

Complaint

119 F.T.C.

IN THE MATTER OF

MEDICAL STAFF OF GOOD SAMARITAN
REGIONAL MEDICAL CENTERCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3554. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995*

This consent order prohibits, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

Appearances

For the Commission: *Mark J. Horoschak, Garry H. Gibbs, Steven J. Osnowitz and Gary H. Schorr.*

For the respondent: *Robert J. Milligan, Gallagher & Kennedy, Phoenix, AZ.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Medical Staff of Good Samaritan Regional Medical Center has violated and is violating Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

THE SAMARITAN ORGANIZATION AND RESPONDENT MEDICAL STAFF

PARAGRAPH 1. Samaritan Health Systems ("SHS"), formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), is a nonprofit corporation organized and existing under the laws of the State of Arizona. SHS operates nine full service medical and surgical hospitals in the United States, including four hospitals in Maricopa County, Arizona. Good

Samaritan Regional Medical Center ("Good Samaritan" or "the Hospital"), one of the hospitals operated by SHS, is a 571-bed tertiary, teaching hospital. Good Samaritan is the largest hospital in Arizona. The principal physical facilities of Good Samaritan are located at 1111 E. McDowell Road, Phoenix, Arizona.

PAR. 2. Respondent Medical Staff of Good Samaritan Regional Medical Center ("respondent Medical Staff" or "Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Arizona, with its mailing address at 1111 E. McDowell Road, Phoenix, Arizona. The Medical Staff is composed of over 500 physicians and other practitioners who have privileges to attend patients at Good Samaritan.

PAR. 3. The overwhelming majority of physicians in Maricopa County and on the Medical Staff practice medicine in individual or small group practices on a fee-for-service basis. Under this traditional form of practice, when a patient's illness is beyond the capability or outside the medical specialty of an individual physician, the physician refers the patient to another independent physician. Except to the extent that competition has been restrained as herein alleged, most, if not all, of the Medical Staff's members have been and are now in competition among themselves and with other health care practitioners in Maricopa County.

PAR. 4. The Medical Staff is engaged in substantial activities for the economic benefit of its members. By virtue of its purposes and activities, the Medical Staff is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. The acts and practices of the Medical Staff, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

THE FORMATION OF THE SAMARITAN PHYSICIANS CENTER

PAR. 6. In early 1986, SHS began investigating the concept of developing a physician-hospital clinic joint venture. The idea for the joint venture was prompted by the anticipated opening of the Mayo Clinic in nearby Scottsdale, which was expected to offer significant competition for SHS hospitals in Maricopa County. While SHS was

still studying the idea, several members of Good Samaritan's medical staff independently approached the Hospital with the idea of opening a hospital-affiliated physician group practice. After a feasibility study showed that the group practice could be expected to significantly increase patient admissions to Good Samaritan, the Hospital and the physicians who approached the Hospital concerning the group practice agreed to implement their plans.

PAR. 7. In March 1987, Good Samaritan announced its plans to open the Samaritan Physicians Center ("SPC" or "the Clinic"), a multispecialty clinic in the Phoenix area. As originally planned, the Clinic was to have 39 physicians within five years and was to be a patient-oriented practice, benefitting patients by providing one-stop shopping for various medical specialties, extended hours, preventive care, house calls, and a single set of records and billing for each patient. Representatives of Good Samaritan and the SPC physicians believed that the Clinic had the potential for holding down medical costs.

THE CONSPIRACY TO RESTRICT COMPETITION

PAR. 8. Respondent Medical Staff, acting as a combination of its members and in conspiracy with at least some of its members and others, joined in a common plan to coerce, intimidate, and threaten to boycott Good Samaritan in order to induce termination of the Hospital's involvement with SPC. At various times during, and in furtherance of, the combination and conspiracy, respondent Medical Staff:

A. Agreed to boycott and threatened to boycott Good Samaritan by representing to Good Samaritan that doctors would jointly withhold patient admissions from Good Samaritan if Good Samaritan continued its relationship with SPC; and

B. Solicited physicians on the Medical Staff to threaten to withhold patient admissions from Good Samaritan if Good Samaritan continued its relationship with SPC.

CONDUCT FURTHERING THE CONSPIRACY

PAR. 9. Beginning in March 1987, Good Samaritan administrators and the SPC physicians presented their plans for the

new multispecialty clinic to various medical departments at the Hospital. Physicians at the March 10, 1987, Obstetrical/Gynecology Department meeting passed a motion "to inform [the] administration that this department condemns the development of a multispecialty care clinic on the [Good Samaritan] campus to capture patients." Physicians at this meeting commented that direct action by physicians would be beneficial in making known to the administration their feelings about the SPC, and there was general discussion regarding a physician boycott of the hospital.

PAR. 10. In December 1987, the Executive Committee of Samaritan Health Services approved Good Samaritan's request to broaden the size and scope of practice at the proposed SPC. The revised plan provided for SPC to eventually be located at two different sites having a total of 84 to 100 physicians.

PAR. 11. SPC began operations in a limited capacity in February 1988 with approximately four physicians. By July 1988, SPC had nineteen physicians on staff, and was continuing to expand.

PAR. 12. Physicians at a Medicine Department meeting on July 21, 1988, passed a motion to create a subcommittee "to discuss the economic impacts [of SPC] on [physicians'] offices in the vicinity of [Good Samaritan]." According to one physician who attended the meeting, "everyone [at the meeting] was wondering how this [the Clinic] would affect them economically."

PAR. 13. At a special meeting of the Medical Staff to discuss SPC on November 14, 1988, physicians complained that they had not approved the Clinic and that the venture would compete with members of the Medical Staff, and threatened to withhold patient admissions to Good Samaritan if the Hospital continued its relationship with SPC. Physicians asked "why should [they] continue to support a hospital that is putting up a clinic to compete with them?" Physicians stated that they had choices as to where to admit their patients and if the Hospital continued to give support to the Clinic they would take their patients elsewhere. Physician opposition to the Clinic at this meeting resulted in the Medical Staff passing a motion to advise the Boards of Samaritan Foundation and its subsidiaries that "these plans [to open a clinic] were instituted without the approval of any Medical Staff member or committee." After learning about the motion, Samaritan administrators, fearing a Medical Staff boycott of Good Samaritan, immediately put further

development of the SPC project on hold and froze physician staffing levels and Samaritan's financial support for further planned development.

PAR. 14. At the July 24, 1989, meeting of the Good Samaritan Medical Staff Executive Committee, members of the Medical Staff continued to express anger and hostility over the Clinic. Physicians stated that there is a continuing schism between the Medical Staff and the Hospital over the Clinic. Physicians stated that members of the Medical Staff wanted to know if Good Samaritan had reduced its financial commitment to the Clinic, so that they could make a decision on whether to continue their practices at Good Samaritan. A Medical Staff Advisory Committee, made up of physicians and hospital administrators, was created to provide the Hospital with physician input regarding the Clinic and other physician sensitive issues.

PAR. 15. On August 24, 1989, the Medical Staff Advisory Committee met to discuss the Clinic. Hospital representatives at this meeting agreed to downsize the Clinic by reducing the number of physicians at the Clinic from 100 to 50 and by reducing the Hospital's financial commitment to the project. Physicians at the meeting stated that there was still great unrest in the Medical Staff, and that this unrest would become apparent at the September 13th Quarterly Medical Staff Meeting.

PAR. 16. At the September 13, 1989, Quarterly Medical Staff Meeting, due to concerns about SPC, an Ad Hoc Committee was formed to conduct a vote of no-confidence in the Corporate Administration and the Governing Board of Samaritan Foundation. The results of the vote were findings of no-confidence in the Corporate Administration and the Governing Board of the Samaritan Foundation. Because of the two no-confidence votes by the Medical Staff, the President/Chief Executive Officer of the Samaritan Foundation resigned.

PAR. 17. As a result of the combination, conspiracy, acts and practices herein described, Good Samaritan halted further development of SPC from November 1988 through July 1, 1991, and then severed its relationship with SPC.

EFFECTS

PAR. 18. The purpose, effects, tendency, or capacity of respondent Medical Staff's conduct described in paragraphs eight through sixteen are and have been to restrain trade unreasonably and hinder competition in the provision of health care services in Maricopa County in the following ways, among others:

A. Depriving consumers of the price and quality benefits of competition between the SPC integrated multispecialty group practice and independent fee-for-service practitioners;

B. Depriving consumers of the full array of services that Good Samaritan sought to offer consumers in Maricopa County;

C. Hindering SPC's ability to offer health care services to consumers by raising its costs, reducing its efficiency, and delaying or preventing SPC from offering specialty and sub-specialty services;

D. Limiting competition among physicians in Maricopa County to the extent that physicians agreed not to compete with each other, but rather act only on collectively determined terms, in deciding whether to admit patients to Good Samaritan, to refer patients to SPC physicians, or otherwise to deal with Good Samaritan; and

E. Raising impediments to entry into the physician services market by innovative or nontraditional providers of health care services.

VIOLATION

PAR. 19. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Competition Act. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

Commissioner Starek dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Staff of Good Samaritan Regional Medical Center is an unincorporated association, organized and existing under and by virtue of the laws of the State of Arizona, with its principal office and place of business located at 1111 E. McDowell Road, Phoenix, Arizona.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for purposes of this order, the following definitions shall apply:

A. "*Medical Staff*" means the Medical Staff of Good Samaritan Regional Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. "*Good Samaritan*" means Samaritan Health Systems, formerly operated as two separate corporations (Samaritan Foundation and its subsidiary Samaritan Health Services), doing business as Good Samaritan Regional Medical Center, a non-profit corporation with its principal offices located at 1111 E. McDowell Road, Phoenix, Arizona, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. "*SPC*" means Samaritan Physicians Center, Inc., an Arizona Corporation, its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. "*Integrated joint venture*" means a joint arrangement to provide health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.

II.

It is ordered, That respondent Medical Staff, directly or indirectly, or through any device, shall cease and desist from entering into, maintaining, or continuing, or attempting to enter into, maintain, or continue, any agreement or understanding, either express or implied, between or among its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by Good

Samaritan, SPC or any other provider of health care services, including any agreement to:

A. Refuse to deal, threaten to refuse to deal, or attempt to induce others to refuse to deal or threaten to refuse to deal; and

B. Withhold patient referrals, threaten to withhold patient referrals, or attempt to induce others to withhold patient referrals or threaten to withhold patient referrals.

III.

A. *It is further ordered*, That this order shall not be construed to prohibit the Medical Staff or its members from offering to participate or participating with other physicians, pursuant to the Medical Staff's bylaws, in *bona fide* utilization review, quality assurance, or credentialing activities in connection with the provision of physician services.

B. *It is further ordered*, That this order shall not be construed to prohibit any individual member of the Medical Staff from entering into an agreement or combination with any other physician or health care practitioner with whom the individual Medical Staff member practices in partnership or in a professional corporation, or who is employed by the same person as said Medical Staff member.

C. *It is further ordered*, That this order shall not be construed to prohibit respondent Medical Staff from forming, facilitating the formation of, or participating in, an "integrated joint venture" that limits the number of participating physicians, as long as the physicians participating in the joint venture remain free to deal with other persons or entities other than through the joint venture.

IV.

It is further ordered, That the Medical Staff shall:

A. Within thirty (30) days after the date this order becomes final, mail a copy of this order and the accompanying complaint to each member of the Medical Staff as of the date this order becomes final, and for a period of three (3) years after the date this order becomes final, distribute to each new member of the Medical Staff a copy of

this order and the accompanying complaint within thirty (30) days after he or she is officially admitted to the Medical Staff.

B. For a period of three (3) years after the date this order becomes final, maintain records adequate to describe in detail any action taken in connection with the activities covered by this order and, upon reasonable notice, make such records available to the Federal Trade Commission staff for inspection and copying.

C. Within sixty (60) days after the date this order becomes final, annually for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Federal Trade Commission may by written notice require, file with the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied and is complying with this order.

D. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the association which may affect compliance obligations arising out of this order.

Commissioner Starek dissenting.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I do not agree with the Commission's decision to issue the final order in this matter because I continue to find the evidence insufficient to support reason to believe that the respondent violated the law.

As I noted in my earlier dissenting statement, the centerpiece of this case is a resolution adopted by the medical staff of Good Samaritan Regional Medical Center concerning plans under consideration by the Medical Center to develop a multispecialty medical clinic that would compete with staff members' private practices. That resolution -- approved on November 14, 1988, following certain medical staff members' complaints about plans for the clinic -- declared that those plans "were instituted without the approval of any [m]edical [s]taff member or committee." In the wake of the resolution, the Medical Center decided to "freeze" the development and planned expansion of the clinic, and eventually the Medical Center severed its financial and other ties to the clinic.

Neither the language of the medical staff resolution nor the other information unearthed in this investigation has established the validity of the core allegation here -- that in order to end the Medical Center's involvement with the clinic, medical staff members combined to threaten a boycott of the Medical Center (which they would effect by referring patients to other area hospitals). Although individual physicians on the medical staff made clear the Medical Center's administration their displeasure with the Medical Center's role in support of the clinic, the November 14, 1988 resolution and the other evidence in this case are insufficient to show an agreement to threaten a boycott.

Nothing that has come to the Commission's attention during the public comment period disturbs my view that this case rests almost exclusively -- and precariously -- on the purported boycott victims' characterization of the medical staff's collective state of mind. Because of the ambiguities and weaknesses that have plagued the evidence in the present case, I respectfully dissent from the Commission's decision to issue the final order.

IN THE MATTER OF

OERLIKON-BUHRLE HOLDING AG

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3555. Complaint, Feb. 1, 1995--Decision, Feb. 1, 1995

This consent order permits, among other things, a Switzerland-based corporation to acquire Leybold AG, a German firm, but requires the respondent to divest both the Leybold compact disc metallizer business and the Balzers-Pfeiffer turbomolecular pump business, within 12 months, to Commission approved entities. If the divestitures are not completed within 12 months, the Commission is permitted to appoint trustees to complete them. In addition, the respondent is required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

Appearances

For the Commission: *Ann B. Malester, Michael R. Moiseyev and Mary Lou Steptoe.*

For the respondent: *Tim Fieghery, Kaye, Scholer, Fierman, Hays & Handler, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a Swiss corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of Leybold AG ("Leybold"), a wholly-owned subsidiary of Degussa Aktiengesellschaft, ("Degussa"), a German corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Oerlikon-Buhrle is a corporation organized and existing under the laws of Switzerland, with its principal place of business located at Hofwiesenstrasse 135, CH - 8021, Zurich, Switzerland.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ACQUIRED COMPANY

3. Leybold, a wholly-owned subsidiary of Degussa, is a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business located at Wilhelm-Rohn-Strasse 25, D-6450 Hanau 1, Federal Republic of Germany.

4. Leybold is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. Oerlikon-Buhrle proposes to acquire 99.5 percent of the voting stock of Leybold for consideration of DM 99,500,000 ("Acquisition").

IV. THE RELEVANT MARKETS

6. For purposes of this complaint, one relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution and sale of turbomolecular pumps.

7. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the turbomolecular pump market is the United States.

8. The relevant market set forth in paragraphs six and seven is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

9. Entry into the turbomolecular pump market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive turbomolecular pump designs, establishing manufacturing facilities, organizing a sales and service network, and gaining customer acceptance in the marketplace.

10. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

11. For purposes of this complaint, another relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, distribution, and sale of compact disc metallizers.

12. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the compact disc metallizer market is the world.

13. The relevant market set forth in paragraphs eleven and twelve is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

14. Entry into the compact disc metallizer market would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraph sixteen because of the difficulty of developing competitive compact disc metallizer designs, establishing a sales and service presence, and gaining customer acceptance in the marketplace.

15. Oerlikon-Buhrle and Leybold are actual competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

16. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in each relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between Oerlikon-Buhrle and Leybold;

- b. By increasing the likelihood that Oerlikon-Buhrle would unilaterally exercise market power;
- c. By increasing the likelihood of collusion or coordinated interaction in the relevant markets;
- d. By increasing the likelihood that consumers would be forced to pay higher prices for turbomolecular pumps and compact disc metallizers;
- e. By increasing the likelihood that technological innovation would be reduced.

VI. VIOLATIONS CHARGED

17. The Acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of certain assets and businesses of Degussa Aktiengesellschaft ("Degussa"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Oerlikon-Buhrle AG ("Oerlikon-Buhrle") is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal executive offices located at Hofwiesenstrasse 135, CH - 8021 Zurich, Switzerland.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Oerlikon-Buhrle*" means Oerlikon-Buhrle Holding AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Oerlikon-Buhrle; their directors, officers, employees, agents (including, but not limited to, SKA), and representatives; and their successors and assigns.

B. "*Leybold*" means Leybold AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Leybold; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "*SKA*" means Schweizerische Kreditanstalt, a banking corporation organized, existing and doing business under, and by virtue of the laws of Switzerland. Pursuant to the Trust Agreement dated October 6, 1994, SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

D. "*Balzers-Pfeiffer*" means Balzers-Pfeiffer GmbH, a German corporation, its predecessors, subsidiaries, divisions, and groups and

affiliates controlled by Balzers-Pfeiffer; their directors, officers, employees, agents, and representatives; and their successors and assigns.

E. "*Respondent*" means Oerlikon-Buhrle.

F. "*Commission*" means the Federal Trade Commission.

G. "*Acquisition*" means Oerlikon-Buhrle's acquisition of voting securities of Leybold pursuant to the Purchase Agreement dated January 21, 1994.

H. "*Assets and Businesses*" means all assets, properties, business and goodwill, tangible and intangible, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. Inventory and storage capacity;
4. All rights, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. All rights under warranties and guarantees, express or implied;
6. All books, records, and files; and
7. All items of prepaid expense.

I. "*Trust Agreement*" means the trust agreement dated October 6, 1994, between Oerlikon-Buhrle and SKA, attached hereto as Attachment 1, pursuant to which SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle, as of the time Leybold is acquired by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

J. "*Leybold Compact Disc Metallizer Business*" means all of Leybold's rights, title and interest in and to:

1. Compact disc metallizers, including, but not limited to, Singulus, and all patents, trademarks, intellectual property, production technology and know-how related to the manufacture, distribution and sale of compact disc metallizers; and

2. All of Leybold's Assets and Businesses as further delineated in Schedule A, attached hereto and made a part hereof.

K. "*Leybold Thin Film Coating Systems Business*" means all of Leybold's rights, title and interest, as of the date this agreement is accepted by the Commission, in all Assets and Businesses relating to the development, manufacture, distribution, marketing or sale of vacuum systems and equipment for the deposition of thin films, including without limitation, vacuum web coating systems, architectural glass coaters, compact disc metallizers, compact disc replication lines, compact disc mastering equipment, precision optics coating systems, ophthalmic lens coating systems, decorative hard coating systems, silicon crystal growing systems, and vacuum coating systems for research and development. Such Assets and Businesses shall include all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits. The Leybold Thin Film Coating Systems Business excludes magnetic and magneto-optical disc coating systems, systems for the manufacture of thin film heads for magnetic drives, vacuum systems for the coating of plastic parts, and vacuum systems for the coating of automotive parts.

L. "*Balzers-Pfeiffer Assets*" means all of the Assets and Businesses of Balzers-Pfeiffer and all of the other Oerlikon-Buhrle Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of turbomolecular pumps, as delineated in Schedule B, attached hereto and made a part hereof.

M. "*Ophthalmic Coating Business*" means all of Oerlikon-Buhrle's rights, title and interest in all Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of equipment used in the application of coatings to ophthalmic lenses, including all interests in such Assets and Businesses as acquired from Leybold.

N. "*Compact Disc Metallizers*" means vacuum systems for the deposition of reflective coatings on audio compact discs and CD-ROMs.

O. "*Turbomolecular Pumps*" means vacuum pumps employing turbomolecular processes to generate high vacuum environments.

II.

It is further ordered, That:

A. Oerlikon-Buhrle shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Leybold Compact Disc Metallizer Business, and shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Leybold Compact Disc Metallizer Business; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule A unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest the Leybold Compact Disc Metallizer Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Leybold Compact Disc Metallizer Business as an ongoing, viable operation, engaged in the same business in which the Leybold Compact Disc Metallizer Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer to Oerlikon-Buhrle, for a period of six months following the date of divestiture, Oerlikon-Buhrle shall provide such personnel, information, technical assistance, advice and training to the acquirer as is necessary to transfer the Leybold Compact Disc Metallizer Business pursuant to paragraph II. A. and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Oerlikon-Buhrle to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture of compact disc metallizers to the extent Oerlikon-Buhrle has the ability to do so after the divestiture is complete. Oerlikon-Buhrle shall not charge the acquirer a rate more than its own direct costs for providing such technical assistance.

D. Pending divestiture of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Leybold Compact Disc Metallizer Business and to prevent the destruction, removal, wasting, deterioration or impairment of the Leybold Compact Disc Metallizer Business except for ordinary wear and tear.

E. At the time of the execution of a purchase agreement between Oerlikon-Buhrle and a proposed acquirer of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall provide the acquirer with a complete list of all non-clerical, salaried employees of the Leybold Compact Disc Metallizer Business, who have been involved in the development, production, distribution, or sale of Leybold compact disc metallizers at any time during the period from September 1, 1992, until the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with any compact disc metallizer product developed, produced, or distributed by Leybold.

F. Oerlikon-Buhrle shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II. E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Oerlikon-Buhrle shall further provide the Commission-approved acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Oerlikon-Buhrle shall provide the individuals identified in paragraph II. E. of this order with ample financial incentives to continue in their employment positions during the period covered by the Leybold Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include:

1. Continuation of all employee benefits offered by Leybold until the date of the divestiture; and
2. A bonus equal to 25 percent of an employee's annual salary (including any other bonuses) as of the date this order becomes final for any individual who agrees to employment with the Commission-

approved acquirer, payable upon the beginning of their employment by the Commission-approved acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, Oerlikon-Buhrle shall not re-hire any of the individuals identified in paragraph II.E. of this order who accept employment with the Commission-approved acquirer.

III.

It is further ordered, That:

A. Respondent Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Balzers-Pfeiffer Assets, and Oerlikon-Buhrle shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of Balzers-Pfeiffer; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule B, unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, the Balzers-Pfeiffer Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Balzers-Pfeiffer Assets is to ensure the continuation of Balzers-Pfeiffer as an ongoing, viable operation, engaged in the same business in which it is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Provided, however, that nothing in this order shall prevent Oerlikon-Buhrle from transferring the stock and share capital of Balzers-Pfeiffer to SKA at the time Oerlikon-Buhrle acquires Leybold pursuant to the Trust Agreement. However, such transfer shall not fulfill Oerlikon-Buhrle's obligation under this order to divest the Balzers-Pfeiffer Assets.

C. Pending divestiture of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall take such actions, and shall direct SKA to take such actions, as are necessary to maintain the viability and marketability of Balzers-Pfeiffer and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Balzers-Pfeiffer Assets except for ordinary wear and tear.

D. Oerlikon-Buhrle shall take all steps necessary to ensure that SKA complies with the Trust Agreement, including, without limitation, pursuing any legal action it may have against SKA for monetary and equitable damages arising from any breach of the Trust Agreement by SKA. Oerlikon-Buhrle shall not agree to any alteration, reformation, amendment or other change to the Trust Agreement without the prior approval of the Commission. In addition to the requirements of this paragraph III, Oerlikon-Buhrle shall direct SKA to take all steps necessary to accomplish the requirements of this order pertaining to the Balzers-Pfeiffer Assets.

IV.

It is further ordered, That:

A. If Oerlikon-Buhrle has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Leybold Compact Disc Metallizer Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Leybold Thin Film Coating Systems Business.

B. If Oerlikon-Buhrle and SKA have not divested, absolutely and in good faith, and with the prior approval of the Commission, the Balzers-Pfeiffer Assets within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Balzers-Pfeiffer Assets.

C. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to

it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Oerlikon-Buhrle to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A. or paragraph IV.B., Oerlikon-Buhrle shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Oerlikon-Buhrle or in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Oerlikon-Buhrle of the identity of any proposed trustee, Oerlikon-Buhrle shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

3. Within ten (10) days after appointment of the trustee, Oerlikon-Buhrle shall execute a trust agreement, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to execute a trust agreement, that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.D.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets, or to any other relevant information, as the trustee may request. Oerlikon-Buhrle shall develop, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to develop, such financial or other information as such trustee may request and shall cooperate with the trustee. Oerlikon-Buhrle shall take no action, and Oerlikon-Buhrle shall direct SKA to take no action, to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Oerlikon-Buhrle or SKA shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Oerlikon-Buhrle's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer(s) as set out in paragraphs II and III of this order, as appropriate; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Oerlikon-Buhrle from among those approved by the Commission. If requested by the trustee or acquirer, Oerlikon-Buhrle shall provide the acquirer with the assistance required by paragraph II.C. of this order.

7. The trustee shall serve, without bond or other security, at the cost and expense of Oerlikon-Buhrle, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Oerlikon-Buhrle, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Oerlikon-Buhrle, and the trustee's power shall

be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

8. Oerlikon-Buhrle shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Leybold Thin Film Coating Systems Business or the Balzers-Pfeiffer Assets.

12. The trustee shall report in writing to Oerlikon-Buhrle and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture(s).

V.

It is further ordered, That, until the earlier of ten (10) years from the date this order becomes final or until Oerlikon-Buhrle has sold all of the Assets and Businesses of either Balzers' ophthalmic lens coating business or Leybold's ophthalmic lens coating business, Oerlikon-Buhrle shall not transfer any interest in the stock, share capital, or assets of the Ophthalmic Coating Business to any third party, other than to a subsidiary of Oerlikon-Buhrle, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter "the

Notification"). Oerlikon-Buhrle shall provide to the Federal Trade Commission, at least thirty days prior to transferring any interest in the stock, share capital, or assets of the Ophthalmic Coating Business, both the Notification and supplemental information either in Oerlikon-Buhrle's possession or reasonably available to Oerlikon-Buhrle. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Oerlikon-Buhrle and of the firm who proposes to acquire the stock, share capital, or assets of the Ophthalmic Coating Business who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed transaction. If, within the thirty-day period, representatives of the Federal Trade Commission make a written request for additional information, Oerlikon-Buhrle shall not consummate the transaction until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

VI.

It is further ordered, That Oerlikon-Buhrle shall comply with all terms of the Balzers-Pfeiffer Agreement to Hold Separate and the Leybold Systems Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendices I and II. The Balzers-Pfeiffer Agreement to Hold Separate the Balzers-Pfeiffer Assets shall continue in effect until Oerlikon-Buhrle and SKA have divested all of the Balzers-Pfeiffer Assets. The Leybold Systems Business Agreement to Hold Separate shall continue in effect until Oerlikon-Buhrle has divested all of the Leybold Compact Disc Metallizer Business or the Leybold Thin Film Coating Systems Business as required by this order.

VII.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Oerlikon-Buhrle shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of turbomolecular pumps;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. Acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of compact disc metallizers; or

D. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this paragraph VII shall not apply to the acquisition of products or services acquired in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

VIII.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Oerlikon-Buhrle has fully complied with paragraphs II, III, IV, and VI of this order, Oerlikon-Buhrle shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, IV, and VI of this order. Oerlikon-Buhrle shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, IV, and VI of this order, including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Oerlikon-Buhrle shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Oerlikon-Buhrle shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs V and VII of this order.

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers, directors, or employees of respondent. Officers and employees of respondent whose places of employment are outside the United States shall be made available on reasonable notice.

X.

It is further ordered, That

A. Oerlikon-Buhrle shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

SCHEDULE A

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Leybold Compact Disc Metallizer Business pursuant to the terms

of this order. The assets identified in paragraph I.J. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Leybold in or relating to the development, manufacture, sale, distribution and marketing of compact disc metallizers, compact disc lines, and compact disc mastering systems, including without limitation, the following:

PART 1

1. All Leybold compact disc metallizers, including, but not limited to, equipment and documentation;
2. All Leybold compact disc metallizer inventory (including work in progress);
3. All lists or other information necessary to source materials, parts, components and other inputs involved in the production of Leybold compact disc metallizers;
4. All rights, title and interest in and results of all research and development efforts by Leybold relating to improvements, developments, and variants of Leybold compact disc metallizer products;

PART 2

5. All Assets and Businesses of Leybold relating solely to the development, manufacture, sale, distribution and/or marketing of compact disc lines and/or compact disc mastering systems, including equipment, documentation, inventory, work in process, information necessary to source materials, parts, components, and other inputs, all rights, title and interest and results of all research and development efforts by Leybold relating solely to improvements, developments, and variants or Leybold compact disc line and or mastering system products, and employment contracts to the extent permissible under applicable law.

SCHEDULE B

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Balzers-Pfeiffer Assets pursuant to the terms of this order. The assets identified in paragraph I.L. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Oerlikon-Buhrle as of the date this order is accepted by the

Commission, in or relating to the development, manufacture, marketing, sale, and distribution of turbomolecular pumps, including without limitation, the following:

PART 1

1. All of the stock and share capital, or participation held by Oerlikon-Buhrle of Balzers-Pfeiffer, including, without limitation, all stock, share capital, or participation held in trust by SKA for the account and risk of Oerlikon-Buhrle as of the date Leybold is acquired by Oerlikon-Buhrle;

2. All patents, intellectual property, trademarks, production technology, and know-how related to the development, manufacture, marketing, sale, or distribution of turbomolecular pumps;

3. All rights, title and interest in and results of all research and development efforts relating to improvements, developments, and variants of turbomolecular pump products;

4. All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits used in the manufacture of turbomolecular pumps;

PART 2

5. All Assets and Businesses of Oerlikon-Buhrle (excluding Balzers-Pfeiffer) in or relating to the sale, distribution or marketing of turbomolecular pumps.

ATTACHMENT 1

TRUST AGREEMENT

PREAMBLE

A. OBH owns 100% of the shares of stock of BHAG.

BHAG is the unrestricted owner of 95.5% of the capital of Balzers Deutschland Holding GmbH with registered seat in Asslar, Germany ("BDH"), which equals a nominal value of DM 38'200'000.--. BHAG controls BDH by votes. The remaining 4.5% of the capital of BDH is owned by IHAG Holding AG.

BDH is the unrestricted owner of 99.5% of the capital of a nominal total value of DM 14'925'000.-- of Balzers-Pfeiffer GmbH

with registered seat in Asslar, Germany ("B-P"). The remaining 0.5% of the capital of B-P is owned by IHAG Holding AG, Zurich.

For the purposes of the following provisions of this Trust Agreement, "Capital Contributions" and/or "Capital Contributions of BDH" shall mean the 95.5% of the capital of BDH owned by BHAG.

The Capital Contributions are not subject to any restrictions regarding their transfer by agreement or through inheritance. According to the Articles of BDH any transfer of Capital Contributions is only subject to the approval of the shareholders (majority of votes recorded).

B. On January 21, 1994, OBH and the German company Degussa AG signed a sales contract under which Degussa AG sold all shares of Leybold AG in Hanau (Germany) to OBH and IHAG Holding AG, Zurich. The effectiveness of that sales contract is subject to the condition that the acquisition of Leybold AG is not prohibited by the German Bundeskartellamt in accordance with Section 24 sec. 2 first sentence GWB.

The sales contract is further subject to the condition that all other competent antitrust authorities which have jurisdiction over this transaction (especially the one of the United States) approve the transaction.

In order to prevent a possible negative decree of both the German Bundeskartellamt ("BKA") and the Federal Trade Commission ("FTC") and in order to ensure that the division turbomolecular pumps of B-P is placed outside the Oerlikon-Buhrle group of companies, BHAG intends to transfer the Capital Contributions to an unrelated third party within twelve (12) months of the date on which the consent order of the FTC enters into force. In the meantime the Capital Contributions shall be held by CS as a trustee of BHAG.

This procedure has been discussed by OBH with both the BKA and the FTC.

C. Under a consent order of the FTC (the text and content of which is unknown to CS), OBH will be required to elect a three-person management committee for the Balzers-Pfeiffer business ("Balzers-Pfeiffer Management Committee"). The Balzers-Pfeiffer Management Committee shall consist of the President, the financial officer of B-P and a financial officer of OBH whose responsibilities with OBH do not involve direct management of OBH's turbomolecular pumps. The Chairman of the Balzers-Pfeiffer Management Committee shall be [name to be inserted by OBH]

(provided he agrees, or a comparable, knowledgeable person among the managers of Balzers-Pfeiffer), who shall remain independent of OBH and competent to assure the continued viability and competitiveness of the B-P assets.

The consent order will provide that OBH shall not exercise, and OBH shall direct CS not to exercise direction or control over, or influence directly or indirectly, B-P, the Balzers-Pfeiffer Management Committee, or any of its operations or businesses; provided, however, that OBH may exercise only such direction and control over B-P as is necessary to assure compliance with the consent order and with all applicable laws.

D. The consent order of the FTC shall further provide as follows:

If OBH and CS have not absolutely and in good faith, and with the prior approval of the FTC, divested B-P within twelve (12) months of the date the order becomes effective, the FTC (or a court upon motion by the FTC) may appoint a trustee to divest B-P (the "FTC Trustee").

Subject to the prior approval of the FTC, the FTC Trustee shall have the exclusive power and authority to divest B-P.

Within ten (10) days after appointment of the FTC Trustee, OBH shall direct CS to execute a trust agreement, that, subject to the prior approval of the FTC and, in the case of a court-appointed FTC Trustee, of the court, transfers to the FTC Trustee all rights and powers necessary to permit the FTC Trustee to effect the divestiture(s) required by this order.

The FTC Trustees shall have full and complete access to the personnel, books, records and facilities related to the B-P assets, or to any other relevant information, as the FTC Trustee may request. OBH shall take no action, and OBH shall direct CS to take no action to interfere with or impede the FTC Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by OBH or CS shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the FTC or, for a court-appointed FTC Trustee, by the court.

The FTC Trustee shall have no obligation or authority to operate or maintain B-P.

Based on these declarations and confirmations the Parties hereto agree to follows:

