

Case M.[No...] – [Title...]

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to [Article 6(2), *if Phase I Commitments*] [Article 8(2), *if Phase II Commitments*] [Articles 8(2) and 10(2), *if in Phase II Commitments prior to the sending out of the Statement of Objections*] of Council Regulation (EC) No 139/2004 (the ‘**Merger Regulation**’), [Indicate the name of the undertaking or undertakings offering the Commitments. Note that Committing Party/Committing Parties should submit and sign a single (combined) set of Commitments. Please select between the terms Committing Party/Committing Parties, as appropriate, and apply this change throughout the document] hereby enter into the following commitments (the ‘**Commitments**’) vis-à-vis the European Commission (the ‘**Commission**’) with a view to rendering [Description of the operation: e.g. the acquisition of...; the creation of a full-function joint venture between...] (the ‘**Concentration**’) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to [Article 6(1)(b) of the Merger Regulation, *if Phase I Commitments*] [Article 8(2), *if Phase II Commitments*] of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the ‘**Decision**’), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ‘**Remedies Notice**’)¹.

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, including the joint venture [*Only in the case when the proposed operation is a creation of a joint venture*], whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the ‘**Consolidated Jurisdictional Notice**’).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of 3 months from the approval of the Purchaser and the terms of sale by the Commission.

¹ For completeness it is noted that Commission Regulation (EC) No 802/2004 has been replaced by Commission Regulation (EC) 914/2023.

Committing Party/Committing Parties: The notifying party(ies) [*and where the Commitments relate to a business on the target side or include any obligations incumbent on the target:* and the undertaking that is the target of the Concentration]. This includes also any legal successors of the Committing Party/Committing Parties (notably the merged entity).

Confidential Information: any business secrets, know-how, commercial information not in the public domain, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Committing Party/Committing Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Committing Party/Committing Parties and who has/have received from the Committing Party/Committing Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [•] months from the Effective Date.

Hold Separate Manager: the person appointed by the Committing Party/Committing Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

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

Parties: the Notifying Party(ies) and the undertaking that is the target of the Concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 20 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

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

Seller in the Concentration: the legal or natural person currently controlling the undertaking that is the target of the Concentration, if applicable.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [•] months from the end of the First Divestiture Period.

[X]: [*Indicate the name of the undertaking that will divest its business/es*], incorporated under the laws of [•], with its registered office at [•] and registered with the Commercial/Company Register at [•] under number [•].

[*Provide additional definitions for each additional capitalised term within the Commitments*]

2. Should issues arise relating to the interpretation of terms listed in paragraph 1 of these Commitments or terms not defined, the Commission will retain the interpretation that is the most favourable for an effective implementation of the Commitments.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

3. In order to maintain effective competition, the Committing Party/Committing Parties commit(s) to divest, or procure the divestiture of the Divestment Business as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 21 of these Commitments. To carry out the divestiture, the Committing Party/Committing Parties commit(s) to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Committing Party/Committing Parties has/have not entered into such an agreement at the end of the First Divestiture Period, the Committing Party/Committing Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 34.
4. [*The following sentence should be inserted in case of an 'up-front buyer':*] The Concentration shall not be implemented before the Committing Party/Committing Parties, [X] or the Divestiture Trustee has/have entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the Purchaser and the terms of sale in accordance with paragraph 21.
5. The Committing Party/Committing Parties shall be deemed to have complied with this commitment if they fulfil the following conditions:
 - (a) a final binding sale and purchase agreement has been entered into by the Committing Party/Committing Parties/[X] by the end of the First Divestiture Period or by the Divestiture Trustee by the end of the Trustee Divestiture Period, and the Commission approves the Purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 21; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period on the basis of the transaction documents approved by the Commission without any modification, unless explicitly approved by the Commission.

Structure and definition of the Divestment Business

6. The Divestment Business consists of [*provide a summary description of the Divestment Business*]. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes the transfer of all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including products under development and related rights, intellectual property rights, and know how);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; all cooperation agreements with third parties; and
 - (d) all personnel.
7. [*To be included in cases in which the Divestment Business needs an on-going relationship with the Committing Party/Parties/X in order to be fully competitive and viable*]: In addition, the Divestment Business includes the benefit, for a transitional period of up to [*insert*] years after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business or at cost (whichever is more advantageous to the Divestment Business), of all current arrangements under which [*Committing Party/Parties/X*] or its Affiliated Undertakings supply products or services to the Divestment Business or of any other current or new arrangements which are necessary for the viability of the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser and with the approval of the Commission. Strict firewall procedures shall be adopted so as to ensure that any competitively sensitive information related to, or arising from, such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the [*insert the relevant business unit/division providing the product/service*] operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Committing Party/Committing Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of the competitive potential of the Divestment Business. In particular the Committing Party/Committing Parties undertake(s):
- (a) not to carry out any action that might have a significant adverse impact on the value, management, viability or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient financial and other resources needed for the development of the Divestment Business, including the

development of pipeline products or services where relevant, on the basis of the continuation of the existing business plans;

- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, to assist the Divestment Business in the process of IT migration and/or IT separation until the full process is completed;
- (d) to the extent the Divestment Business includes any licences, permits and authorisations issued by any governmental organisation or any other third party/parties for the benefit of the Divestment Business, to take all reasonable steps, or procure that all reasonable steps are being taken, to obtain consent from any governmental organisation or any other third party/parties for all required licences, permits and authorisations;
- (e) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to [X's] remaining business. Incentives schemes should not be linked to the sale of the Divestment Business within a certain period or to the sale price of the Divestment Business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Committing Party/Committing Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Committing Party/Committing Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. The Committing Party/Committing Parties commit(s), from the Effective Date until Closing, to keep, or procure to keep, the Divestment Business separate from the business(es) the Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
10. Until Closing, the Committing Party/Committing Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which [X] is retaining. Immediately after the adoption of the Decision, the Committing Party/Committing Parties shall appoint a Hold Separate Manager. The Hold Separate Manager shall be the current head of the Divestment Business and shall be part of the Key Personnel. If the Hold Separate Manager is not the head of the Divestment Business at the time of the submission of the Commitments, the appointment should occur in agreement with the Commission. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by [X]. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. The Committing Party/Committing Parties shall ensure that the Hold Separate Manager is available for an initial call with the Monitoring Trustee and the Commission, as well as to discuss any significant matter at the request of the Monitoring Trustee or the Commission during his/her

mandate. The Monitoring Trustee or the Commission can discuss any matter relevant for the implementation of the Commitments with the Hold Separate Manager without the presence or explicit agreement of representatives of the Committing Party/Committing Parties. The Hold Separate Manager should provide all information requested by the Commission, including confidential information.

11. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(e) of these Commitments. The Commission may, after having heard the Committing Party/Committing Parties, require the Committing Party/Committing Parties to replace the Hold Separate Manager. The Hold Separate Manager shall not be employed by the Committing Party/Committing Parties or their affiliated undertakings for a period of two years after Closing.
12. *[The following is to be inserted in cases in which a company or a share in a company is to be divested and a strict separation of the corporate structure is necessary:]* To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise [X's] rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Committing Party's/Committing Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of [X]. Upon request of the Monitoring Trustee, [X] shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing obligations

13. [X] shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by [X] before the Effective Date will be eliminated and not be used by [X]. This includes measures vis-à-vis [X's] appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. All personnel in [X's] remaining business who have had access to Confidential Information relating to the Divestment Business shall sign non-disclosure agreements preventing them from using or disclosing any such information. To that effect, within two weeks of the Effective Date, [X] shall provide a detailed work plan on the implementation of the ring-fencing measures to the Monitoring Trustee for its review. [X] may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to [X] is required by law.

Transitional obligations

14. Until the end of the term of the relevant obligations, the Committing Party/Committing Parties shall fulfil and respect its obligations under any and all of the agreements between the Committing Party/Committing Parties/[X] and the Purchaser, as detailed in the Schedule.

Non-solicitation obligation

15. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [●] after Closing.

Non-reacquisition obligation

16. In order to maintain the structural effect of the Commitments, the Committing Party/Committing Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Committing Party/Committing Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 57 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the whole or part of Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

Due diligence-related obligations

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, [X] shall, provide them with the confidential version (or a meaningful non-confidential version) of the Commitments. Subject to customary confidentiality assurances and dependent on the stage of the divestiture process [X] shall also provide potential purchasers with:
 - (a) sufficient information as regards the Divestment Business;
 - (b) sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting obligations

18. The Committing Party/Committing Parties shall submit written reports in [*Indicate the language of the procedure or another language agreed with the Commission*] on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Monitoring Trustee's request). The Committing Party/Committing Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission and the Monitoring Trustee at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
19. The Committing Party/Committing Parties shall inform the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

20. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) The Purchaser shall be independent of and unconnected to the Committing Party/Committing Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture). In addition, the Purchaser should not be the Seller in the Concentration nor any of its Affiliated Undertakings.
 - (b) The Purchaser shall have the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, the Purchaser shall not be excessively leveraged, shall have sufficient equity and profitability, shall have a turnover significantly larger than the turnover of the Divestment Business, shall have sufficient means to finance the acquisition of the Divestment Business and the execution of its business plan, including investments.
 - (c) The Purchaser shall also have the proven expertise, ability and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
 - (d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
21. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When [X] has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. For the approval, [X] must be able to demonstrate – and the Commission shall verify - that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more of the Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the implementation of the Commitments and the viability and competitiveness of the Divestment Business after the sale, taking account of the Purchaser.
22. Any change to the final binding sale and purchase agreement (as well as ancillary agreements) taking place after the Commission's approval referred to in the previous paragraph shall be approved by the Commission, following consultation of the Monitoring Trustee.

Section E. Trustee

I. Appointment procedure

23. The Committing Party/Committing Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Committing

Party/Committing Parties commit(s) not to close the Concentration before the appointment of a Monitoring Trustee.

24. If [X] has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by [X] at that time or thereafter, the Committing Party/Committing Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
25. The Trustee shall:
- (a) at the time of appointment, be independent of the Parties, the Seller in the Concentration, and their Affiliated Undertakings;
 - (b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor;
 - (c) neither have nor become exposed to a Conflict of Interest;
 - (d) demonstrate sufficient capacity and resources to take on the Trustee role with all the obligations that the role entails, including to report regularly to the Commission;
 - (e) have a sufficient presence in the EU/EEA, and sufficient expertise in the relevant EU/EEA countries covered by the Commitments.
26. The Trustee shall be remunerated by the Committing Party/Committing Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Committing Party/Committing Parties

27. No later than one week after the Effective Date, the Committing Party/Committing Parties shall submit the names of at least three natural or legal persons whom the Committing Party/Committing Parties propose(s) to appoint as the Monitoring Trustee to the Commission for approval and a list of two or more persons, who can be the same as the persons proposed as Monitoring Trustee, whom the Committing Party/Committing Parties proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the persons proposed as Trustee fulfil the requirements set out in paragraph 25 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments; and
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

28. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee

to fulfil its obligations. If only one name is approved, the Committing Party/Committing Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Committing Party/Committing Parties 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 Committing Party/Committing Parties

29. If all the proposed Trustees are rejected, the Committing Party/Committing Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 23 and 28 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

31. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Committing Party/Committing Parties, 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

32. 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) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Committing Party/Committing Parties 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 Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8, 9 and 10 of these Commitments;
 - (ii) monitor that the Committing Party/Committing Parties make(s) available sufficient resources for the Divestment Business to develop, including for the development of pipeline products or services where relevant (including to reach completion, approval or registration of pipeline products or services), based on the continuation of existing business plans and relevant milestones or of any other future or ongoing projects that are important for the viability of the Divestment Business to the extent that there are any support obligations from the Committing Party/Committing Parties;

- (iii) to the extent that the Commitments include transitional agreements or the obligation to supply certain inputs, products or services, the Trustee shall monitor the strict compliance with the terms approved and inform the Commission promptly of any changes or compliance problems during the term of such agreements;
- (iv) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraphs 10 to 12 of these Commitments;
- (v) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Committing Party/Committing Parties do(es) not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by the Committing Party/Committing Parties before the Effective Date is eliminated and will not be used by the Committing Party/Committing Parties, and
 - decide whether such information may be disclosed to or kept by the Committing Party/Committing Parties as the disclosure is reasonably necessary to allow the Committing Party/Committing Parties to carry out the divestiture or as the disclosure is required by law;
- (vi) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Committing Party/Committing Parties or Affiliated Undertakings;
- (c) propose to the Committing Party/Committing Parties such measures as the Monitoring Trustee considers necessary to ensure the Committing Party's/Committing Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
 - (i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and by ensuring their access to a confidential version (or a meaningful non-confidential) version of the Commitments, and
 - (ii) potential purchasers are granted reasonable access to the Personnel and Key Personnel;
- (e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (f) provide to the Commission, sending the Committing Party/Committing Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment

Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. The Committing Party/Committing Parties shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;

- (g) promptly report in writing to the Commission, sending [X] a non-confidential copy at the same time, if it concludes on reasonable grounds that [X] is failing to comply with these Commitments. [X] shall neither receive nor comment on draft reports that the Monitoring Trustee prepares for the purposes of reporting to the Commission;
 - (h) promptly report in writing to the Commission as soon as it becomes aware of potential exposure to a Conflict of Interest appearing after its appointment, including if it becomes aware of any potential lack of independence or Conflict of Interest with any purchaser participating in the sale process;
 - (i) to the extent that the Commitments include transitional services agreements, support for projects under development, or the obligation to supply certain inputs, products or services, assess that these obligations are satisfactorily reflected in the sale and purchase agreement and other transaction documents, and inform the Commission promptly of any deviation from the terms included in the Commitments or approved by the Commission or any dispute as to the compliance with such terms during the full duration of the agreement;
 - (j) promptly report in writing to the Commission risks of degradation of the value or operation of the Divestment Business, or risks that the Purchaser does not or is not able to carry out or maintain investments that are essential for the viability of the Divestment Business;
 - (k) within two weeks after receipt of the documented proposal referred to in paragraph 21 of these Commitments, submit to the Commission, sending [X] a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
 - (l) remain throughout the term of the Commitments a point of contact for the Committing Party/Committing Parties, potential purchasers, the Purchaser, the Commission and any other interested third party, in case of issues arising from the implementation and monitoring of the Commitments, including by producing *ad hoc* reports upon request of the Commission;
 - (m) contact potential purchasers that submitted a bid for the Divestment Business and ask for relevant information;
 - (n) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
33. If the Monitoring and Divestiture Trustee are not the same [*legal or natural*] persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

34. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 20 and 21 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of [X], subject to the Committing Party/Committing Parties' unconditional obligation to divest at no minimum price (including at a negative price if considered appropriate and reasonably required) in the Trustee Divestiture Period.
35. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in [*Please indicate the language of the procedure or a different language agreed with the Commission*] on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Committing Party/Committing Parties.

III. Duties and obligations of the Committing Party/Committing Parties

36. The Committing Party/Committing Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of [X's] or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and [X] and the Divestment Business shall provide the Trustee upon request with copies of any document. [X] and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
37. The Committing Party/Committing Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Committing Party/Committing Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Committing Party/Committing Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
38. The Committing Party/Committing Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the

sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Committing Party/Committing Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

39. The Committing Party/Committing Parties 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 the Committing Party/Committing Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
40. At the expense of the Committing Party/Committing Parties, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to [X's] approval (this approval not to be unreasonably withheld or delayed) if the Monitoring 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 Monitoring Trustee are in line with business practice. Should the Committing Party/Committing Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, at the expense of the Committing Party/Committing Parties, after having heard the Committing Party/Committing Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 39 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Committing Party/Committing Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale. At the expense of the Committing Party/Committing Parties, the Divestiture Trustee may appoint advisors (in particular for corporate finance or legal advice), without the Committing Party's/Committing Parties' approval if the Divestiture 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 Divestiture Trustee are in line with business practice.
41. The Committing Party/Committing Parties agree(s) that the Commission may share Confidential Information proprietary to the Committing Party/Committing Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.
42. The Committing Party/Committing Parties agree(s) that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition, and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee. The Committing Party/Committing Parties agree(s) that the contact details of the Divestiture Trustee are published on the website of the Commission's Directorate-General for Competition upon the commencement of the Trustee Divestiture Period begins.
43. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

44. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including for failure to comply with the requirements in paragraph 25:
- (a) the Commission may, after hearing the Trustee and the Committing Party/Committing Parties, require the Committing Party/Committing Parties to replace the Trustee; or
 - (b) the Committing Party/Committing Parties may, with the prior approval of the Commission, replace the Trustee.
45. If the Trustee is removed according to paragraph 44 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 23-30 of these Commitments.
46. Unless removed according to paragraph 44 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. Interpretation of the Commitments

47. In case of a conflict between the wording of the text of the present Commitments and the contractual instruments executed by the Committing Party/Committing Parties, the Purchaser or any other party for the purposes of implementing the Commitments, the wording of the Commitments shall prevail, without prejudice to the fact that the interpretation of the Commitments shall take into account the solution that is more favourable to the Divestment Business. Deviations from the Commitments in such contractual instruments are only valid if they have been expressly approved by the Commission. A clause implementing this paragraph should be included in the contractual instruments executed by the Committing Party/Committing Parties.

Section G. Dispute Resolution Procedure

48. The following dispute resolution procedure applies in case of conflict between the Committing Party/Committing Parties and the Purchaser in relation to the Commitments.
49. The Committing Party/Committing Parties and the Purchaser shall appoint a panel of experts (the '*Experts*'). This panel shall comprise:
- (a) one expert appointed jointly by the Committing Party/Committing Parties;
 - (b) one expert appointed by the Purchaser; and
 - (c) one expert appointed by the two experts appointed under (a) and (b) provided that if they fail to appoint the third expert within 15 working days from their appointment, either the Committing Party/Committing Parties or the Purchaser may request the Monitoring Trustee to appoint the third expert, provided that each person so appointed

shall be independent of the Parties and the Purchaser, and a suitably qualified and experienced expert.

50. The process shall be conducted in private and shall be confidential but under supervision of the Monitoring Trustee. The language of the process shall be [*Complete with language of procedure*].
51. The Experts shall act on the following basis:
- (a) the Experts shall act fairly and impartially;
 - (b) each party shall submit to the Experts its brief and its submission in relation to the matter in dispute within 5 working days of the Experts' appointment;
 - (c) the Experts shall decide the procedure to be followed within 5 working days of their appointment, which may be the rules of arbitration [*Complete with relevant Court of Arbitration*];
 - (d) the Committing Party/Committing Parties and the Purchaser shall assist and provide documentation as the Experts reasonably requires to consider the matters referred to them;
 - (e) decisions of the Experts shall be based on majority votes of the panel;
 - (f) the Experts' determination in relation to any matter referred to them shall be given within a maximum period of one month of the Experts' appointment;
 - (g) the Experts' determination in relation to any matter referred to them shall (save for manifest error or fraud) be final and binding on the Committing Party/Committing Parties and the Purchaser;
 - (h) any challenge to the Experts' determination shall be made in the courts of [*Complete with the relevant court*];
 - (i) each party shall carry out the actions required to comply with the obligations set out in the Experts' determination in relation to any matter pursuant referred to them within any time-limits specified by the Experts; and
 - (j) the Experts shall determine how and by whom the costs of the determination in relation to any matter referred to it including the fees and expenses of the Experts are to be paid.
52. The Commission shall be allowed and enabled to participate in all stages of the dispute resolution procedure by:
- (a) receiving all written submissions (including documents and reports, *etc.*) made by the Committing Party/Committing Parties and the Purchaser to the procedure;
 - (b) receiving all documents exchanged by the Experts with the Committing Party/Committing Parties and the Purchaser to the procedure;
 - (c) filing any written submissions; and
 - (d) being present at the hearing(s) and being allowed to ask questions.
53. The Experts shall forward, or shall order the Committing Party/Committing Parties and the Purchaser to forward, the documents mentioned to the Commission without delay.

- 54. The Monitoring Trustee shall receive copies of:
 - (a) all submissions made by the Committing Party/Committing Parties and the Purchaser in relation to the matters they wish to have resolved by the Experts, on the day when these have been submitted to the Experts;
 - (b) all other documentation provided by the Committing Party/Committing Parties and the Purchaser, on the day when these have been submitted to the Experts; and
 - (c) the determination made by the Experts, on the day when the determination has been provided to the Committing Party/Committing Parties and the Purchaser.

- 55. This dispute resolution procedure is without prejudice to any other rights and remedies that may be available to the Committing Party/Committing Parties and the Purchaser as the case may be in respect of any breach of the transaction documents. This procedure is also without prejudice to any Commission decision related to the compliance of the Committing Party/Committing Parties with the Commitments.

Section H. The review clause

- 56. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Committing Party/Committing Parties or, in appropriate cases, on its own initiative. Where the Committing Party/Committing Parties request(s) an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Committing Party/Committing Parties. Only in exceptional circumstances shall the Committing Party/Committing Parties be entitled to request an extension within the last month of any period.

- 57. The Commission may further, in response to a reasoned request from the Committing Party/Committing Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Committing Party/Committing Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section I. Entry into force

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

.....
 duly authorised for and on behalf of
 [*Indicate the name of each of the Committing Party/Committing Parties*]

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure: *[Describe the legal and functional structure of the Divestment Business, including the organisational chart]*.
2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets: *[Indicate the essential tangible assets, e.g. xyz factory/warehouse/pipelines located at abc and the real estate/property on which the factory/warehouse is located; the R&D facilities]*;
 - (b) the following main intangible assets: *[Indicate the main intangible assets transferred. This should in particular include (i) the brand names and (ii) all other Intellectual Property Rights related to the Divestment Business]. [If a license on Intellectual Property Rights is also included]: Any license to intellectual property rights granted to the Divestment Business shall include the rights to new releases, upgrades, modifications, as well as the rights to *inter alia* use, copy, modify, improve, and reverse-engineer relevant elements of existing licenses or software or products under development;*
 - (c) the following main licences, permits and authorisations: *[Indicate the main licences, permits and authorisations]*;
 - (d) the following main contracts, agreements, leases, commitments and understandings *[Indicate the main contracts, etc.]*;
 - (e) the following customer, credit and other records: *[Indicate the main customer, credit and other records, according to further sector specific indications, where appropriate]*;
 - (f) the following Personnel: *[Indicate the personnel to be transferred in general, including personnel providing essential functions for the Divestment Business, such as central R&D staff]*;
 - (g) the following Key Personnel: *[Indicate the names and functions of the Key Personnel, including the Hold Separate Manager, where appropriate]*; at the reasonable request of the Monitoring Trustee, the Committing Party/Committing Parties shall consider the appointment of additional Key Personnel without delaying or withholding the appointment unreasonably; and
 - (h) the arrangements for the supply with the following products or services on terms and conditions equivalent to those at present afforded to the Divestment Business or at cost (whichever is more advantageous to the Divestment Business) by the Committing Party/Committing Parties or Affiliated Undertakings for a transitional period of up to [•] after Closing: *[Indicate the products or services to be provided for a transitional period in order to maintain the economic viability and competitiveness of the Divestment Business.] [Where the Commitments include arrangements for the provision of products, services or any type of assistance for the Purchaser to complete the development of future or ongoing projects, such as pipeline products or services, indicate milestones for the completion or homologation or registration of such project developments and of the relevant products or services.]*
3. The Divestment Business shall not include:
 - (a) ...;

(b) *[It is the responsibility of the Committing Party/Committing Parties to indicate clearly what the Divestment Business will not encompass.]*

4. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which contribute to the current operation (and are not excluded pursuant to paragraph 3 of this Schedule) or are necessary to ensure the viability and competitiveness of the Divestment Business, that asset, personnel or adequate substitute will be offered to potential purchasers.