordination

(183) The proposed divestiture will maintain a competitive market structure in the product markets affected by the merger, maintaining at least three eligible suppliers for all areas in which the merging parties' activities overlap. The divestiture package will strengthen GL&V significantly and enable GL&V to take over Kvaerner's role as a third player which will exercise competitive pressure on the two other suppliers which can contribute to prevent the two others from coordinating their behaviour. In the markets affected by the concentration, the competitive structure will therefore not significantly change.

(184) Although GL&V's ability to exercise competitive pressure on Andritz and Metso/Kvaerner in projects which require the supply of a full or almost full pulp mill might be limited, the merger will not negatively affect this situation. Today, Andritz has a monopoly for such projects. The change brought about by the merger is therefore rather positive, since there will be two suppliers competing for "full mill" projects in the future, which can be regarded as a clear improvement of the competitive structure.

C. CONDITIONS AND OBLIGATIONS

(185) In order to ensure that Metso complies with its commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section 2 of the commitment text ("Commitment to divest") annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious concerns to effective competition in the common market identified by the Commission. The other commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the competition concerns identified by the Commission.

VIII. CONCLUSION

(186) For the reasons set out above the Commission finds that the commitments as proposed by the Notifying Party together with the pro-competitive effects of the merger described above[111] suffice to remove the serious doubts to effective competition identified by the Commission. Therefore the transaction will not significantly impede effective competition in the common market and in the EEA. The Commission has therefore, subject to full compliance by Metso with the offered commitments, decided to declare the concentration compatible with the common market and the functioning of the EEA Agreement pursuant to Article 8(2) and 10(2) of the EC Merger Regulation and Article 57 of the EEA Agreement.

111 See paragraphs (97), (102)-(109).

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Metso Corporation Oy acquires sole control of Aker Kvaerner ASA's pulping and power business within the meaning of Article 3(1)(b) of the EC Merger Regulation is hereby declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

Article 1 is subject to the condition of full compliance with the commitments set out in Section 2 of Annex I to this decision.

Article 3

Article 1 is subject to the obligation of full compliance with the commitments set out in Sections 3 to 7 of Annex I to this decision.

Article 4

This decision is addressed to:

Metso Corporation Oy
Corporate Office
Fabianinkatu 9 A
PL 1220
FIN-00101 Helsinki

Done at Brussels, 12 XII 2006

For the Commission
(signed)
Neelie KROES
Member of the Commission

By hand, email and fax: 02/296.43.01
European Commission
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

METSO CORPORATION/AKER KVAERNER PULPING & POWER
CASE NO COMP/M.4187

COMMITMENTS TO THE EUROPEAN COMMISSION

November 8, 2006

WHITE & CASE LLP

Pursuant to Article 8(2) and 10(2) of Council Regulation (EEC) No. 139/2004 (the “Merger Regulation”), Metso Corporation (“Metso”) hereby provides the following Commitments (the "Commitments") in order to enable the European Commission (the “Commission”) to declare the acquisition of Aker Kvaerner’s Pulping & Power business (“AKPP”) (Metso and AKPP are together referred to as “the Parties”) by Metso (the “Transaction”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the “Decision”).

The Commitments shall take effect upon the date of adoption of the Decision (the “Effective Date”).

Any term used in this text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (the “ Remedies Notice”).

Section 1: Definitions

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

Affiliated Undertakings: undertakings controlled by Metso, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89 (for the avoidance of doubt, including, after the consummation of the Transaction, Kvaerner Pulping and Kamfab).

AKPP: Aker Kvaerner Pulping & Power business, including Kvaerner Pulping and Kamfab.

AKPP Purchase Agreement: the purchase agreement between [CONFIDENTIAL] signed on April 28, 2006.

Auxiliary Equipment: the entire product line of Kvaerner Pulping of tower scrapers, pulp distributors, reactor dischargers, down-flow tower dischargers, pulp heaters (including JETMIXER™), tower and piping inserts and nozzles, pump line separators, standpipes, reactors and towers, used by Kvaerner Pulping to complement its supplies of Wash Presses, Pumps and Mixers.

Business Employees: the key technical and commercial employees working within the Divested Businesses. Business Employees include Key Personnel.

Completion Date: the date of consummation of the divestiture of the Divested Businesses to GLV, to take place on the same date and immediately after the consummation of the transactions contemplated by the AKPP Purchase Agreement, and [CONFIDENTIAL].

Divested Businesses: (i) the WOB Business and (ii) the SuperBatch Cooking Business.

Effective Date: the date of the Commission's decision under Article 8(2) of Council Regulation 139/2004.

GLV: Groupe Laperrière & Verreault Inc. and its subsidiaries.

Kamfab: Kvaerner Kamfab AB, a company organized under the laws of Sweden, registered under the number 556281-8905 and having its principal place of business at Axel Johnsons väg 6, SE-651 15 Karlstad, Sweden.

Key SuperBatch Personnel: the employees of the SuperBatch Cooking Business referred to in paragraph 12.

Key Personnel: Key WOB Personnel and Key SuperBatch Personnel.

Key WOB Personnel: the employees of AKPP referred to in paragraphs 10 to 11.

Kvaerner Pulping: Kvaerner Pulping AB, a company organized under the laws of Sweden, registered under the number 556018-7303, having its principal place of business at Knud Dahls väg, SE-651 15 Karlstad, Sweden.

Metso: Metso Corporation, a company organized under the laws of Finland, having its principal place of business at Fabianinkatu 9 A, PL 1220, 00101 Helsinki, Finland.

Mixers: all mixers for mixing of chemicals into pulp at medium consistency which have been supplied by Kvaerner Pulping prior to the Completion Date or which have been developed or are being developed by Kvaerner Pulping at the Completion Date, including but not limited to [CONFIDENTIAL].

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Metso, and who has the duty to monitor Metso's compliance with the conditions and obligations attached to the Decision.

Ongoing Projects: (i) the projects in respect of which AKPP has delivered Wash Presses, Pumps, Mixers and Auxiliary Equipment and/or Process Systems before the Completion Date but for which AKPP on Completion Date will still have outstanding contractual obligations to perform work/outstanding warranty obligations, and (ii) projects in respect of which Metso has delivered SuperBatch Cooking Equipment (specified prior to Completion Date) but for which Metso still has outstanding contractual obligations to perform work/outstanding warranty obligations.

Order Backlog: (i) Wash Presses, Pumps, Mixers and Auxiliary Equipment which AKPP on Completion Date will still have contractual obligations to deliver and (ii) binding orders from Metso's customers for delivery of SuperBatch Cooking Equipment, where the delivery and/or the customer acceptance of the delivery has not yet taken place.

Personnel: all personnel currently employed by the Divested Businesses, including Key WOB Personnel and Key SuperBatch Personnel, staff seconded to the Divested Businesses and shared personnel.

Process Systems: all process systems and methods of Kvaerner Pulping for brown stock washing, oxygen delignification and bleaching which are based on Wash Presses, excluding components of process systems and methods which include atmospheric or pressure diffusers.

Pumps: all pumps for pumping of pulp at medium consistency which have been supplied by Kvaerner Pulping prior to the Completion Date or which have been developed or are being developed by Kvaerner Pulping at the Completion Date, including but not limited to [CONFIDENTIAL].

Purchaser: Groupe Laperrière & Verreault Inc. and its subsidiaries.

SuperBatch Cooking Business: the entire business activities of Metso relating to the manufacture, development and marketing of SuperBatch cooking equipment and processes, which Metso commits to divest to GLV.

SuperBatch Cooking Back License: an indefinite, irrevocable, worldwide, sole license to the SuperBatch Cooking Technology to be granted by GLV to Metso to develop, design, manufacture, market and sell batch cooking equipment and processes, as well as related services.

SuperBatch Cooking Equipment: equipment used by Metso for batch cooking, including but not limited to digesters, liquor accumulators, heat exchangers, chip feeding systems, as well as other equipment, such as liquor tanks, pipes, pumps, valves, etc.

SuperBatch Cooking Technology: technology package including all information, know-how, patents, trademarks, R&D and other documentation currently used by Metso to

develop, design, manufacture, market and sell SuperBatch cooking equipment and processes.

Trustee: the Monitoring Trustee.

Wash Presses: all wash presses for brown stock washing, oxygen delignification and bleaching which have been supplied by Kvaerner Pulping prior to the Completion Date, or which have been or are being developed by Kvaerner Pulping at the Completion Date, including but not limited to [CONFIDENTIAL].

WOB: brown stock washing, oxygen delignification and bleaching.

WOB Business: AKPP's entire business activities used for brown stock washing, oxygen delignification and bleaching ("WOB"), including Wash Presses, Pumps, Mixers and Auxiliary Equipment, as well as the Process Systems (but excluding atmospheric or pressure diffusers), which Metso commits to divest to GLV.

Section 2: The Divested Businesses

Commitment to divest

1. In order to restore effective competition Metso commits to (i) procure the divestiture by AKPP of its business relating to brown stock washing, oxygen delignification and bleaching (the "WOB Business"), to GLV and (ii) divest Metso's SuperBatch Cooking Business to GLV according to the procedure described in these Commitments (both businesses are jointly referred to as the "Divested Businesses").

2. The proposed divestitures shall not be implemented unless and until the Commission has approved the terms of divestiture in accordance with these Commitments. The sale and transfer of the Divested Businesses shall only be consummated if, and immediately after, the Transaction is consummated. The consummation of the Transaction is expected to take place no later than [CONFIDENTIAL]. In the event that the proposed Transaction is not consummated, these Commitments shall lapse in their entirety.

3. Metso shall be deemed to have complied with this commitment if [CONFIDENTIAL].

4. To maintain the structural effect of the Commitments, Metso shall, for a period of [CONFIDENTIAL] years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divested Businesses [CONFIDENTIAL], 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 Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the WOB Businesses

WOB Business

5. The divestiture of AKPP's WOB business is a full business transfer. It consists of the entire business activities of Kvaerner Pulping and its wholly owned subsidiary Kamfab used for brown stock washing, oxygen delignification and bleaching ("WOB"), including Wash Presses, Pumps, Mixers and Auxiliary Equipment, as well as the Process Systems.

6. The WOB Business shall include the following tangible and intangible assets:

   (a) all patents and patent applications relating to brown stock washing, oxygen delignification and bleaching and listed in Schedule 6(a)(i) (except for [CONFIDENTIAL];

   (b) all trademarks and logos relating to the Wash Presses, Pumps, Mixers and Auxiliary Equipment, namely [CONFIDENTIAL];

   (c) all know-how relating to the WOB Business, [CONFIDENTIAL] as defined in Schedule 6(c);

   (d) all key machines used specifically for the manufacture of Wash Presses and listed in Schedule 6(d); [CONFIDENTIAL];

   (e) all pilot equipment used for the development of the Wash Presses, Pumps, Mixers and Auxiliary Equipment, as listed in Schedule 6(e);

   (f) all tools, fixtures, jigs, molds and patterns used mainly for the manufacture of Wash Presses, Pumps, Mixers and Auxiliary Equipment, as listed in Schedule 6(d);

   (g) all rights and obligations under existing agreements with customers in respect of the Order Backlog and Ongoing Projects relating to the WOB Business (subject to GLV's willingness to take over such customer agreements and, if applicable, subject to customers' consent). The Order Backlog and Ongoing Projects relating to the WOB Business as of the date hereof are specified in Schedule 6(g);

   (h) all rights and obligations under other agreements relating to the WOB Business without which GLV's ability to conduct the WOB Business would be limited (subject to GLV's willingness to take over the relevant agreement and, if applicable, consent from the relevant counterparties), including but not limited to (i) all existing maintenance and service contracts, if any, relating to the WOB Business and (ii) the full benefit of all existing subcontracting agreements concerning manufacture and supply of Pumps, Mixers and Auxiliary Equipment;

   (i) all office equipment, computers, software (except for software licenses which are non-transferable and for which GLV must acquire a license in its own name), licenses and other equipment used by AKPP's employees who become employees of GLV;

(j) the liabilities relating to AKPP's employees who become employees of GLV; and

(k) any other tangible or intangible asset used for brown stock washing, oxygen delignification and bleaching and not transferred to GLV pursuant to (a) through (j) above, the absence of which would materially limit GLV's ability to conduct the WOB Business; any such asset would be transferred to GLV under mutually acceptable commercial terms and conditions.

7. For the avoidance of doubt, the WOB Business will not include:

(a) cash and cash equivalents; and

(b) accounts receivable.

SuperBatch Cooking Business

8. The divestiture of the SuperBatch Cooking Business shall include all assets, know-how (including technical and commercial information about the installed base) and intellectual property rights necessary to ensure the viability and competitiveness of the SuperBatch Cooking Business.

9. Metso commits that the list of transferred assets set forth below identifies all the relevant functions of the SuperBatch Cooking Business:

(a) all patents and patent applications relating to the SuperBatch Cooking Business and listed in Schedule 9(a);

(b) the trademark SuperBatch;

(c) the SuperBatch pilot equipment, as described in Schedule 9(c);

(d) all existing and documented know-how related to the equipment and process systems, installed base and active sales projects, including but not limited to [CONFIDENTIAL];

(e) all commercial data related to the installed base, including [CONFIDENTIAL];

(f) all rights and obligations under existing agreements with customers in respect of the Order Backlog and Ongoing Projects relating to the SuperBatch Cooking Business (subject to GLV's willingness to take over such customer agreements and, if applicable, subject to customers' consent). The Order Backlog and Ongoing Projects relating to the SuperBatch Cooking Business as of the date hereof are specified in Schedule 9(f);

(g) all rights and obligations under all other agreements relating to the SuperBatch Cooking Business (subject to GLV's willingness to take over the relevant agreement and, if applicable, consent from the relevant counterparties), including but not limited to [CONFIDENTIAL] (ii) all ongoing batch cooking maintenance contracts and (iii) all existing subcontracting agreements concerning manufacture and supply of SuperBatch Cooking Equipment; and

(h) All office equipment, computers, software (except for software licenses which are non-transferable and for which GLV must acquire a license in its own name), licenses and other equipment used by Metso's employees who become employees of GLV.

Transfer of Employees

WOB Business

10. GLV will have a right to employ any employee in key business positions in the WOB Business, subject to his/her agreement and the requirement of national law ("Key WOB Personnel"). Therefore, GLV will be able to choose all employees necessary to ensure a full business transfer. Metso will use its best efforts to facilitate the transfer of the necessary personnel to GLV; Metso undertakes all reasonable steps to encourage all Key WOB Personnel to remain with the WOB Business transferred to GLV, including [CONFIDENTIAL].

11. The Key WOB Personnel include but are not limited to [CONFIDENTIAL].

SuperBatch Cooking Business

12. GLV will have the right to employ all employees working specifically in the SuperBatch Cooking Business, subject to their agreement and the requirements of national law, necessary to ensure a full business transfer of the SuperBatch Cooking Business ("Key SuperBatch Personnel"), including, but not limited to:

[CONFIDENTIAL]

13. Metso will use its best efforts to facilitate the transfer of the necessary personnel to GLV; Metso also commits to provide [CONFIDENTIAL].

14. If Key SuperBatch Personnel refuse to be employed by GLV, Metso commits to provide to GLV, upon request and remuneration for the related costs, all technical assistance and training reasonably necessary for the purpose of enabling GLV to supply SuperBatch Cooking Equipment and processes.

Back license of the SuperBatch Cooking Technology

15. Metso shall retain a back license on the SuperBatch Cooking Technology. Following the divestiture of the SuperBatch Cooking Business to GLV, GLV shall grant Metso [CONFIDENTIAL] license to use the SuperBatch Cooking Technology to develop, design, manufacture, market and sell batch cooking equipment and processes, as well as related services (the "SuperBatch Cooking Back License").

16. The SuperBatch Cooking Back License shall cover all information and intellectual property rights, including know-how, patents, patent applications, trademarks, R&D and other documentation, enabling Metso to develop, design, manufacture, market and sell, without any limitations, batch cooking equipment and processes, as well as related services.

17. The SuperBatch Cooking Back License shall be granted on commercial terms and conditions subject to the Commission's prior approval. [CONFIDENTIAL].

18. Metso commits for the period mentioned above, at GLV's request and under mutually acceptable terms and conditions, all technical assistance and access to the relevant engineering teams within Metso which is reasonably necessary for the purpose of enabling GLV to supply SuperBatch Cooking Equipment and processes, as currently supplied by Metso.

Transfer of Customer Agreements

WOB Business

19. The sale and purchase of the WOB Business shall include a transfer of the WOB Business in its entirety. Metso shall therefore procure that AKPP transfers to GLV all rights and obligations under its existing customer agreements relating to the WOB Business; provided that GLV shall have a right to refuse the transfer of a particular customer agreement if it does not want to take over the rights and obligations under the customer agreement in question.

20. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL]

21. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL]

22. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL]

SuperBatch Cooking Business

23. The sale and purchase of the SuperBatch Cooking Business shall include the transfer of the SuperBatch Cooking Business in its entirety. Metso shall therefore transfer to GLV all rights and obligations under its existing customer agreements relating to the SuperBatch Cooking Business; provided that GLV shall have the right to refuse the transfer of a particular customer agreement if it does not want to take over the rights and obligations under the customer agreement in question.

24. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL].

25. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL]

26. [DETAILS OF THE TRANSFER OF CUSTOMERS - CONFIDENTIAL]

Transitional arrangements

27. WOB Business: Except for the fixed assets used by Kamfab for the manufacturing of Wash Presses (tools, fixtures, jigs, moulds, patterns and key machines) and know-how documents , all divested assets used in the WOB Business will be transferred to GLV on Completion Date. [DETAILS ON TRANSITIONAL ARRANGEMENTS, RELATED *INTER ALIA* TO THE ORDER BACKLOG AND ONGOING PROJECTS - CONFIDENTIAL]*.

28. SuperBatch Cooking Business: All divested assets used in the SuperBatch Cooking Business will be transferred to GLV on Completion Date . However, in the event that a customer contract in respect of the Order Backlog or an Ongoing Project relating to the SuperBatch Cooking Business cannot be transferred to GLV, certain limited separation arrangements will be required:

[DETAILS ON TRANSITIONAL ARRANGEMENTS, RELATED *INTER ALIA* TO THE ORDER BACKLOG AND ONGOING PROJECTS - CONFIDENTIAL]

29. [DETAILS ON TRANSITIONAL ARRANGEMENTS - CONFIDENTIAL]

Section 3. Related commitments

Preservation of Business in Ordinary Course

30. From the Effective Date until the Completion Date, Metso shall preserve the economic viability, marketability and competitiveness of the SuperBatch Cooking Business, and shall procure that AKPP preserves the economic viability, marketability and competitiveness of the WOB Business in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divested Businesses. In particular, Metso undertakes and shall procure that AKPP to undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divested Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or investment policy of the Divested Businesses;

(b) to make available sufficient resources for the development of the Divested Businesses, on the basis and continuation of the existing business plans

(c) to take all reasonable steps, including [CONFIDENTIAL], to encourage the Key Personnel to remain with the Divested Businesses.

31. From the Effective Date until the Completion Date, Metso shall use its best efforts to achieve the results referred to in paragraph 30 above.

Hold-separate obligations of Metso

32. Metso commits, from the Effective Date until the Completion Date, to keep the Divested Businesses separate from the businesses it is retaining, and to ensure that Key Personnel of the Divested Businesses – including the Hold Separate Manager as defined in paragraph 33 below – have no involvement in any business retained and vice versa.

33. Until the Completion Date, Metso shall assist the Monitoring Trustee in ensuring that the Divested Businesses are managed as a distinct and saleable entity separate from the businesses retained by the Parties. Metso shall appoint a Hold Separate Manager who shall be responsible for the separation of the Divested Businesses from the businesses of AKPP retained by Metso, as well as the management of the Divested Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently and in the best interest of the business with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by the Parties.

34. The obligations described in paragraphs 32 and 33 above are applicable to the extent that compliance therewith is compatible with the measures necessary to separate the

Divested Businesses from the businesses of AKPP retained by Metso, as well as with paragraphs 30 and 31 above.

Ring-fencing

35. Metso shall implement all necessary measures to ensure that it does 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 WOB Business. In particular, the participation of the WOB Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the WOB Business. Metso may obtain information relating to the WOB Business which is reasonably necessary for the divestiture of the WOB Business, including the transitional arrangements described above, or whose disclosure to Metso is required by law.

Non-solicitation clause

36. Metso undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Business Employees transferred with the Divested Businesses for a period of [CONFIDENTIAL] years after the Completion Date.

Non-use of technology and trademarks

37. After the Completion Date, Metso and its Affiliated Undertakings (including, after the consummation of the Transaction, AKPP) shall refrain, in relation to the WOB Business, from using:

[CONFIDENTIAL]

Section 5. Trustee

Appointment Procedure

38. Metso shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. Metso commits not to close the Transaction until a Monitoring Trustee has been appointed.

39. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfillment of its mandate.

40. When performing its duties, the Monitoring Trustee shall, to the extent compatible with its duties under these Commitments, take adequately into consideration the interest of customers and the parties.

Proposal by Metso

41. No later than one week after the Effective Date, Metso shall submit a list of one or more persons whom Metso proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 39 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments; and

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

42. The Commission shall have the discretion to approve or reject the proposed Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfill its obligations. If only one name is approved, Metso shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Metso shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

43. If all the proposed Trustees are rejected, Metso shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs 38 to 40.

Trustee nominated by the Commission

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

Functions of the Trustee

45. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Metso, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

46. The Monitoring Trustee shall:

    (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) monitor the on-going management of the Divested Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Metso with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divested Businesses, and the keeping separate of the Divested Businesses from the business retained by the Parties, in accordance with paragraphs 30 to 34 of the Commitments;

(ii) supervise the management of the Divested Businesses as a distinct and saleable entity, in accordance with Section 3 of the Commitments;

(iii) (1) in consultation with Metso, determine all necessary measures to ensure that Metso does 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 Businesses, except the information necessary to finalize the transitional arrangements and/or under the SuperBatch Back License, and, in particular, strive to the extent possible for the severing of the Divested Businesses' participation in any central information technology network, without compromising the viability of the Divested Businesses, and (2) decide whether such information may be disclosed to Metso as is reasonably necessary to allow Metso to carry out the divestiture or its business, or as the disclosure is required by law; and

(iv) (1) monitor the splitting of assets, including monitoring that all assets, information or rights which are necessary for the viability of the Divested Businesses are transferred to GLV, even if the transfer thereof requires the transfer of other ancillary assets, information or rights, unless such transfer could be regarded as abusive or as obviously disproportionate; and (2) monitor the allocation of Personnel between the Divested Businesses and Metso or Affiliated Undertakings. In cases of conflict regarding the splitting of assets, the Monitoring Trustee will propose adequate solutions for the separation thereof; and in case of continued disagreement, the Monitoring Trustee may refer to the Commission to decide the matter.

(c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(d) propose to Metso such measures as the Monitoring Trustee considers necessary to ensure Metso's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divested Businesses, the holding separate of the Divested Businesses and the non-disclosure of competitively sensitive information;

(e) provide to the Commission, sending Metso a non-confidential copy at the same time, a written report within fifteen (15) days after the end of every

month. The report shall cover the operation and management of the Divested Businesses so that the Commission can assess whether the Businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Metso a non-confidential copy at the same time, if it concludes on reasonable grounds that Metso is failing to comply with these Commitments; and

(f) within a reasonable time after receipt of the final binding sale and purchase agreement between Metso and GLV, submit to the Commission a reasoned opinion as to whether the Divested Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divested Businesses without one or more assets or not all of the Personnel affects the viability of the Divested Businesses after the sale.

Duties and obligations of Metso

47. Metso shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Metso's or the Divested Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Metso and the Divested Businesses shall provide the Trustee upon request with copies of any document. Metso and the Divested Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

48. Metso shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divested Businesses. This shall include all administrative support functions relating to the Divested Businesses which are currently carried out at headquarters level. Metso shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to GLV, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to GLV in the due diligence procedure. Metso shall keep the Monitoring Trustee informed of all developments in the divestiture process.

49. Metso shall indemnify the Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Metso for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

50. At the expense of Metso, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Metso's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred

by the Trustee are reasonable. Should Metso refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Metso. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 49 shall apply mutatis mutandis.

Replacement, discharge and reappointment of the Trustee

51. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

(a) the Commission may, after hearing the Trustee, require Metso to replace the Trustee; or

(b) Metso, with the prior approval of the Commission, may replace the Trustee.

52. If the Trustee is removed according to paragraph 51, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 39-41.

53. Beside the removal according to paragraph 51, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section 6: Future co-operation in providing information and data on the relevant market(s) of the Divested Businesses

54. Metso commits to provide, for a period of [CONFIDENTIAL], on request by the Commission (or third parties under contract by the Commission, respecting confidentiality obligations) information and data pertaining to the operations of the retained business as well as on the relevant markets of the Divested Business in a sufficient level of detail to allow the Commission to carry out an ex-post analysis on the effectiveness of the divestiture to resolve any competition problems. All business secrets conveyed to the Commission will be covered by the obligation of professional secrecy that the Commission is bound to by virtue of the EC Treaty and of the Merger Regulation.

Section 7: The Review Clause

55. The Commission may, where appropriate, in response to a request from Metso showing good cause:

(a) grant an extension of the time periods foreseen in the Commitments; or

(b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

If the Commission, on request from Metso, waives the commitment to divest the Divested Businesses to GLV, Metso will, if the Commission so requires, submit to

the Commission commitments for the divestiture of the Divested Businesses substantially in the form of the Commission's standard commitments.

duly authorized for and on behalf of Metso Corporation

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Pontus Lindfelt
White & Case LLP

SCHEDULE 6(a)(i) – Transferred Patents (WOB)

I. WASH EQUIPMENT PATENTS

A. WASH PRESSES

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

B. PUMPS

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries*	*Related to*
[confidential]				

C. MIXERS

No patents

D. AUXILIARY EQUIPMENT

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries*	*Related to*
[confidential]				

II. PROCESS SYSTEM PATENTS

A. Fiber Line Processes

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

B. Oxygen Delignification Processes

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

C. Bleaching Processes

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

D. Ozone Processes

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries*	*Related to*
[confidential]				

SCHEDULE 6(a)(ii) – Non-transferable process patents (WOB)

III. OXYGEN DELIGNIFICATION PROCESSES

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

IV. BLEACHING PROCESSES

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries Granted/Pending*	*Related to*
[confidential]				

V. OZONE PROCESSES

Kvaerner ref. No.	*Patent No.*	*Valid until*	*Other countries*	*Related to*
[confidential]				

SCHEDULE 6(b) – Transferred Trademarks (WOB)

TRADEMARKS

[confidential]

SCHEDULE 6(c) – Transferred Know-How (WOB)

Metso commits to transfer all documented know-how relating to the WOB Business. Set forth below are details of the transferred know-how:

(a) know-how relating to equipment, [CONFIDENTIAL];

(b) know-how relating to processes, [CONFIDENTIAL]; and

(c) know-how relating to the manufacture of Wash Presses includes, but is not limited to, [CONFIDENTIAL]

SCHEDULE 6(d) – Transferred Tools and Key Machines (WOB)

Tools, fixtures, jigs, moulds, patterns & other equipment

Item	*Kamfab ID**	*Description*	*Summary*
[confidential]			

Key Machinery

Item	*Kamfab ID**	*Description*
[confidential]		

SCHEDULE 6(e) – Pilot Equipment (WOB)

Pilot equipment used for development of Wash Equipment

[Confidential]

SCHEDULE 6(g) – Ongoing Projects

Date: 2006-11-03

NON CONFIDENTIAL

Kvaerner Pulping

Kvaerner Pulping AB
Fiberline Division

Proj. No.	Customer	Equipment	Contract Day	Start Up Day	Expiration Main Guarantee period	Expiration Post Guarantee period
[CONFIDENTIAL]						

SCHEDULE 6(g) – Order backlog

Date: 2006-10-19

NON CONFIDENTIAL

Kvaerner Pulping

Kvaerner Pulping AB
Fiberline Division

Ref:
Issued by:

Proj. No	**Customer**	**Equipment**	Project Manager	Contract holder	Contract Day	Delivery Kamfab	Installation Start Day	Start Up Day	Taking over Day	Guarantee Test run	Final Acceptance	Final Payment	Guarantee Period	Guarante item
[CONFIDENTIAL]														

SCHEDULE 9(a) – Transferred Patents (SuperBatch)

PATENTS AND APPLICATIONS RELATED TO SUPERBATCH KRAFT COOKING

[CONFIDENTIAL]

PATENTS AND APPLICATIONS ON SUPERBATCH PREHYDROLYSIS COOKING

[CONFIDENTIAL]

SCHEDULE 9(c) – Transferred Patents (SuperBatch)

THE SUPERBATCH PILOT EQUIPMENT

[SUPERBATCH® EXPERIMENTAL DIGESTING SYSTEM FOR SIMULATING REAL CONDITIONS – PUBLICLY AVAILABLE BROCHURE]

SCHEDULE 9(f) – Customer Agreements

[CONFIDENTIAL]

SCHEDULE 13 – Transferred Employees

SuperBatch employees selected by GLV for transfer to GLV

[CONFIDENTIAL]

EUROPEAN COMMISSION
Competition DG

Policy and Strategic Support
Enforcement Priorities and Decision Scrutiny

OPINION

of the ADVISORY COMMITTEE on CONCENTRATIONS

given at its 145th meeting on 1 December 2006

concerning a draft decision relating to

Case COMP/M.4187 – Metso/Aker Kvaerner

Rapporteur : GERMANY

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1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of the Merger Regulation No. 139/04 and that it can be deemed to have a Community dimension pursuant to Article 4(5) of that Regulation.

2. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the relevant product markets as concerns Digesters are:
   a) Digesters for new mills,
   b) Batch digesters for rebuild projects,
   c) Continuous digesters for rebuild projects.

3. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the relevant product markets as concerns Washing, delignification, bleaching equipment are:
   a) Equipment for the brown stock washing stage for new mills,
   b) Equipment for the delignification stage for new mills,
   c) Equipment for the bleaching stage for new mills,
   d) Equipment for the brown stock washing stage for rebuild projects,
   e) Equipment for the delignification stage for rebuild projects,
   f) Equipment for the bleaching stage for rebuild projects.

4. The Advisory Committee agrees with the Commission that for the purpose of assessing the present operation, the relevant geographic markets are worldwide for all of the above mentioned product markets.

5. The Advisory Committee agrees with the Commission that the proposed concentration is likely to result in a significant impediment to effective competition in the common market or in a substantial part of it and the EEA for digesters for new mills.

6. The Advisory Committee agrees with the Commission that the proposed concentration does **not** significantly impede effective competition in the common market or in a substantial part of it and the EEA for the following markets:
   a) Batch digesters for rebuild projects,
   b) Continuous digesters for rebuild projects.

7. The Advisory Committee agrees with the Commission that the proposed concentration is likely to result in a significant impediment to effective competition in the common market or in a substantial part of it and the EEA for the following markets:
   a) Equipment for the brown stock washing stage for new mills,
   b) Equipment for the delignification stage for new mills,
   c) Equipment for the bleaching stage for new mills,
   d) Equipment for the brown stock washing stage for rebuild projects,
   e) Equipment for the delignification stage for rebuild projects,
   f) Equipment for the bleaching stage for rebuild projects.

8. The Advisory Committee agrees that the competition concerns arising from the proposed concentration will not be outweighed by the potential benefits.

9. The Advisory Committee agrees with the Commission that the commitments concerning the Digester business of Metso are sufficient to remove the significant impediments to effective competition in the market defined in Question 5 (digesters for new mills).

10. The Advisory Committee agrees with the Commission that the commitments concerning the WOB business of Kvaerner are sufficient to remove the significant impediments to effective competition in the markets defined in Question 7.

11. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments offered by the parties, and considered all commitments together, the proposed concentration does not significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, within the meaning of Article 2(2), 8(2) and 10(2) of the Merger Regulation and that the proposed concentration is therefore to be declared compatible with the Common Market and with the EEA Agreement.

12. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

BELGIË/BELGIQUE	**ČESKÁ REPUBLIKA**	**DANMARK**	**DEUTSCHLAND**	**EESTI**
K. BOEYKENS	---	---	K HOOGHOFF	---
ELLADA	**ESPAÑA**	**FRANCE**	**IRELAND**	**ITALIA**
---	---	O. HERY	---	F. PAPADIA
KYPROS/KIBRIS	**LATVIJA**	**LIETUVA**	**LUXEMBOURG**	**MAGYARORSZÁG**
---	---	---	---	---
MALTA	**NEDERLAND**	**ÖSTERREICH**	**POLSKA**	**PORTUGAL**
---	I. NOBEL	U. PIRKO	---	R. MAXIMIANO
SLOVENIJA	**SLOVENSKO**	**SUOMI-FINLAND**	**SVERIGE**	**UNITED KINGDOM**
---	---	T. SAARINEN	C. SZATEK	T. KRAJEWSKA

FINAL REPORT OF THE HEARING OFFICER
IN CASE COMP/M.4187 – Metso / Aker Kvaerner

(pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings – OJ L162, 19.06.2001, p.21)

On 4 April 2006 the Commission received a request for referral pursuant to Article 4 (5) of Council Regulation (EC) No 139/2004 (*Merger Regulation*), which was transmitted to the Member States. No Member State or EEA country competent to examine the concentration under its national competition law (Finland, Sweden, Poland, Germany and Norway) expressed its disagreement as regards the requested referral. Accordingly, the concentration was deemed to have a Community dimension pursuant to Article 4 (5) of the Merger Regulation and should therefore be notified to the Commission.

Subsequently, on 23 June 2006, the Commission received a notification of a proposed concentration by which Metso Corporation Oy (*Metso*) acquires sole control, within the meaning of Article 3.1 (b) of the Merger Regulation, of parts of the undertaking Aker Kvaerner ASA (*Aker Kvaerner*), namely its pulping and power business, by way of purchase of shares and assets.

After examining the notification the Commission found that, even taking into account commitments entered into by Metso on 24 July and modified on 27 July 2006, the transaction raised serious doubts as to its compatibility with the common market and the functioning with the EEA Agreement. Accordingly, on 11 August 2006, the Commission decided to initiate proceedings in accordance with Article 6.1(c) of the Merger Regulation.

On 6 November 2006 Metso offered new commitments with a view to render the concentration compatible with the common market. These commitments were subsequently modified on 8 November 2006.

In view of the modified commitments and taking into account the result of an in-depth market investigation, the relevant Commission services considered, subject to full compliance with the commitments offered, that the serious doubts had been removed and that the proposed transaction would not significantly impede effective competition in the common market or a substantial part of it. Accordingly, no Statement of Objections was sent to the parties.

No queries or submission have been made to the Hearing Officer by the parties or any other third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 4 December 2006.

(signed)
Karen Williams